

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

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

**ITA No.7512/MUM/2018
Assessment Year: 2009-10**

ITO-27(2)(5), Mumbai	Vs.	Paresh P. Parekh Flat No.106, Somnath CHS Ltd. Neelkanth Valley, 7 th Road, Ghatkopar, Mumbai, Pin- 400077. PAN: AABPP4458L
(Appellant)		(Respondent)

Present for:

Appellant by :R. Bhoopathi, CIT
Respondent by : None

Date of Hearing : 07.01.2020
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 17.10.2017 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 ld. CIT(A) deleting the addition to the extent of

Rs. 2,88,570/- being 12.50% the bogus purchases as against 100% addition 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.

4. The facts in brief are that the assessee filed his return of income on 25.09.2009 declaring total income of Rs.3,36,730/- which was processed u/s 143(1) of the Act. Thereafter the AO reopened the case of the assessee after receiving information from DGIT (Inv.), Mumbai that the assessee is beneficiary of hawala purchase entries to the tune of Rs.3,29,794/- and by issuing a notice u/s 148 dated 30.03.2014 reopened the assessment. The AO issued show-cause notice to the assessee to prove the genuineness of the purchase, failing which why the same should not be added to the total income of the assessee. 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. Thus after relying the decision of Hon'ble Delhi High Court in the case of CIT vs. Korlay Trading Co. Ltd. 232 ITR 820) and Hon'ble Delhi High Court in the case of CIT vs. La Medica 117 Taxman 628 (2001) added 100% on the said bogus purchases by framing assessment u/s 143(3) r.w.s. 147.

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

proceedings and by following the decisions of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth reported in 356 ITR 451 and in the case of M/s Bholanath Poly Fab. P. Ltd. reported in 355 ITR 290.

6. 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.3,29,794/-. Though the assessee has tried to substantiate and prove the genuineness of the purchases yet the AO sought to assess the the said bogus purchases at 100% on the ground that these purchases are from hawala dealer who were engaged in issuing bogus purchase bills only without doing any business. The AO however did not doubt the genuineness of the sales. The ld. CIT(A) reduced the said addition to Rs.41,224/- by applying 12.5% bogus purchases by following the decision of CIT vs. Simit P. Sheth and M/s Bholanath Poly Fab. P. Ltd which is reasonable and appears to be correct. We are therefore inclined to uphold the order of the ld. CIT(A) on this issue which is in consonance with the decisions of the various High Courts and Tribunals by dismissing the appeal of the Revenue.

7. 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.