

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

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

**ITA No. 5537/MUM/2018  
Assessment Year: 2010-11**

Mr. Punit Malhotra, Punit Sales Corporation, 39/43, 3 <sup>rd</sup> Floor, M.K. Marg, Churchgate, Mumbai - 400020 PAN: AGIPM0375L	<b>Vs.</b>	The Income Tax Officer, Ward 17(2) 5, Aayakar Bhavan, 1 <sup>st</sup> Floor, M.K. Marg, Churchgate, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri J.P. Purohit (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**

The assessee has filed the present appeal against the order dated 05.06.2018 passed by the Commissioner of Income Tax (Appeals)-28 (for short 'the CIT(A), Mumbai, which pertains to the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee proprietor of M/s Punit Sales corporation, engaged in the business of trading, filed its return of income for the assessment year under consideration declaring total income of Rs.16,88,810/-. Since, it came to the notice of the AO that the assessee had shown purchases amounting to Rs. 6,31,966/- from a bogus entity declared by the Sales Tax Department, Maharashtra which used to provide accommodation bills without supplying any goods. Accordingly, the AO issued 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 said amount to the income of the assessee. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee dismissed the assessee's appeal and confirmed the addition. Against the said findings, the assessee is in appeal before the Tribunal.

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

*“1. In the facts & circumstances of the case as well as in law the learned CIT (Appeals) erred in confirming the order passed by the learned assessing officer under section 143 (3) r.w.s. 147 of the Income Tax Act, 1961.*

*2. In the facts & circumstances of the case as well as in law the learned CIT (Appeals) erred in not appreciating that the appellant had made genuine purchases in ordinary course of business and the same is supported by proper documents.*

*3. In the facts and circumstances of the case the learned CIT (Appeals) erred in confirming addition of Rs. 6,31,966/- on account of suppressed profits on bogus purchases being 100% of the purchases from the said party.”*

4. Before us the Ld. counsel for the assessee submitted that that since the assessee has discharged the primary onus of establishing genuineness of the purchases by submitting the documentary evidence, the Ld CIT(A) has wrongly made 100% addition of the alleged bogus purchases. 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. The Ld. counsel further submitted that in any case the addition should be just and reasonable. The Ld

counsel further submitted that since the findings of the Ld CIT(A) are contrary to the settled principles of law, the same may be set aside or modified in the interest of justice.

5. On the other hand, the Ld. DR submitted that since the assessee had failed to discharge the onus of proving genuineness of the transaction of purchase by adducing cogent evidence, the Ld. CIT(A) has rightly confirmed the addition made by the AO in accordance with the law laid down by the Hon'ble Gujarat High Court in the case of *N.K. Proteins Ltd. [1996] 58 ITD 428*. The Ld. DR further submitted that since the action of the Ld. CIT (A) is in accordance with the principle of law laid down by the Hon'ble Gujarat High Court, there is no infirmity in the order of the Ld. CIT(A).

6. We have heard the rival submissions and 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 were received back unserved. The assessee also failed to produce the parties 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 profit embedded in the said transaction. However, the AO made addition of the total amount of bogus purchases, which was confirmed by the Ld. CIT(A).

7. In the case of *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, the Hon'ble Gujrat High Court has upheld the decision of the Tribunal and sustained the addition of 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) contrary to the principles of law laid down by the Hon'ble Gujarat High Court in the said case. On the other hand, the law relied upon by the Ld. DR is distinguishable on facts. Hence, following the ratio laid down by the Hon'ble Gujarat High Court, discussed above, we set aside the impugned order passed by the Ld. CIT(A) and restrict the addition to 12.5% of the total amount of bogus purchases. Accordingly, we 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 2010-2011 is partly allowed.

Order pronounced in the open court on 29<sup>th</sup> 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