

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.558/Mum/2019
(Assessment Years: 2009-10)**

ITO 17(1)(1) R.No. 115, 1 st Floor, Aayakar Bhavan, Churchgate, Mumbai.	बनाम/ Vs.	Mr. Akshay Ramprasad Agarwal, 41, Santam Apartment, 93, Cufee Parade, Mumbai. PIN - 400 005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEVPA1819G		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Sourabh Deshpande, DR
प्रत्यर्थी की ओर से/ Respondent by :	None

सुनवाई की तारीख / Date of Hearing	03/02/2020
घोषणा की तारीख / Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER SHRI G. MANJUNATHA- AM:

This appeal filed by the Revenue is directed against order of the ld. CIT(A)-55, Mumbai, dated 19/11/2018 and it pertains to the A.Y 2009-10.

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

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition*

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made by the AO 8% of Rs. 6.39,917/- against the addition made at 12.5% of the bogus purchases, ignoring that the assessee was unable to prove the genuineness of the purchases either by producing the suppliers for examination or by furnishing other substantiating documents by way of delivery challans, lorry receipts, octroi payment, quantify tally, confirmation from transport operation, godown rent and records maintained by godown keeper, bank accounts clearance certificate, rate comparison, third party assessment order etc, which were required by the A.O.

- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the AO was based on the details of the scam unearthed by the sales tax department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchases from them.*
- 3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of flameproof electrical equipments, filed his return of income for AY 2009-10 on 30/09/2009, declaring the total income at Rs. 6,07,566/- 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

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of bogus purchases from various parties as listed by the AO in para 2 of his assessment order amounting to Rs. 6,39,917/-. 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 09/02/2015 and determined total income of Rs. 6,87,560/-, after 12.50% profit additions towards alleged bogus purchase from those parties and made additions of Rs. 79,990/-.

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% gross profit on total purchases from those parties.

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 additions of 12.50% profit on alleged bogus purchases on the ground that the

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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

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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 12.50% profit additions, whereas the Ld.CIT(A) has scaled down addition to 8% 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

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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 a fair view and estimated 8% 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.

This Order pronounced in Open Court on 14/02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai, Dated: 14 /02/2020

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.

558/Mum/2019.
Akshay Ramprasad Agarwal.

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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / **ITAT, Mumbai**