

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.474/Mum/2019  
(Assessment Year: 2010-11)**

ITO-26(2)(5) Room No.506, 5 <sup>th</sup> Floor C-11, Bandra Kurla complex Bandra(E) Mumbai-400 051	Vs.	Ramesh C Gala Room No.9, 2 <sup>nd</sup> Floor Bldng No.14, BMC building Sion-Koliwada Sakinaka Mumbai-400 072
		<b>PAN/GIR No.AMFPG1277J</b>
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri Ashish Kumar, DR
Assessee by	None
<b>Date of Hearing</b>	<b>27/01/2020</b>
<b>Date of Pronouncement</b>	<b>10/02/2020</b>

**आदेश / ORDER**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-38, Mumbai, dated 30/08/2018 and it pertains to Assessment Year 2010-11.

2. The revenue has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance to 20% of the total amount of bogus purchase transaction instead of 25% of the total amount of bogus purchase made by the AO*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT[A] has erred in not considering that the addition was made on the basis of information received from DIT(Inv) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assessed from dealers without supply of actual goods."*

3. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody."*

4. *"On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in not considering that the assesses could not prove the genuineness and credit worthiness of the purchase transactions during the course of assessment proceedings."*

5. *"The Ld. CIT(A) failed to uphold the decision of Hon'ble Apex Court in the case of N K proteins Ltd. vs. DCIT in SLP (Civil) No.769/2017 dated 16/01/2017 where 100% of addition was confirmed by the Apex Court'*

6. *"On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in not appreciating the tact that applicability of provisions of section 40A(3) attracts 100% bogus purchases to be held as profit."*

7. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

8. *"The appellant craves leave to amend or to after any ground or add a ground, which may be necessary."*

3. The brief facts of the case are that the assessee is an individual and engaged in the business of manufacturing of Stainless steel Utensils, filed his return of income for AY 2010-11 on 15/10/2010 declaring total income of Rs. 1,83,920/- and said return was processed u/s 143(1) of the I.T.Act, 1961. The case has been subsequently reopened u/s 147 of the Act, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from Jai Steel & Alloys amounting to Rs. 5,05,868/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 23/08/2016 and determined total income of Rs. 3,10,390/-, after making 25% additions towards

alleged bogus purchase from those parties and made additions of Rs. 1,26,467/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions, on the issue, which has been reproduced at Para 6 on pages 7 to 9 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down addition made by the AO towards alleged bogus purchases to 20% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

*“From the above chart it is seen that the gross and net profit ratios, being 19.69% and 4.80% respectively declared in the return filed for the assessment year under consideration are higher than the average gross & net profit ratios of 15-80% and 3.92% respectively, However, keeping in mind inflation in the purchases recorded in the books of the appellant as per the alleged purchase invoices issued by the alleged supplier and the cost-saving benefits the appellant has availed in making purchases from the grey market, the rate of 25%, adopted by the AO to work out the profit element embedded in the aforesaid alleged bogus purchases is considered to be appropriate taking into account the nature of business of the appellant being that of manufacturing stainless steel utensils and the material purchased being raw material. In this regard, in view of (the fact that profit at 4.80% has already been offered for tax, respectfully following the maxim laid down by the jurisdictions! Tribunal, Bench 'H', Mumbai in the case of M/s. Ratnagiri Stainless (P.) Ltd. vs. Income-Tax Officer, 5(3)(I), Mumbai in ITA No. 4463 (MUM.) of 2016, dated April 4, 2017, Assessment Year 2009-10, 4,80% is reduced from 25% (25-4.30=20.20 taken as 20%) and 20% is adopted to compute the profit embedded in such transactions which works out to Rs.1,01,174/-. The AO is directed to*

*add the same to total income declared in the return filed for the assessment year under consideration- Accordingly this ground of appeal is Partly Allowed.”*

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made addition towards 25% profit on alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the

investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 25% profit additions, whereas the Ld.CIT(A) has scaled down addition to 20% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered view that the Id. CIT(A) has taken one of the possible method and estimated 20% gross

profit on alleged bogus purchases to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue..

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 10 /02/2020

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

**Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 10/02/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai