

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

**BEFORE SHRI WASEEM AHMED (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5981/MUM/2018  
Assessment Year: 2011-2012**

Manohar S. Ali, Gala No. 6, Doshi Industrial Estate, Navghar Road Bhayander (E) Maharashtra- 401105 PAN: ADPPA4968F	<b>Vs.</b>	The ITO – 2(5), Thane, Maharashtra.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri B.N. Rao. (AR)  
Revenue by : Akhtar H. Ansari (Sr.DR)

Date of Hearing: 05/11/2019  
Date of Pronouncement: 08/11/2019

**ORDER**

**PER RAM LAL NEGI, JM**

The assessee has filed the present appeal against the order dated 16.07.2018 passed by the Commissioner of Income Tax (Appeals)-1 (for short 'the CIT(A), Thane, for the assessment years 2011-12, 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, Prop. of M/s Concept Engineering and M/s D.N. Rubber Industries, engaged in the business of manufacturing rubber products & industrial packing material, filed its return of income for the assessment year under consideration declaring the total income of Rs. 6,94,373/-. The return was processed u/s 143 (1) of the Act. Subsequently, the AO received information from sales tax department Maharashtra through DGIT (Investigation) to the effect that the assessee during the year relevant to the assessment year under consideration obtained bogus purchase bills amounting to Rs. 11,35,260/- from three parties mentioned in

the assessment order, whose name were in the list of 'hawala' parties prepared by the Maharashtra sales tax department. As per the information these parties used to issue bogus bills to various assessees during the relevant period. On the basis of the said information, the AO reopened the assessment u/s 147 of the Act after issuing 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 before the AO, submitted the details called for and contended that the assessee had made genuine purchases from the said parties. The AO rejected the claim of the assessee and treating the purchases as bogus made addition of 25% of the total amount of purchases and after inter alia making addition of the said amount determined the total income of the assessee at Rs.2,89,130/-. In the first appeal, the Ld. CIT(A) confirmed the addition made by the AO. 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 ground:-

*“ On the facts and circumstances of the case and law-  
The Ld. Commissioner of Income Tax (Appeals) erred in  
upholding the addition made by the Assessing Officer on  
account of bogus purchases to the tune of Rs. 2,83,815/-.”*

4. The Ld. counsel for the assessee submitted that since, the action of the AO was bad in law, the Ld. CIT(A) ought to have set aside the assessment order. The Ld. counsel further contended that AO has made addition of the total amount of alleged bogus purchases without taking into consideration the submissions made by the assessee in the light of the documentary evidence including copies of bills raised by the parties, delivery challan, ledger extract stock register showing movements of products, quantity purchased and quantity sold supplied & consumed, bank statement, details of party-wise sales/purchases and sale bills, copy of VAT return and sales tax return, produced by the assessee to prove the genuineness of the purchases in question. The Ld. counsel further pointed out that AO has not rejected the

sales made by the assessee, but rejected the purchases ignoring that there cannot be any sale without purchases. The assessee apart from the documents evidence to establish the genuineness of the transactions, furnished the details regarding the whereabouts of the parties including their TIN numbers. The Ld. counsel further submitted that in view of the aforesaid facts, the addition of 25% may be deleted and in alternative a reasonable percentage of addition may be made in the light of the GP shown by the assessee.

5. On the other hand, the Ld. departmental representative (DR) relying on the concurrent findings of the authorities below submitted that since the assessee has failed to discharge the onus of proving genuineness of the transaction to the satisfaction of the authorities below, the Ld. CIT(A) has rightly confirmed the addition of 12.5% of the total amount of bogus purchases determined by the AO. The Ld DR further submitted that the findings of the Ld. DR are based on the evidence on record and in accordance with the settled principles of law, hence the appeal of the assessee deserves dismissal being devoid of any merit.

6. We have heard the rival submissions of the parties and carefully gone through the relevant material on record in the light of the contentions of the parties. We notice that the Ld. CIT(A) has confirmed the addition upholding the findings of AO that the assessee has failed to prove the genuineness of the questioned transactions. We agree with the Ld. CIT(A) as in our considered view, the evidence on record is not sufficient to conclude that the goods were purchased by the assessee from the parties as per the bills and other documents produced by the assessee. Hence, the AO has rightly held that the assessee has not made the questioned purchases from the parties mentioned in the books of account of the assessee. However, since, the AO has not rejected the sale of the goods so purchased, it can be presumed 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 addition on estimation basis taking into consideration, the applicable rate of VAT or other taxes and the element of

profit embedded in the said transaction. But, he instead of doing so, made addition of 25% of the entire amount in question to the income of the assessee and the Ld. CIT(A) confirmed the same.

7. The Hon'ble Gujarat High Court in the case *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, while dealing with the similar issue, 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. The Tribunal estimated the addition keeping in view the existing rate of VAT which was 10% and the estimated profit of 2.5% from the questioned transaction. As pointed out by the Ld. counsel, the applicable rate of VAT in the present case was 5% and the revenue has not disputed this fact. Hence, we find merit in the contention of the Ld. counsel that the addition of 25% of the questioned purchases is on higher side. Hence, following the principles of law laid down by the Hon'ble Gujarat High Court in the said case, we estimate the addition at 7.5% i.e. 5% VAT plus 2.5% profit from the transactions in question. We therefore, modify the impugned order passed by the Ld. CIT (A) and restrict the addition to 7.5% of the total amount of bogus purchases determined by the AO.

In the result, appeal filed by the assessee for assessment years 2011-12 is partly allowed.

Order pronounced in the open court on 8<sup>th</sup> November, 2019.

*Sd/-*  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 08/11/2019

**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**