

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1067/M/2019
Assessment Year: 2009-10**

ITO 27(3)(5), R.No.428, 4 th Floor, Tower No.06, Vashi, Navi Mumbai-400 703	Vs.	Shri Vipul Premchand Shah, 1/5, Kandhari Colony, 2 nd Floor, Chembur, Mumbai – 400 071 PAN: AACPS 6641P
(Appellant)		(Respondent)

**ITA No.1068/M/2019
Assessment Year: 2009-10**

ITO 27(3)(5), R.No.428, 4 th Floor, Tower No.06, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	Vs.	Vinit P. Shah (HUF), 2/4, Kandhari Colony, 2 nd Floor, Chembur, Mumbai – 400 071 PAN: AAHV4423J
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R. Bhoopathi, Sr. A.R.

Date of Hearing : 10.02.2020
Date of Pronouncement : 18.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the Revenue against the common order dated 19.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. During the course of hearing, neither assessee nor his authorized representative appeared to attend the hearing nor any application seeking adjournment was filed. Therefore, we are disposing off the appeal after hearing the Ld. D.R. and going through the facts of the case.

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) restricting the addition to 12.5% of the alleged bogus purchases of Rs.43,15,874/- as against 15% addition on bogus purchases made by the AO.

4. The facts in brief are that the assessee filed the return of income on 26.09.2009 declaring a total income of Rs.3,68,490/- which was processed under section 143(1) of the Act. Thereafter, the AO received information from Sales Tax Department, Government of Maharashtra as well as DGIT, Mumbai that assessee has received accommodation entries from suspicious hawala dealers. Accordingly, the case of the assessee is reopened under section 147 of the Act by issuing notice under section 148 dated 24.03.2014 which was duly served upon the assessee. During the course of assessment proceedings the AO observed from the details filed by the assessee that assessee has made a total purchase of Rs.43,15,874/- from 12 parties details whereof are given in para 4.2. of the assessment order. The assessee was called upon to prove the genuineness of the purchases by filing the necessary evidences. The AO also issued notice under section 133(6) of the Act to various suppliers to verify the genuineness of the purchases, however, these notices could not be served on the assessee. The assessee filed

evidences in the form of purchase bills, invoices, sales bill, payment details etc. However, the AO was not satisfied with the genuineness of the purchases for the reason that same remained unverified. The AO finally rejected the books of accounts under section 145(3) of the Act and estimated the income of bogus purchases by applying 15% on the alleged bogus purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj). The Ld. CIT(A) in the appellate proceedings reduced the addition to 12.5% of the arisen bogus purchases by following the decision of CIT vs. Simit P. Sheth (supra) and also the case CIT vs. Bholanath Poly Fab Pvt. Ltd. ITA No.63 of 2012 dated 23.10.2012 of Hon'ble Gujarat High Court.

5. In the appellate proceedings, the Ld. CIT(A) after considering the contentions of the assessee partly allowed the appeal of the assessee by sustaining the addition at 12.50% by holding that 15% is unreasonable and excessive.

6. After hearing the ld. DR and perusing the records as placed before us, we note that assessee is wholesalers and Semi Wholesalers of chemicals. Undoubtedly, the assessee was beneficiary of hawala purchases and therefore the AO applied a rate of 15% on the bogus purchases to assess the profit embedded therein which was reduced by ld. CIT(A) to 12.50% . In our opinion the rate directed by ld CIT(A) is most reasonable keeping in view the facts of the present case. Accordingly we uphold the order of ld. CIT(A) by dismissing the appeal of the revenue.

ITA No.1068/M/2019

7. The issue raised in this appeal is identical to one as decided by us in ITA No. 1067/Mum/2019. Therefore our decision in ITA No/ 1067/Mum/2019 would, mutatis mutandis, apply to this appeal as well. Accordingly the revenue's appeal is dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 18.02.2020.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated:18.02.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.