

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

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

**ITA No. 5555/MUM/2018  
Assessment Year: 2009-10**

The ITO 29(2)(3), Bldg. No. C-10, 2 <sup>nd</sup> Floor, Room No. 204, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	<b>Vs.</b>	Shri Mahasukha Mansukhlal Mehta, 208, Supashwa, Nahur Road, Mulund (West), Mumbai - 400080 PAN: AAUPM0175G
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Akhtar H. Ansari (DR)

Assessee by : None

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 revenue against the order dated 26.06.2018 passed by the Commissioner of Income Tax (Appeals)-40 (for short 'the CIT(A), Mumbai, for the assessment year 2009-10, whereby the Ld. CIT(A) has partly allowed 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 Mahavir Enterprises, engaged in the business of manufacturing of metal washers as well as trading in metal washers and hardware items, filed its return of income for the assessment year under consideration declaring total income of Rs.6,51,230/-. Since, it came to the notice of the AO that the assessee had shown purchases amounting to Rs. 38,80,229/- from seven bogus parties 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 u/s 139(1) of the Act 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 @ 18% of the total amount of Bogus purchases 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 restricted the addition to 12.5% of the total amount of bogus purchases. Against the said findings, the revenue is in appeal before the Tribunal.

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

*“1. Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in restricting the addition of Rs. 6,95,843/- being 18% of Rs. 69,58,432/- to 12.5% of bogus purchase from hawala parties to ignoring the fact that the alleged party was included in the list of suspicious and/or hawala dealers provided by the Sales Tax Department?*

*2. Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in restricting the addition of Rs. 6,95,843/- being 18% of Rs. 38,80,229/- to Rs. 4,85,02,862/- being 12.5% of the aforesaid bogus purchases from hawala parties by ignoring the fact that the notice u/s 133(6) were returned unserved and the assessee was failed to produce the parties for cross verification.*

*3. Whether, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in restricting the addition of Rs. 6,95,843/- being 18% to 12.5% of bogus purchases in the view of the decision of the Hon'ble Supreme Court of India in the case of N.K. Proteins Limited, wherein Apex Court has dismissed the SLP filed against the High Court's*

*decision of upholding the 100% addition made by the Assessing Officer on account of bogus purchases?”*

4. This case was fixed for hearing on 11.11.2019. On the said date, when the case was called out for hearing, none appeared on behalf of the assessee. From the record, we observed that the assessee does not want to pursue the appeal filed by the department, as the assessee has not appeared despite service of notice. Accordingly, we decided to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR).

5. The Ld. DR submitted before us 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) ought to have confirmed the addition made by the AO. The Ld. DR further submitted that since the action of the Ld. CIT (A) is not in accordance with the settled principle of law, the same is liable to set aside.

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 were received back un-served. 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 its 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. Accordingly, the AO made addition of 18% of the total amount of bogus purchases.

7. The Ld CIT(A) has restricted the addition to 12.5%, basically on the ground that the addition of 18% amount of bogus purchases is on much higher side. 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) 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 sole ground of the revenue'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 revenue for assessment year 2009-2010 is dismissed.

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**