

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 311/MUM/2019  
Assessment Year: 2009-10**

Chetan Vasantry Parekh  
A/6, Munisuvrat Darshan  
Navroji Lane, Ghatkopar (W) Vs. Income Tax Officer – 27(1)(3)  
Mumbai-400086. 4<sup>th</sup> Floor, Tower 6, Vashi  
Railway Station Complex,  
Vashi, Navi Mumbai – 400703

**PAN No. AAAPP 6737 F  
Appellant**

**Respondent**

Assessee by : Mr. Rajesh S. Shah, AR  
Revenue by : Mr. R. Bhoopathi, DR

Date of Hearing : 21/01/2020  
Date of pronouncement : 29/01/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

The appeal by the Assessee is directed against the order of the Commissioner of Income Tax (Appeals)-24 [in short 'CIT(A)], Mumbai and arises out of the assessment order passed by the Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal read as under:

1. On facts and circumstances of the case and in law, the learned CIT(A) erred in passing an ex-parte order without providing an opportunity to the appellant.
2. On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made in respect of alleged bogus purchases at 12.5% as additional Gross Profit.
3. On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made in respect of alleged bogus purchases at 12.5% as additional Gross Profit though the purchases were genuine and the appellant had provided all the details in respect of purchase, sales, bank, stock register etc.
4. On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made in respect of alleged bogus purchases at 12.5% as additional Gross Profit though the appellant has declared 4.23% of the Gross Profit in the books of accounts which is comparable in the market.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 25.09.2009 declaring total income at Rs.7,29,300/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee has obtained bogus purchase bills from the four entry providers amounting to Rs.86,93,958/-, the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 dated 29.03.2014. In response to it, the assessee *vide* letter dated 29.04.2014 stated before the AO that the return filed on 25.09.2009 may be treated as return filed in response to notice u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the four parties calling for copies of ledger account of the assessee in their books, nature of goods sold along with sample copies of bills issued,

copy of delivery challan for goods dispatched along with transport bills, copy of bank statement showing relevant receipts and payment of outstanding receipts after the end of the year and copy of their return of income for the AY 2009-10. However, those notices were returned un-served by the postal authorities. In such a scenario, the AO asked the assessee to produce the said parties along with the abovementioned documents to verify their identity and the genuineness of the purchases. However, the assessee failed to produce those parties before the AO for examination. Further, it is mentioned by the AO that the assessee even failed to file before him the latest address of the above parties. In such a situation, the AO came to a finding that the profit embedded in such purchases be brought to tax. By following the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth* (2013) 356 ITR 451 (Guj), the AO estimated the profit @ 12.5% on the disputed purchases of Rs.86,93,958/-. Thus he made a disallowance of Rs.10,86,745/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 06.11.2018, the Ld. CIT(A) affirmed the addition made by the AO.

5. Before us, the Ld. counsel for the assessee submits that in the instant case, the assessee has declared gross profit @ 4.23% in its books of accounts which is comparable in the market and therefore, there is no basis in the order of the AO in estimating the profit @ 12.5%, which is subsequently affirmed by the Ld. CIT(A).

On the other hand, the Ld. Departmental Representative (DR) supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

As mentioned earlier, during the course of re-assessment proceedings, the notices issued by the AO u/s 133(6) calling for copies of ledger account of the assessee in their books, nature of goods sold along with sample copies of bills issued, copy of delivery challan for goods dispatched along with transport bills, copy of bank statement showing relevant receipts and payment of outstanding receipts after the end of the year and copy of their return of income for the AY 2009-10, were returned un-served by the postal authorities. Thereafter, the AO asked the assessee to produce the said parties before him to verify the identity and genuineness of the purchases. However, the assessee failed to do so. Even the assessee failed to file before the AO the latest address of the said parties.

As recorded by the Ld. CIT(A), despite number of notices sent in the last available address as per Form 35, there is no compliance by the assessee. However, we find that the Ld. CIT(A) has not mentioned whether the notices were acknowledged by the assessee. In this respect, the order of the Ld. CIT(A) is silent. In the interest of justice, we set aside the order of the Ld. CIT(A) and restore the matter to him to decide the appeal after giving reasonable opportunity of being heard. We direct the assessee to appear before the Ld. CIT(A) and file the relevant documents/evidence.

7. In the result, the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 29/01/2020.**

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/01/2020

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**