

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5479/MUM/2018
Assessment Year: 2009-10**

Shri Mahesh R. Kadakia, 244, F-Wing, Sidesh Jyoti Tower, Balaram Tower, Grant Road (E), Mumbai - 400004 PAN: AAEPK4491R	Vs.	The ITO 19(2)(3), 2 nd Floor, Matru Mandir, Opp. Bhatia Hospital,
(Appellant)		(Respondent)

Assessee by : Shri Mahesh R. Kadakia (AR)
Revenue by : Shri Akhtar H. Ansari (DR)

Date of Hearing: 11/11/2019
Date of Pronouncement: 29/11/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 18.05.2018 passed by the Commissioner of Income Tax (Appeals)-6 (for short 'the CIT(A), Mumbai, which pertains to the assessment year 2009-10, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee proprietor of M/s S.V. Enterprises, engaged in the business of trading in chemicals, filed its return of income for the assessment year under consideration declaring the total income of Rs. 6,88,130/-. Subsequently, it came to the notice of the AO that the assessee had shown purchases amounting to Rs. 22,90,786/- from three bogus entities declared by the Sales Tax Department, Maharashtra who used to provide accommodation bills without supplying any goods. Accordingly, the AO issued notice u/s 148 of the Act. The assessee submitted that the original return filed be treated as the

return filed in response to the notice u/s 148 of the Act. Thereafter the AO issued notices u/s 143(2) and 142(1) of the Act. In response thereof, the authorized representative of the assessee appeared and filed the details. The assessee contended that the purchases were genuinely made from the aforesaid parties, however the AO rejecting the contention of the assessee treated the questioned purchases as bogus transaction and made addition of 12.5% of the said amount to the income of the assessee and determined the total income of the assessee at Rs. 9,74,480/- The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee confirmed the addition of 12.5% of the total amount of bogus purchases. Against the said findings, the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

"1. The learned assessing officer has erred in making addition of Rs. 2,86,346/- by disallowing purchases on the suspicion that the said purchases are non-genuine. The learned CIT (A)-6 has erred in dismissing the appeal without considering the facts and submissions of the case.

4. Before us, the Ld. counsel for the assessee submitted that since the assessee has discharged the primary onus of establishing genuineness of the purchases by submitting the documentary evidence, the Ld. CIT(A) ought to have deleted the addition of 12.5% of the alleged bogus purchases determined by the AO. Placing reliance on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Nikunj Eximp Enterprises Pvt. Ltd*, the Ld. counsel submitted that merely because the assessee could not produce the parties before the authorities below, it could not be concluded that the goods were not purchased.

5. On the other hand, the Ld. departmental representative (DR) relying on the findings of the authorities below submitted that since the assessee has failed to prove the genuineness of the transaction of purchase by adducing cogent and convincing evidence, the Ld. CIT (A) has rightly confirmed the addition of 12.5% of the total amount of bogus purchases in the light of the

ratio laid down by the Hon'ble Gujarat High in the case of *Simit P. Sheth*, 356 ITR 451(Guj).

6. We have carefully gone through the relevant record including the cases relied upon by the authorities below. We are convinced from the material on record that the assessee has failed to establish the genuineness of the purchases in question by adducing cogent and convincing evidence. The notices issued by the AO to the hawala parties were received back un-served. The assessee also failed to produce them before the AO for verification. Hence, in our considered view, the AO has rightly concluded that the assessee has not made the questioned purchases from the parties mentioned in the books of account. We further notice that, the AO has not rejected the sale of the goods so purchased. The above-mentioned facts give rise to the conclusion that the assessee had purchased the goods in question from grey market and evaded the tax applicable during the relevant period. Under these circumstances, the AO had no option but to make an addition on estimation basis considering the applicable rate of VAT or other taxes and the element of profit embedded in the said transaction. The Ld. CIT(A) has sustained the addition of 12.5%, holding that the estimate reached at by the AO is just and reasonable.

7. The Ld CIT(A) has sustained addition to 12.5%, by following the ratio laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Seth* 356 ITR 451(Guj), in which the Hon'ble High Court has upheld the decision of the Tribunal and sustained the addition 12.5% of the total amount of bogus purchases determined by the Tribunal, holding that only profit element embedded in such purchases can be added to income of the assessee. Hence, in our considered view, the order passed by the Ld. CIT(A) is based on the principles of law laid down by the Hon'ble Gujarat High Court in the said case. Hence, we do not find any infirmity in the order of the Ld. CIT (A) to interfere with. Accordingly, we uphold the order of the Ld. CIT (A) and dismiss the assessee's appeal and direct the AO to make addition of 12.5% of the total amount of questioned purchases.

In the result, appeal filed by the assessee for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 29th November, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/11/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai