

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 179 & 180/Mum/2019
(Assessment Year: 2010-11 & 2011-12)**

I.T.O.-22(2)(4), 310, 3 rd Floor, Piramal Chambers, 1st Baug, Parel, Mumbai-400012.	Vs.	Smt. Neelima Martin, 503, Gokul Sushma, Dadabhai Road, Santacruz East, Mumbai-400054.
PAN/GIR No. AFZPM 5434 J		
(Appellant)	..	(Respondent)

Revenue by	Shri Akhtar H Ansari (DR)
Assessee by	None
Date of Hearing	15/01/2020
Date of Pronouncement	20/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

These are the appeals filed by the revenue against the common order of the Id. CIT(A)-34, Mumbai dated 11/10/2018 for the A.Y. 2010-11 & 2011-12 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In both these appeals, the revenue is aggrieved by the order of the Id. CIT(A) for restricting the addition on account of bogus purchases to the extent of 12.5%.

3. I have gone through the orders of the authorities below and found that the A.O. got information from the sales tax department regarding bogus purchases by the assessee. After considering facts of

the case, the A.O. made addition by estimating the G.P. of 25% on such bogus purchases.

4. By the impugned order, the Id. CIT(A) after considering various judicial pronouncements and the facts of the case, directed the A.O. to restrict addition to the extent of 12.5%. The precise observation of the Id. CIT(A) was as under:

“4.5. Conclusion on case laws:

The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the appellant. It is also seen that putting an onus on the AO to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A.Sanghavi (supra). If the bogus purchases are unproved and are declared consumed b^y appellant itself in its trading, manufacturing or non-trading activities, the entire addition can be made as it only goes to inflate the expenses of the appellant. (refer M/s. Shoreline Hotel Pvt. Ltd vs. CIT Central-1 in ITA No.964/M/2015 dated 19.06.2015).

4.6. *In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala*

dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from five of the hawala operators totaling to Rs. 5,26,670/-. The A.O. attempted to verify such parties by making independent enquiries u/s.133(6) of the I.T.Act, 1961. All these verification letters came back "unserved". The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc could not be submitted before the A.O. Nor the Principle Officer of these concerns were produced before the A.O. for examination. However, it is also a fact that the A.O. has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such 'accommodation entry. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The AO has rightly disallowed part of the purchases claimed such hawala dealers. However, the ratio of the judgement of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case since the appellant is a trading concern. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified. Thus, the disallowance made by the A.O. is upheld in principle. However, the percentage is restricted from

25% to 12.5%. The ground of appeal filed by the appellant on this issue is therefore, Partly Allowed.”

Dept. is before us against the above order of CIT(A).

5. I have gone through the orders of the authorities below and found that after considering various judicial pronouncements and specially the decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P Sheth 365 ITR 0451 wherein it has been held that once the sale is accepted by the A.O., the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. Accordingly, the Id. CIT(A) has restricted the addition to the extent of 12.5% in so far as corresponding sales were not doubted nor the books of account were rejected. The detailed findings so recorded by the Id. CIT(A) has not been controverted by the Id DR by bringing any positive material on record, accordingly, I do not find any reason to interfere in the order of the Id. CIT(A) in restricting the addition to the extent of 12.5% of alleged bogus purchases, being profit element in such bogus purchases.

6. Since the facts and circumstances of both the years are same, therefore, by following the reasoning giving in the appeal for the A.Y.

2010-11, I also uphold the action of the Id. CIT(A) for the A.Y.2011-12.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 20th January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/01/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai