

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

**BEFORE SHRI PAWAN SINGH, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 5596/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2011-12)

Ramnik Sushil Choudhary, Flat no. 101, Bldg. No. 7, Tulsivihar CHS Ld, Tulsi Dham, Thane-400 607	<b>बनाम/ Vs.</b>	ACIT - 3, Thane
स्थायीलेखासं./जीआइआरसं./PAN No. ACIPC01496K		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकरअपीलसं./ I.T.A. No. 5384/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2011-12)

DCIT Cir -3, R. No. 2, 6 <sup>th</sup> floor, Ashar IT Park B-wing, Wagle Indl. Estate, Thane (w), Thane-400 604	<b>बनाम/ Vs.</b>	Ramnik Sushil Choudhary, Flat no. 101, Bldg. No. 7, Tulsivihar CHS Ld, Tulsi Dham, Thane-400 607
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Aditya Ajgaonkar, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	16.01.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	10.02.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):**

The present two Appeals have been filed by the assessee and revenue against the order of Commissioner of Income Tax (Appeals)-2, Thane, dated 30.06.2016 for AY 2011-12 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

3. The brief facts of the case are, assessee is an individual and engaged in the business of scrap material and iron & steel. Assessee filed its return of income on 19.09.11 declaring total income of Rs. 16,17,750/-. Subsequently, AO received information from Sales Tax Department about large number of entities who have provided bogus purchase bills to a large number of tax payers. Based on the information, assessment was

reopened u/s 147 of the Act by issuing notice u/s 148 of the Act. AO has received information from Sales Tax Department that assessee has received bogus purchase bills from Sidhivinayak and Surat Tube Corporation. When assessee was asked to substantiate the above purchases, assessee denied the above purchases were bogus. Since assessee could not submitted the document in support of above purchases like transport bills and octroi bills, but assessee has filed only ledger account and cheque payments and no other details were submitted. Considering the above, AO treated those transaction as bogus and accordingly, disallowed 100% of bogus purchases valid.

4. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) agreed with the findings of AO, but Ld. CIT(A) relied on various judgments in his order, sustained 5.73% of the bogus purchases as suppressed profit with the following observations:-

*6.11 Keeping in view the facts as discussed as above and in the light of decision of the Hon. Delhi High Court in the case of CIT Vs. Jansampark Advertising and Marketing (p) Ltd, it is also an obligation on the*

part of the first appellate authority to ensure that the effective enquiry is carried out, to arrive at logical conclusion. Therefore, to ascertain the impact of hawala purchases on the profit of the appellant, the Ld AR was required to furnish the comparative details of GP/NP and GP/NP rates for hawala years, preceding two years and subsequent two years. In compliance, the appellant has submitted, the required details, as under :-

AY	Gross Sale	Gross Profit in %	Gross Profit in Amount	Net Profit in %	Net Profit in Amount
2007-08	3,75,12,382	4.66	17,47,933	1.09	4,09,380
2008-09	7,55,36,012	3.19	24,05,876	1.07	8,11,220
2009-10	9,03,66,362	3.37	30,49,168	0.95	8,54,628
2010-11	8,05,85,931	5.24	42,21,737	1.29	10,38,165
2011-12	20,68,31,682	3.07	63,55,840	0.84	17,32,126
2012-13	11,88,19,441	3.65	43,34,151	1.22	14,44,247
2013-14	11,36,78,654	4.56	51,80,077	1.31	14,89,133

10.11 From the above chart, it is noticed that the **gross profit rate has gone down** from 4.66% in AYr 2007-08(non-hawala purchase year) to 3.07%, in AYr 2011-12 (hawala purchases year), the year in which the alleged hawala purchases, were booked, for which the

*appellant could not offer any valid explanation. These facts clearly established that the appellant had suppressed its profits by booking alleged hawala purchases as above, as compared to GP of AYr 2007-08. This has resulted into suppression of gross profit by Rs 32,82,624/-. If the GP rate is compared with A.Y.10-11, shown from goods traded from regular parties, then the suppressed GP is worked out at Rs.55,01,723/-(20,68,31,682 x 5.73/100 less GP declared RS.63,55,840). On the other hand, it is noticed that the appellant has declared GP in hawala years at lower side, as compared to the similar trade in the town. In the case of M/s Vinayak Trading Corporation, in the same years, from the same trade, had declared GP @ 9.20% & 9.22%, as against 5.20% & 3.07%, respectively, shown by the appellant. Likewise in the other similar trades, the appellant had declared the GP rate at higher side, as compared the GP rate declared by the appellant. In compliance, the Ld. AR could not offer any valid explanation for fall in the GP rate.*

*10.12 In order to ascertain the impact of bogus purchases on GP rate, the appellant was required to furnish the comparative trading details - sales GP, GP rate in respect of regular parties vis-a-vis alleged*

*hawala parties. In compliance, the appellant has submitted as under:*

**A.Y.10-11**

<i>Particulars</i>	<i>Total sales affected</i>	<i>Gr. Profit</i>	<i>GP Ratio(%)</i>
<i>Sales against purchases from hawala parties</i>	55,50,147	(- )77,666	(-)1.39
<i>Sales against purchases from regular parties</i>	7,50,35,784	42,99,403	5.73
<i>Total sales</i>	8,05,85,931	42,21,737	5.24

**A.Y.11-12**

<i>Particulars</i>	<i>Total sales affected</i>	<i>Gr. Profit</i>	<i>GP Ratio (%)</i>
<i>Sales against purchases from hawala parties</i>	1,24,89,960	1,27,999	1.025
<i>Sales against purchases from regular parties</i>	19,43,41,722	62,27,841	3.20
<i>Total sales</i>	20,68,31,682	63,55,840	3.07

***10.13 From the above chart it is seen that the appellant had declared the GP @ (-) 1.39% & 1.02%, in respect of goods traded from alleged hawala parties, as against GP rate of 5.73% and 3.20%, in respect of goods traded from regular parties, in AYr***

*10-11 and 11-12, respectively. In compliance, the Ld AR could not offer any valid explanation, for selling goods at losses are at low margin, in respect of goods traded through hawala dealers. These facts clearly establish the fact that appellant had suppressed its profits by inflating its purchases through alleged hawala dealers, which are not open for verification. From the facts of the case, it is noticed that the appellant had affected the purchases of Rs 90,90,345/- and Rs. 1,36,75,254/, as against total turnover of Rs 8,05,85,931/- and Rs 20,68,31,682/-, in A Yr 10-11 and 11-12, respectively, from alleged hawala parties. These facts clearly establish the fact that this is not a case where the entire cash has been siphoned off by debiting the above bogus purchases declared rather it is a case where the appellant has suppressed its profit by affecting inflated purchases through alleged hawala parties, which are not open for verification, as the corresponding sales have been declared in the books.*

*10. 14 It is pertinent to mention here that the appellant was able to harvest GP@ 5.73% in A Yr 10-11, in respect of goods traded from the regular parties, by same management, as against GP of 5.24% and 3.07%, declared in A Yr 2010-11 and 2011-12, respectively, with combined purchases. **In the absence of any valid explanation, along with credible***

*documents, the contention of the appellant is not tenable, therefore rejected and the GP declared in A Y 10-11, i.e. 5.73%, from items traded through regular parties, is liable to be adopted / estimated in the hawala years as well, in the light of decision of the Hon'ble S.C. in the case of M/s Kanchwala Gem 288ITR10. In view of these facts, the Ld. AR, vide letter dated 24.06.2016 has requested to restrict the disallowance at the most to the extent the GP fall. The contention of the Ld. AR appears to be logical and liable to be accepted. Accordingly the year wise appeals of the appellant are decided here, as under :-*

**A Yr 2010-11**

*By booking alleged bogus purchases, as compared to the A.Y. 10-11, the appellant has suppressed its profit by Rs 4,16,7157- (8,05,85,931 x 5.73% less GP declared Rs.42,21,737). In compliance, the Ld. AR could not offer any valid reasons for fall in the GP rate. The appellant being whole sale trader and in the light of the decision of Gujrat HC in the case of Smit P Seth, the disallowance @ 12.5% of bogus purchases is worked out at Rs 11,36,2937- (90,90,345 x 12.57100), which is more than suppressed GP of Rs 4,16,7157-, therefore, the disallowance to the extent of Rs.11,36,2937-, out of hawala purchases of Rs*

*90,90,345 is sustained, as requested by the Ld. AR and balance amount of Rs 79,54,052/- (Rs 90,90,345/- Less Rs 11,36,293/-), is hereby deleted. Accordingly, this ground of appeal, is partly allowed.*

**A Yr 2011-12**

*By booking alleged bogus purchases, as compared to the A.Y. 10-11 the appellant has suppressed its profit by Rs.55,01,723/-(20,68,31,682 x 5.73/100 less GP declared RS.63,55,840). In compliance, the Ld. AR could not offer any valid reasons for fall in the GP rate. Considering the facts in entirety and relying on decisions in the case of M/s. Kanchwala Gems Pvt. Ltd. V/s JCIT 288 ITR 10 (SC), etc, as quoted above, in my considered opinion, the estimation of GP @ 5.73% will be reasonable, therefore, the disallowance to the extent of Rs 55,01,723 A out of hawala purchases of Rs 1,36,75,254/-, is sustained as requested by the Ld. AR and balance amount of Rs 81,73,530/- (Rs. 1,36,75,254/- Less Rs 55,01,723/-), is hereby deleted. Accordingly, this ground of appeal, is partly allowed. In result the appeals, for both the years, are partly allowed.*

5. Aggrieved with the above order, both assessee and revenue are in appeal before us with the following grounds:-

1. *On the facts and in the circumstances of the case, the Ld. CU(A) has erred in relying on the decision of Supreme Court in the case of Kanchwala Gems Vs. JCIT 288 ITR 10(SC) and Hon'ble High Court's decision in the case of Vijay Protein, Sanjay Oil Cake Industries, etc..*

2. *On the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in not following the order of ITAT, Pune in UA No. 1411-1415 dated 20.02.2015 in the case of M/s. Kolte Patil Developers Ltd. wherein 100% addition of bogus purchases was confirmed.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in giving relief to the assessee to the extent of suppressed G.P. out of total bogus purchases even though-*

(i) *The assessee could not produce primary evidences like Octroi Receipts, Delivery Challan etc. evidence to prove the genuineness of the purchases before the AO and before CIT(A).*

(ii) *The affidavits filed by the entry providers before Sales Tax Authorities cannot be ignored having evidentiary value.*

*4. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*

*5. The appellant craves leave to add, amend, alter or delete any ground of appeal.*

6. Before us, Ld. AR submitted that Ld. CIT(A) has passed a combined order for AY 2010-11 & 2011-12 in which Ld. CIT(A) gave finding that assessee is in agreement and he adopted the same GP ratio which was adopted for 2010-11 as the basis for estimation of suppressed profit in AY 2011-12 also. Even though Ld. CIT(A) given a clear finding that assessee has earned only 3.2% of GP in this assessment year earned out of purchases from regular parties. He further submitted that Ld. CIT(A) has made erroneous conclusion by not following his own findings.

7. On contrary, when the bench asked why estimated disallowance cannot be made like any another case disallowing 12.5% of the purchases. Ld. AR submitted that it will be acceptable to the assessee and left the decision with the bench.

8. On the other hand, Ld. DR submitted that assessee has not brought on record any document in support of the above said purchases and it clearly indicates that these purchases are not genuine and it is only accommodation entries provided to the assessee and he supported the findings of AO and prayed that 100% purchases be disallowed and restore the order to AO.

9. Considered the rival submission and material placed on record, we notice from the records that assessee is engaged in the business of scrap dealer in iron and steel market and assessee purchased the scrap materials from the various manufacturers or dealers. From the record, we notice that the AO has not disallowed the sales, but disputed only the purchases. Therefore, we cannot disallow 100% of the purchases and we have seen that various courts held that when the AO accepts the turnover without any dispute and in those situation, only the benefit enjoyed by the assessee are being considered for disallowance instead of 100% of purchases and considering the benefit enjoyed by the assessee for these type of transactions, the rate of disallowance were varying from 12.5% to 3%. In the given case,

Ld. CIT(A) had rightly evaluated the transactions of the assessee from AY 2007-08 to 2013-14. Looking at the transactions, the business of the assessee grown from 3.4 to 20.68% from AY 2007-08 to 2011-12. But the results of the assessee are fluctuating year on year. Only in AY 2010-11, assessee has declared gross profit of 5.24%, whereas in other years it is around 3%. Ld. CIT(A) has only analyzed that how the assessee has generated gross profit from regular transactions and transactions with disputed purchases. It is only a finding that assessee has earned profit from these transactions and it is not final that Ld. CIT(A) should adopt only the profit declared by the assessee during the respective year. There is no change in the business model of the assessee and why the profit declared in the AY 2010-11 cannot be same for this assessment year also. We notice that during this current AY, the turnover of the assessee has grown to 20.68 crores against 8.05 crores, even though there is sharp increase in the turnover, the assessee declared only 3.07% as the GP. Since Ld. CIT(A) has adopted previous year gross profit as the base for this AY also. But the results achieved by the assessee for the period is not reasonable and cannot be

relied on. Therefore, following the standard basis of the decision of the Coordinate Benches, we are inclined to direct the AO to disallow 12.5% of the purchases value which are under dispute. Accordingly, grounds raised by the assessee are dismissed and grounds raised by the revenue are partly allowed.

10. In the net result, the appeal filed by the assessee is **dismissed** and appeal filed by the revenue stands **partly allowed**.

*Order pronounced in the open court on 10<sup>th</sup> Feb 2020.*

Sd/- (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांकDated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 10.02.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
  2. प्रत्यर्थी/ The Respondent
  3. आयकरआयुक्त(अपील) / The CIT(A)
  4. आयकरआयुक्त/ CIT- concerned
  5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
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**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**