

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

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

Sl. No.	ITA / CO No.	A.Y	Appellant	Respondent
1	752/Mum/2019	2009-10	Vipul P Shah 1/5 Kandhari Colony, 2 nd Road Chembur, Mumbai PAN - AACPS6641P	ITO 27 (3)(5) Viashi Rly Stn Complex, Vashi, Navi Mumbai
2	753/Mum/2019	2010-11	Vinit P Shah, HUF 2/4 Kandhari Colony, 2 nd Road Chembur, Mumbai PAN - AAAHV4423J	ITO 27 (3)(5) Viashi Rly Stn Complex, Vashi, Navi Mumbai
3	754/Mum/2019	2009-10		

अपीलार्थी ओर से / Appellant by :	Shri Sanjay R. Parikh, AR
प्रत्यर्थी की ओर से / Respondent by :	Shri Sourabh Deshpande, DR

सुनवाई की तारीख / Date of Hearing	04/02/2020
घोषणा की तारीख / Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER SHRI G. MANJUNATHA- AM:

These three appeals filed by two different assessee's are directed against separate, but identical orders of the CIT (A)-25, Mumbai, all dated 19/12/2018 for the A.Y 2009-10 & 2010-11. Since, the facts are identical and issue is common, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

2. Both assessee's have raised more or less common grounds in their respective appeals. Therefore, for the sake of brevity, grounds of appeal filed in ITA 752/Mum/2019 for A.Y 2009-10 are reproduced as under:

"A. Reopening of assessment.

1. *The Ld. CIT(A) erred on facts and in law in holding that the reopening of assessment by the A.O u/s 147 was as per law.*
2. *The appellant prays that your honours hold that the reopening of assessment by the AO u/s 147 was bad in law and the consequent order passed u/s 143(3) r.w.s 147 is also bad in law.*

B. Principles of Natural Justice Violated

3. *The Ld. CIT(A) erred on facts and in law in not appreciating that AO had not given the appellant an opportunity to cross examine the parties who had stated before the Sales Tax Authorities that they had only given accommodating entries. As the principles of natural justice are violated, the order u/s 143(3) r.w.s 147 bad in law.*
4. *The appellant prays that your honours hold that the order u/s 143(3) r.w.s 147 is bad in law as the principles of natural justice are violated.*

C. Addition of gross profit alleged bogus purchases of Rs. 5,39,484/-

5. The Ld. CIT(A) erred on facts and in law in confirming the addition made by the AO on account on bogus purchases to the extent of Rs. 5,39,484/- being estimated gross profit @ 12.50 of the bogus purchases amounting to Rs. 43,15,874/-.

6. The appellant prays that the addition on account of estimated gross profit on alleged bogus purchases of Rs. 5,39,484/- confirmed by the CIT(A) out of the addition of Rs. 6,47,381/- may be deleted.

7. Without prejudice to the above, the Ld. CIT(A) erred on facts and in law in adopting the estimated gross profit @ 12.50% without any basis.

8. The appellant prays that if your honours are not inclined to delete the entire addition, the estimated gross profit on the alleged bogus purchases may be estimated considering the facts of the appellant's case and the past history of the appellant's case.

D. General

9. The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.

3. The brief facts of the case extracted from IT No. 752/Mum/2019 are that the assessee is engaged in the business of Whosellers and Resellers of Chemicals, filed his return of income for AY 2009-10 on 26/09/2009, declaring total income of Rs. 3,68,490/- 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. 43,15,874/-. 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 18/03/2015 and determined total income of Rs. 10,15,870/-, after making 15% profit additions on alleged bogus purchase from those parties and made additions of Rs. 6,47,381/-.

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 4 on pages 3 to 8 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 assessee had also challenged reopening assessment u/s 147 of the Act. 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) has scaled down addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total purchases from those parties. The ld. CIT(A) has also rejected

legal ground taken by the assessee challenging reopening assessment u/s 147 of the Act.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made addition of 15% 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 both the parties and also, considered 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 15% profit additions, whereas the ld. CIT(A) has scaled down addition to 12.50% profit on alleged bogus purchases. 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, but said estimation is supported by certain judicial precedents where under identical cases, the Courts and Tribunal have upheld estimation of profit. In this case, the CIT(A) has adopted 12.50% profit. It is the contention of the ld. AR for the assessee that rate of profit adopted by the ld. CIT(A) is on higher side when compared to nature of business of the assessee. In this regard, he has relied upon the decision of Hon'ble Bombay High court in case of PCIT vs. Mohamed Haji Adam & Co (Supra), where it was held that GP on alleged bogus purchases should be brought on par with GP declared on normal purchases. Therefore, considering facts and circumstances of this case and by respectfully following the decision of Hon'ble Bombay High court in case of PCIT vs. Mohamed Haji Adam & Co (Supra), we set aside the issue to the file of the ld. AO and direct him to follow the findings of Hon'ble High court while estimating GP on alleged bogus purchases.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

ITA No.753/Mum/2019 and 754/Mum/2019:-

8. The facts and issues involved in these two appeal are identical to the facts and issues, which we had considered in ITA No. 752/Mum/2019 for AY 2009-10. The reasons given by us in preceding paragraphs in ITA No. 752/Mum/2019 for AY 2009-10 shall *mutatis mutandis* apply to these appeals, as well. Therefore, for similar reasons recorded in his ITA No. 752/Mum/2019, we set aside the appeals to file of the ld. AO and direct him to follow the findings of Hon'ble Bombay High Court in case of PCIT vs. Mohamed Haji Adam & Co (Supra) while estimating GP on alleged bogus purchases.

9. In the result, all appeals filed by the assessee's are allowed for statistical purpose.

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)

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