

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

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

**ITA No.7440/MUM/2018  
Assessment Year: 2009-10**

ITO-32(3)(1), Mumbai	Vs.	Ramesh K. Solanki B-2/1/2, Devki Nagar CHS Ltd. Eksar Road, Borivali West, Mumbai, Pin-400092. <b>PAN: AGGPD6265J</b>
(Appellant)		(Respondent)

**Present for:**

Appellant by : R. Bhoopati, CIT-DR  
Respondent by : None

Date of Hearing : 06.01.2020

Date of Pronouncement : 31.01.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 18.09.2018 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 Revenue in grounds of appeal is against the order of CIT(A) restricting the addition to Rs. 2,87,584/- being 12.50% the bogus purchases as against 15% i.e. 3,45,100/- by the AO.

3. At the time of hearing neither the assessee nor his authorized representative appeared for attending the hearing nor any adjournment application was received despite service of notice through RPAD. Therefore, we are proceeding to decide this appeal on merits after hearing the ld. DR.

3. The facts in brief are that the assessee filed his return of income on 22.09.2009 declaring total income of Rs.2,37,370/- which was processed u/s 143(1) of the Act. Thereafter the AO received information from DGIT (Inv.), Mumbai that the assessee is beneficiary of hawala purchase entries to the tune of Rs.23,00,670/- and accordingly reasons were recorded and notice u/s 148 dated 11.03.2014 was issued. The AO issued show-cause notice to the assessee to prove the genuineness of the purchases and as to why the same should not be added to the total income of the assessee failing to prove the genuineness. Accordingly the assessee filed copies of bills, vouchers and other evidences to prove the genuineness of the purchases. However the reply of the assessee did not find favour with the AO. The AO observed that the assessee has made respective sales and therefore the only presumption to this effect was that the assessee has made purchase from grey market at lower rates and thus after relying the decision of Hon'ble Gujarat High Court in the case of CIT vs. Bholanath Ply Fab Pvt. Ltd. (2013) 355 ITR 290 applied the rate of 15% on the said bogus purchases thereby making an addition of Rs.3,45,100/- by framing assessment u/s 143(3) r.w.s. 147 dated 07.11.2014.

4. In the appellate proceedings, the ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition @12.5% on the bogus purchases after taking into account the contentions and

submissions as made by the assessee during the course of appellate proceedings. Hence the revenue is in appeal before us.

5. After hearing the ld. DR and perusing the material on record, we observe that in this case the undisputed facts are that the assessee was beneficiary of hawala purchase entries to the tune of Rs.23,00,670/-. Though the assessee has tried to substantiate and prove the genuineness of the purchases but the AO sought to assess the profit element on the said bogus purchases on the ground that these purchases were made from hawala dealers who were engaged in issuing bogus purchase bills and thus applied a rate of 15% on the bogus purchases thereby making an addition of Rs. 3,45,100/- by following the decision of M/s Bholanath Poly Fab. P. Ltd. (supra) without doubting the genuineness of the sales. the ld. CIT(A) reduced the said addition to 2,87,584/- by applying 12.5% bogus purchases after taking into account the contentions of the assessee which appear to be reasonable. We are, therefore, inclined to uphold the order of the ld. CIT(A) on this issue which is in consonance with the decision of the various High Courts and Tribunals by dismissing the appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 31.01.2020.**

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

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

Mumbai, Dated: 31.01.2020.

RS, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.