

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI  
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6403/Mum/2018  
(Assessment Year: 2011-12)**

ITO-17(1)(3) Room No.135, 1 <sup>st</sup> Floor, Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	Boon Petrochem House 53/55, Bhandari Street Masjid Bunder Mumbai-400 003
		<b>PAN/GIR No.AAAF7130J</b>
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri Kailash Mangal, DR
Assessee by	None
<b>Date of Hearing</b>	<b>19/12/2019</b>
<b>Date of Pronouncement</b>	<b>15/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-55, Mumbai, dated 21/08/2018 and it pertains to Assessment Year 2011-12.

2. The revenue has raised the following grounds of appeal:

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in restricting the addition made by the AO to 8% of Rs.30,36,314/- against the addition made at 12.5% of the bogus purchases, ignoring that the notices u/s.133(6) issued by the Assessing Officer to the alleged suppliers, were returned unserved and the assessee was also unable to prove the genuineness of the purchases either by producing the suppliers for examination or by furnishing other substantiating documents which were required by the Assessing Officer ?*

2. *Whether on the facts and circumstances of the case and in law, the Learned CIT(A) erred in overlooking the fact that the addition made by*

*the AO was based on the details of the scam unearthed by the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchases from them ?"*

*The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

*(This case falls under the exception 10(e) of the Circular No.03/2018 doted 11.07.2018 as amended on 20.08.2018)*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of resale and trading in chemicals, filed its return of income for AY 2011-12 on 23/09/2011 declaring total income of Rs.36,583/-. Thereafter, the case has been reopened u/s 147 of the Act, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in para 2 of his assessment order amounting to Rs. 38,66,298/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 29/02/2016 and determined total income of Rs. 12,46,110/-, after making 12.50% additions towards alleged bogus purchase from those parties and made additions of Rs. 3,79,539/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions, on the issue, which has been reproduced at Para 6 on pages 3 to 4 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A)

are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down addition made by the AO towards alleged bogus purchases to 8% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

*7. Ground Nos.1, 2 & 3 relates to re-opening of the order and the addition made to the total income on account of bogus purchases made by the appellant. As they are interconnected, they are taken together for adjudication, I have considered the facts of the case, AO's order and appellant's submission. From the perusal of AO's order, it is seen that an information was received in respect of accommodation entries taken by the appellant in respect of 5 parties declared as hawala by the Maharashtra- Sales..Tax Department to the tune of Rs. 38,66,298/-'. As regards Ground No.1 & 2, is concerned, the contentions of the appellant cannot be accepted that there was no proper reason on record for re-opening of the case as the modus operandi adopted by the parties mentioned in the order who have given accommodation entries are elaborately discussed in the order. After having gone through the same, I feel the AO has appropriately re-opened the case as it is a settled law that if the AO has reason to believe that certain income has escaped assessment, re-assessment proceedings can be initiated. In the appellant's case, the AO had the information which is based on the independent enquiries conducted by the Sales Tax Department: about the hawala dealers and their modus operandi of giving accommodation entries. In view of the above, Ground Nos.1&2 of the appellant is dismissed.*

*As regards Ground No.3 is concerned regarding the addition of Rs.3,79,539/- at 12.5% of purchases of Rs 30,36,314/- (Rs.38,66,298 – Rs.8,29,984/-), it is gathered from the AO's order that the appellant has not been able to provide any corroborative evidence to prove its purchases from the aforesaid six parties. Further, the AO has tried to ascertain the genuineness of purchases by issuing notices u/s.133(6) to the parties but they came back unserved. This fact was brought to the notice of the appellant but the appellant expressed its inability to produce the parties. During the course of appellate proceedings, the appellant has not brought anything new to prove its genuineness of the claim before me. The appellant has merely stated that the purchases are genuine and also relied on plethora of case laws. Having considered the same, I feel*

*that all the case laws relied by the appellant does not apply to the appellant's case as the appellant has failed to discharge the onus of bringing the parties before the AO. In view of the above facts, I am of the considered opinion that the AO has appropriately made the addition but the percentage of 12.5% appears to be excessive and accordingly, it is directed that the percentage may be taken as B% thus giving partial relief to the appellant. The appellant gets relief of Rs.1,36,634/-i.e (Rs.3,79,539/- Rs.2,42,905/- at 8% of Rs. 30,36314/-). Thus, Ground No.3 of the appellant is partly allowed.*

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made addition of 12.50% profit on alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides have failed to prove

the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 12.50% profit additions, whereas the Ld.CIT(A) has scaled down addition to 8% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any

comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken one of the possible method and estimated 8% gross profit on alleged bogus purchases to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue..

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 15 /01/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15 /01/2020  
Thirumalesh Sr.PS

**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