

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

**ITA No.972/Mum/2019  
(Assessment Year: 2009-10)**

ITO-26(2)(4) Room No.511, 5 <sup>th</sup> Floor C-11, BKC Complex Bandra(East) Mumbai-400 051	Vs.	Pankaj Kapurchand Sanghvi Room No.18, 44 Nagdevi Street Mandavi,Mumbai-400 003
		<b>PAN/GIR No.AIJPS7241Q</b>
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri Sourabh Deshpande, Addl. CIT-DR
Assessee by	None
<b>Date of Hearing</b>	<b>06/02/2020</b>
<b>Date of Pronouncement</b>	<b>14 /02/2020</b>

**आदेश / O R D E R**

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

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-58, Mumbai, dated 30/11/2018 and it pertains to Assessment Year 2009-10.

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

1. " Whether on the facts and in the circumstances of the case and in law, the Ld, CIT[A] has erred in restricting the disallowance to 8.5% of the total amount of bogus purchase transaction instead of 16.41% of the total amount of bogus purchase made by the AO,"

2. Whether 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 assessee from dealers without supply of actual goods,"

3. *"Whether 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. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee could not prove the genuineness and creditworthiness of the purchase transactions during the course of assessment proceedings."*

5. *"The Ld. CTT(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.760/2017 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 fact that applicability of provisions of section 40A(3) attracts 100% bogus purchases to be held as profit"*

3. The brief facts of the case are that the assessee is engaged in the business of reseller in hardware items, filed his return of income for AY 2009-10 on 29/09/2009, declaring the total income at Rs. 4,89,920/- 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 various parties as listed by the AO in para 4 of his assessment order amounting to Rs. 35,18,465/-. 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 23/03/2015 and determined total income of Rs. 10,67,300/-, after making additions of 16.41% gross profit towards alleged bogus purchase from those parties and made additions of Rs. 5,77,380/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his submissions made before the AO. 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 8.50% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

*10. Ordinarily once purchase is held bogus, entire purchase is to be disallowed as a book entry having effect of reducing profit is created solely for reducing normal profit. However judicial decisions need to be followed by which a fixed per cent of same i.e bogus entry/accommodation entry is added to income eg: DCIT, 14(1)(2), Mumbai vs M/s Fagioli India Pvt Ltd, (ITA No. 4557 & 45G8/Mum/2Q1 5 dated 28.07.2017, which infer alia considered decision of Hon. Supreme Court in N K Protiens vs DCIT (SLP 759 to 2017) dated 16.01,2017]. In the cited case of M/s Fagioli India Pvt. Ltd gross profit was 37% and Hon'ble ITAT decided that estimate of profit be 12.5% on the figure of accommodation entry or bogus purchase. Further in Shri Mehul K. Mehta Prop. Vaishnavi Enterprises vs Income Tax Officer 15(1)(3) Mumbai in I,T,A. Mo. 3 227/Mum/2Q16 dated 14.03.2017 in the context of the case the Hon ITAT ordered as under:*

*We do not find any infirmity in the well reasoned appellate order of learned CIT(A) which we are inclined to affirm/sustain except that , in our considered view, the end of justice will be met in the instant case if GP is estimated to tune of 12 5% of the purchases from these alleged hawala operators which will cover any leakage of Revenue by way of VAT, commission etc. . Thus as compared to the GP ratio at 7.11% dictated by the assessed, we are estimating GP ratio at the rate of 12.5% on the said bogus purchases wherein the assessee will be allowed credit of declared GP rate of 7.11% and net addition to GP ratio shall be to the tune of 5.39% on bogus*

*purchases, hence , we allow partial relief to the assesses. We order accordingly*

*It can be seen that in the above the Hon.ITAT has reduced addition further vis-a-vis the originally accepted figure of 12.5%,Further in case of M/s Geolife Organics vs ACIT ITA Nos 3699,4276,491,4760/Mum/2016 of Hon. ITAT, Mumbai dated 05.05.2017, despite all deficiencies in assessment procedure, as against 12.5% disallowance made by Assessing Officer, the Hon. ITAT fixed the rate of disallowance at a lower level.*

*11. All submissions of the appellant is duly considered. The gross profit rate of is 10.1% (current A.Y.), The disputed transaction is reselling of hardware items. The Assessing Officer disallowed 16.41% (3 year average) of the alleged amount of accommodation entries. On facts and circumstances of the case, and considering strength of evidence brought to record (I note that Assessing Officer has issued notice to the alleged accommodation entry providers which weakens the case for (he appellant) decision is to be taken in a balanced manner. I, after considering all aspects, hold that disallowance be kept at 8.5% of transactions covered by accommodation entries. The Assessing Officer is directed to modify assessment accordingly.*

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 of 16.41% 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. Further, mere payment by cheque does not prove the genuineness of purchase, more particularly when other circumstantial evidence says otherwise. 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. The AO neither pointed out any discrepancies in books of accounts nor made out a case of sales outside books of accounts. In fact, the AO did not disputed sales declared for the year. 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 16.41% profit additions, whereas the Ld.CIT(A) has scaled down addition to 8.50% 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 opinion that the Id. CIT(A) has taken one of the possible view and estimated 8.5% 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 14 /02/2020

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

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

Mumbai; Dated 14 /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**