

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND SHRI RAJESH
KUMAR, ACCOUNTANT MEMBER**

**ITA No.6197/MUM/2018
Assessment Year: 2009-10**

Dattaram Vishwanath Keshkamat		ACIT-21(1), Mumbai
9/129, Adarsh Nagar, Opp.Century Bazar, Prabhadevi, Mumbai, Pin- 400025.	Vs.	
PAN: AACPK4240J		
(Appellant)		(Respondent)

Present for:

Appellant by : Ruchi Rathod, Advocate
Respondent by : Jothilakshmi Nayak, Sr. DR

Date of Hearing : 08.01.2020
Date of Pronouncement : 29.01.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 28.09.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The only issue raised by the assessee is against the confirmation of addition of Rs.14,36,628/- by the CIT(A) as made by the AO on account of bogus purchases.

3. The facts in brief are that the assessee filed his return of income on 30.09.2009 declaring total income of Rs.24,34,750/- which was processed u/s 143(1) of the Act. Thereafter the AO received information from Sales Tax Department, Govt. of Maharashtra that the assessee is beneficiary of hawala purchase racket . The case of the assessee was reopened u/s 147 by issuing a notice u/s 148 dated 20.01.2014. The assessee filed before the AO the copies of invoices and ledger in respect of alleged parties from whom the purchases were made. The assessee also filed the details of payment by account payee cheques to alleged bogus parties. Thereafter the AO issued show-cause notice dated 03.03.2015 to call upon the assessee as to why purchases from the said parties should not be disallowed which was complied with by the assessee submitting that the necessary evidences proving the genuineness of the purchases were already filed before the AO. The AO ultimately treated the said purchases as bogus and added the entire amount to the income of the assessee in the assessment framed u/s 143(3) r.w.s. 147 of the Act.

4. In the appellate proceedings, the ld. CIT(A) upheld the order of AO that no explanation was given by the assessee qua the manufacturing process for various raw materials products used in the manufacturing process and also that the GP rate during the year was low as 14.54% vis-à-vis GP rate 19.38%, 22.9% and 20.28% for Assessment Year 2010-11, 2011-12 and 2012-13 respectively. The ratio of purchases with labour charges fluctuates and finally held

that the bills and ledger accounts produced are self-sufficient documents to prove the genuineness.

5. After hearing both the parties and perusing the material on record, we observe that in this case the undisputed facts are that the assessee was beneficiary of hawala purchases entries from several parties as reported by the Sales Tax Department, Govt. of Maharashtra. The assessee during the year made purchases of Rs.14,36,628/- from the various alleged parties. The assessee filed during the course of assessment proceedings, the various evidences i.e. invoices, ledger accounts, details of payment etc. before the AO. However the AO did not carry out any further investigation even the notices u/s 133(6) were not issued to verify the whereabouts of the suppliers. Thus, we find that no further enquiry has been carried out by the AO. The Id. CIT(A) confirmed the addition qua the bogus purchases on the basis of lack of explanation and low GP rate during the year vis a vis preceding three years. However, the AO has not pointed out any defects in the books of accounts leading to the lower GP rate during the year. In the present scenario, the Id. AR has relied on the decision of Apex Court in the case of CIT vs. Odeon Builders Pvt. Ltd. [2019] 418 ITR 315(SC) in defence of the argument. In the said judgment, we observe that Hon'ble Supreme Court has held that if the disallowances made on account of bogus purchases on the basis of third party's information without being any further scrutiny/investigation by the AO ,then no disallowance should be made .Under these facts and circumstances , the conclusion of the Id CIT(A) cannot be sustained. At the most certain percentage can be applied to assess the profit element embedded in the bogus

purchases. The assessee has already declared a GP rate of 14.54% whereas the average GP of preceding three years works out to 20.85%. In the present scenario we deem it reasonable if a rate of 6% is applied to the alleged bogus purchases. Accordingly we set aside the order of CIT(A) and direct the AO apply a rate of 6%.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.01.2020.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.01.2020.

RS, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Date of pronouncement			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
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9.	Date of dispatch of Order			