

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

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

**ITA Nos. 804 & 805/Mum/2019
(Assessment Years: 2009-10 & 2010-11)**

ITO 24(1)(3) R.No. 606, Piramal Chambers, Jeejeebhoy Lanr, Lalbaugh, Parel, Mumbai – 400 012.	बनाम/ Vs.	Bijal Prashant Kalbag, 1/B, Dashmesh Colony, Four Bunglow Road, Andheri (W), Mumbai – 400 058.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIZPK3640D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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

सुनवाई की तारीख / Date of Hearing	05/02/2020
घोषणा की तारीख/Date of Pronouncement	12/02 /2020

आदेश / O R D E R

PER SHRI G. MANJUNATHA- AM:

These two appeals filed by the Revenue are directed against common orders of the CIT(A)-36, Mumbai dated 16/11/2018 for the A.Y 2009-10 & 2010-11. Since, the facts are identical and issue is common, for the sake of convenience, these appeals

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were heard together and are disposed of by this consolidated order.

2. The Revenue has raised more or less common grounds of appeal for both asst. Years. Therefore, for the sake of brevity, grounds of appeal filed in ITA 804/Mum/2019 for A.Y 2009-10 are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12.5% as against 18% made by the AO, pertaining to Hawala Purchases, notwithstanding that there is a specific finding of Sales Tax Department that the parties from whom purchases were allegedly made had issued false bills without delivery of goods, and none of these parties were available at their address when verification letter u/s 133(6) of the Act were issued.*
2. *On the facts and circumstance of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12.5% as against 18% made by the AO, pertaining to Hawala Purchases, without appreciating the fact that payments made through cheque would not prove the genuineness of transaction and the same principle is upheld by the Hon'ble Apex Court in the case o CIT Vs. P Mohan kala*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12.5% as against 18% made by the AO, without considering decision of Apex Court on the issue of bogus purchases dated 16.01.2017 in the case of NK proteins Vs. DCIT (2017) 84 Taxmann.com 195.*
4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12.5% as against 18% made by the AO, without considering decision of Bombay*

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High Court in the case shoreline Hotel Vs. CIT 98 taxmann. Com 234.

5. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.*
6. *The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturer of Trophies, filed his return of income for A.Y 2009-10 on 30/09/2009, declaring total income at Rs. 10, 34,120/- 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 his assessment order amounting to Rs. 11,51,619/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3) r.w.s. 147 of the Act, 1961 on 10/03/2016 and determined total income of Rs. 12,41,420/-, after making

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18% profit additions towards alleged bogus purchases from those parties and made additions of Rs. 2,07,291/-.

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 its 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 Gujarath 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 12.50% 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 18% addition on alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by

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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 purchase 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 side 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

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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 Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchases from suspicious/hawala dealers, various High Courts and Tribunals had considered and 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 purchases 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 purchase 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%

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on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 18% profit additions, whereas the Ld. CIT(A) has scaled down addition to 12.50% 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 Ld. CIT(A) has taken fair view and estimated 12.5% gross profit on alleged bogus purchases to settle dispute between the parties and hence, we are inclined to uphold order of the Ld. CIT(A) and dismiss appeal filed by the Revenue.

ITA No. 805/Mum/2019 for AY 2010-11:

7. The facts and issues involved in this appeal are identical to facts and issues, which we had considered in ITA No. 804/Mum/2019 for Assessment Year 2009-10. The reasons given by us in preceding paragraphs in ITA No. 804/Mum/2019 for Assessment Year 2009-10 shall mutatis mutandis apply to this appeal, as well. Therefore,

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for similar reasons, we dismiss appeal filed by the Revenue for A.Y 2010-11.

8. In the result, appeals filed by the Revenue for both AY's are dismissed.

This Order pronounced in Open Court on 12/02/2020

Sd /-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai, Dated /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//

1.

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