

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

Sl. No.	ITA / CO No.	A.Y	Appellant	Respondent
1	7011/Mum/2018	2009-10	ITO, Ward -1(4) Rm. No. 11, 6 th Floor, B-Wing, Wagle Ind. Estate, Thane – 400 604.	Gala Gears D-1/A, Nandanvan INDL. Estate, Road No. 28, LBS Marg, Thane – 400 602.
2	7012/Mum/2018	2010-11		
3	7013/Mum/2018	2011-12		
4	CO.260/Mum/2019 (In ITA No. 7011/Mum/2018)	2009-10	Gala Gears D-1/A, Nandanvan INDL. Estate, Road No. 28, LBS Marg, Thane – 400 602.	ITO, Ward -1(4) Rm. No. 11, 6 th Floor, B-Wing, Wagle Ind. Estate, Thane – 400 604.
5	CO.261/Mum/2019 (In ITA No. 7012/Mum/2018)	2010-11		
6	CO.262/Mum/2019 (In ITA No. 7013/Mum/2018)	2011-12		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFG0433A				

अपीलार्थी ओर से/ Appellant by :	Shri R. Bhoopathi (DR)
प्रत्यर्थी की ओर से/ Respondent by :	Shri Mehul Shah (AR)

सुनवाई की तारीख / Date of Hearing	19.12.2019
घोषणा की तारीख/ Date of Pronouncement	31/01/2020

आदेश / ORDER

PER SHRI VIKAS AWASTHY- JM:

These three appeals by the Revenue are directed
against the order of the Ld. Commissioner of Income

- 2 -

Tax (Appeals) (in short 'CIT(A)-1, Thane, dated 24.09.2018, common for the A.Ys 2009-10, 2010-11 and 2011-12. The assessee has filed cross objections against the aforementioned order of the CIT(A).

2. Since, the issue in all the three appeals by the Revenue and the cross objections filed by the assessee is identical and it emanates from same set of facts, these appeals for A.Y 2009-10, 2010-11 and 2011-12 and the corresponding cross objections of the assessee for the said assessment years are taken up together for adjudication and are decided vide this composite order. For the sake of convenience the facts are narrated from the appeal of Revenue for A.Y 2009-10.

ITA No. 7011/Mum/2018 & CO. 260/Mum/2019,
A.Y 2009-10:

3. The brief facts of the case as emanating from the records are; the assessee is engaged in manufacturing of precision gears. An information was received by the Assessing Officer from the Sales Tax Department, Govt. of Maharashtra that the assessee has indulged

- 3 -

in obtaining bogus purchase bills from hawala operators. The assessment for A.Y 2009-10 was reopened u/s 148 of the Act. The A.O in reassessment proceedings held that the assessee has obtained bogus purchase bills aggregating to Rs. 4,33,939/- from following entry providers;

- a. Deep Enterprises - Rs. 1,63,918/-
- b. Purav Enterprises - Rs. 2,70,021/-

3.1 The A.O made addition of entire alleged bogus purchases in the hands of assessee. Aggrieved against the assessment order dated 19.03.2014, passed u/s 143 r.w.s 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after considering the facts and various decisions on the issue restricted the disallowance to 25% of the alleged bogus purchases. Against aforesaid findings of the CIT(A), both, the Revenue and the assessee are appeal before the Tribunal.

4. The department in its appeal as assailed the findings of the CIT(A) in restricting disallowance on account of alleged bogus purchases to 25% of such

- 4 -

non genuine purchases. On the other hand, the assessee in its cross objection has impugned confirming of disallowance to the extent of 25% of alleged bogus purchases. The assessee is seeking deletion of entire disallowances made on account of bogus purchases.

5. Shri R. Bhoopathi, representing the department submitted that, during the assessment proceedings, the assessee failed to furnish relevant documents to substantiate genuineness of the purchases and also failed to produce the parties from whom purchases were made. Even before the CIT(A), the assessee has failed to establish trail of goods in respect of transactions which are subject matter of appeal and did not produce the parties for examination. The ld. DR prayed for reserving the findings of the CIT(A) and restoring the addition as made in assessment order.

6. Per contra, Shri Mehul Shah, appearing on behalf of the assessee submitted that the revenue has accepted the sales made by the assessee. Without purchases there cannot be sales. The ld. AR, further

- 5 -

pointed that the revenue has accepted majority of purchases made by the assessee. It is only small segment of total purchases on which the doubt has been raised by the Department. The ld. AR placed reliance on the decision of Coordinate Bench, in the case of Saroj Shailendra Bhagat Vs. ITO, in ITA No.6671/Mum/2018, A.Y 2009-10, decided on 16.12.2019 to contend that if at all addition is to be made it should be restricted to 5% bogus purchases.

7. Both sides heard. Orders of the authorities below perused. The Revenue is in appeal against the order of CIT(A) in restricting disallowance on account of alleged bogus purchases to 25% of such purchases. The A.O had made addition of entire bogus purchases. It is an undisputed fact that the Revenue has not raised any doubt over the sales made by the assessee. Without purchases there cannot be sales. Therefore, entire alleged bogus purchases cannot be added in the hands of assessee. It is only the suppressed GP on bogus purchases that has escaped tax net, has to be added. Therefore, we do not find merit in the

- 6 -

appeal filed by the revenue, accordingly, the same is dismissed sans merit.

8. Before the CIT(A), the assessee has furnished comparative statement of its GP rate in the immediate past two assessment years. The same is tabulated as under:

A.Y	GP Rate
2007-08	33.35%
2008-09	29.74%
2009-10	35.69%

8.1 Taking into consideration, entirety of facts, I am of considered view that ends of justice would meet if on alleged bogus purchases GP @ 12.5% is estimated over and above GP declared by the assessee. I hold and direct, accordingly. Consequently, the cross objection filed by the assessee are partly allowed in the term aforesaid.

9. In the result, appeal of the Revenue is dismissed and cross objection of the assessee are partly allowed.

ITA No. 7012/Mum/2018 & CO. 261/Mum/2019,
A.Y 2010-11:

10. Both sides are unanimous in stating that the facts in the assessment year under appeal are identical, even the party from which the assessee has made alleged bogus purchases is one of the parties from whom the assessee had made purchases in A.Y 2009-10.

11. I find that the A.O has made disallowance on account of bogus purchases in A.Y 2010-11 in similar manner as was made in A.Y 2009-10. The CIT(A) restricted the disallowance to 25% of alleged bogus purchases. Since, the facts are similar, findings given while deciding the appeal of revenue and cross objection of assessee for the A.Y 2009-10 shall mutatis-mutandis apply to the present assessment year as well. Consequently, appeal of the revenue is dismissed and the cross objection of the assessee is partly allowed in the same terms.

- 8 -

ITA No. 7013/Mum/2018 & CO. 262/Mum/2019,
A.Y 2011-12:

12. The ld. AR submitted that except for quantum of addition facts in A.Y 2011-12 are identical to facts in A.Y 2010-11. The addition on account of bogus purchases have been made in similar manner. The CIT(A) has restricted the disallowance to 25% of bogus purchases.

13. The ld. DR endorsed that the facts in present assessment year are identical to A.Y 2010-11.

14. Both sides heard. Orders of authorities below examined. Since, the facts and manner of addition is similar to past two assessment years i.e A.Y 2009-10 & 2010-11, the findings given while deciding the appeals of Revenue and cross objections by the assessee would mutatis-mutandis apply to the present appeal / CO, as well. In the result, the appeal of Revenue is dismissed and CO of the assessee is partly allowed.

ITA No.7011, 7012 & 7013/Mum/2018 &
CO. 260, 261 & 262/Mum/2019
Gala Gears, Thane.

- 9 -

15. To sum up, all the three appeals by the Revenue are dismissed and the corresponding COs of the assessee are partly allowed.

Order pronounced in the open court after hearing on Friday, the 31st day of January, 2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 31 /01/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai