

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

**ITA No. 380 & 381/Mum/2019  
(Assessment Year: 2010-11 & 2009-10)**

I.T.O.-17(2)(4), Room No. 123B, 1 <sup>st</sup> Floor, Aayakar Bhawan, Churchgate, Mumbai- 400020.	Vs.	M/s N.N. Trading Corporation, 12-14, 2 <sup>nd</sup> Floor, Kazi Sayeed Street, Masjid Bunder Road, Mumbai- 400009.
<b>PAN/GIR No. AAAFN 0762 C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Akhtar H Ansari (DR)
Assessee by	None
<b>Date of Hearing</b>	<b>23/01/2020</b>
<b>Date of Pronouncement</b>	<b>27/01/2020</b>

**आदेश / O R D E R**

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

These are the appeals filed by the revenue against the separate orders of the Id. CIT(A)-58, Mumbai dated 19/11/2018 for the A.Y. 2010-11 & 2009-10 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 reducing addition to the extent of 5.75% of alleged bogus purchases, which was made by the A.O. @ 12.5%.

3. I have gone through the orders of the authorities below and found that the A.O. got information regarding the assessee taking bogus bill

with regard to purchases without delivery of goods. Accordingly, the A.O. reopened the assessment and after estimating profit at 12.5% of alleged bogus purchases, made addition.

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 5.75%. The precise observation of the Id. CIT(A) was as under:

- “5. The issue is disallowance of sums represented by bogus accommodation entries. These entries are debited to Profit and Loss Account having effect in determination of taxable profit. The disallowance made is Rs 7,36,604 being 12% of total value of accommodation entries of which Assessing Officer had received information. It is a settled legal position that the onus is on assessee to prove the expense is genuine. Here Assessing Officer made effort to verify genuineness of transaction and failed as relevant documents were not placed before him. The onus therefore shifts to assessee, who failed to discharge the same. As clearly brought out in paragraph 6 of assessment order, the evidence produced are copy of purchase bills and purchase ledger accounts.*
6. *A transaction has two parts being payment for goods/services and transfer of goods/rendering of service. Only if both are proved it can be said that the transaction is genuine. The evidence furnished covers only the limb of payment but nothing on actual transfer of goods. Here the case is that the evidence is factitious and hence evidence on actual transfer of goods only substantiate the case. The assessee has failed in substantiating the same. To refresh above, the case is that assessee, A is between X and Y. Only if X procures or manufacture he can*

*transfer to A. Only if A gets the product he can transfer the product to Y. The sequence is X→A→Y. No satisfactory evidence regarding the link X→A link in the chain proving that the goods were produced/manufactured by X and transferred to A is before me.*

7. *Before me the following were produced:*

1. *Ledger Accounts of Parties concerned*
2. *Purchase bills of Parties concerned*
3. *Bank Statement highlighting the payments*
4. *Sales bills corresponding to purchases concerned*

*The above, internal documents of assessee, does not establish that the goods existed. The appellant was willing to produce more documentary evidence as for AY 2009-10 but it was pointed these are also internal documents having limited utility. This is described in paragraph 6 above. In facts and circumstances of this case the primary requirement is not met. Hence the same is rejected in absence of external documents, requirement in facts and circumstances of the case.*

8. *The appellant also made a legal submission. The same is also considered.*

9. *Ordinarily once purchase is held bogus, entire purchase is to be disallowed as a book entry having effect of reducing profit is created solely for reducing normal profit. However judicial decisions need to be followed by which a fixed per cent of same ie bogus entry/accommodation entry is added to income { eg: DCIT, 14(1)(2), Mumbai vs M/s Fagioli India Pvt. Ltd. (ITA No. 4557 & 4558/Mum/2015 dated 28.07.2017, which inter alia considered decision of Hon. Supreme Court in N K Protiens vs DCIT (SLP 759 to 2017) dated 16.01.2017]. In the cited case of M/s Fagioli India Pvt. Ltd. gross profit was 37% and Hon.ITAT decided that estimate of profit be 12.5% on the figure of accommodation entry or bogus purchase. Further in Shri Mehul K. Mehta Prop. Vaishnavi Enterprises vs Income Tax Officer 15(1)(3), Mumbai in I.T.A. No. 3227/Mum/2016*

*dated 14.03.2017 in the context of the case the Hon. ITAT ordered as under:*

*We do not find any infirmity in the well reasoned appellate order of learned CIT(A) which we are inclined to affirm/sustain except that, in our considered view, the end of justice will be met in the instant case if GP is estimated to tune of 12.5% of the purchases from these alleged hawala operators which will cover any leakage of Revenue by way of VAT, commission etc.. Thus, as compared to the GP ratio at 7.11% declared by the assessee, we are estimating GP ratio at the rate of 12.5% on the said bogus purchases wherein the assessee will be allowed credit of declared GP ratio of 7.11% and net addition to GP ratio shall be to the tune of 5.39% on bogus purchases, hence, we allow partial relief to the assessee. We order accordingly.*

*It can be seen that in the above the Hon.ITAT has reduced addition further vis-a-vis the originally accepted figure of 12.5%.Further in case of MIs Geolife Organics vs ACIT ITA Nos. 3699,4276,4917,4760/Mum/2016 of Hon. ITAT, Mumbai dated 05.05.2017, despite all deficiencies in assessment procedure as against 12.5% disallowance made by Assessing Officer, the Hon TAT fixed the rate of disallowance at a lower level. The latter was relied upon by assessee in concluding portion of their submission.*

- 10. All submissions of the appellant is duly considered The gross profit rate of assessee is 12.38%. The disputed transaction is reselling of hardware (ball bearing). The Assessing Officer disallowed 12% of the alleged amount of accommodation entries. On facts and circumstances of the case, and considering strength of evidence brought to record (I note that Assessing Officer has not issued any notice to the alleged accommodation entry providers, showing incomplete or no enquiry) decision is to be taken in a*

*balanced manner. I, after considering all aspects, hold that disallowance be kept at 5.75% of transactions covered by accommodation entries. The Assessing Officer is directed to modify assessment accordingly."*

5. From the record I found that after considering various documents filed before the A.O. and the Id. CIT(A) and also considering various judicial pronouncements and keeping in view the G.P. rate declared by the assessee, the Id. CIT(A) has restricted the addition to the extent of 5.75%. The detailed finding so recorded by the Id. CIT(A) has not been controverted by the Id DR. 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 5.75% 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 given in the appeal for the A.Y. 2010-11, I also uphold the action of the Id. CIT(A) for the A.Y. 2009-10.

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

Order pronounced in the open court on 27th January, 2020.

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

Mumbai; Dated 27/01/2020  
\*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**