

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 5750/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shri Ranjan Ramesh Doshi, a/501, Shankeshwar Tower, Sudha Park, Santi Path, Ghatkopar (E), Mumbai-400 077	बनाम/ Vs.	ITO-27(3)(1), Room No. 1, 3rd floor, Tower No. 6 Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai-77
स्थायीलेखासं./जीआइआरसं./PAN No. AEMPD3478F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mrs. Ruchi M. Rathod, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri C. S. Sharma, DR
सुनवाईकीतारीख/ Date of Hearing	:	26.09.2019
घोषणाकीतारीख / Date of Pronouncement	:	30.09.2019

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 25 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 12.07.18 for Assessment Year (in short AY) 2011-12.

2. The brief facts of the case are that assessee is an individual, engaged in the business of Supplier of Industrial goods and Item. Assessee filed its return of income for AY 2011-12 on 29.09.11 declaring the total income at Rs. 5,02,378/-. Subsequently, on the basis of information received from the Investigation Wing, Mumbai, with regard to the assessee having taken accommodation bill for purchase through parties declared as hawala operators by Maharashtra Sales Tax Department, the case was re-opened by issuing notice u/s. 148 on 24.03.2016. In response to the said notice, the assessee vide letter dated 01.04.2014 has submitted that the return of income has already filed on 29.09.11 may be treated as return filed in response to notice u/s. 148. An order u/s 143(3) r.w.s. 147 of the Act was passed on 24.03.15 determining the total income of the assessee at Rs. 21,66,480/- after making addition of Rs. 16,64,103/-, being profit element calculated @ 12.5% embedded in purchases of Rs. 1,33,12,823/- treated as bogus.

3. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A), after considering the

submission of the assessee as well order passed by AO, had sustained the disallowance made by AO @ 12.5%.

4. Aggrieved with the above order, assessee has preferred the appeal before us.

5. Ld. AR submitted that Ld. CIT(A) has sustained the addition made by the AO on estimating @ 12.5% of the alleged bogus purchases overlooking that assessee has already declared GP ratio. He submitted a chart of gross profit at the time of hearing, which is placed on record. Accordingly, he submitted that 12.5% estimated by Ld. CIT(A) is too high and he relied upon the judgment passed by the Hon'ble Jurisdictional Bombay High Court in **ITA No. 1004 of 2016 in the case of Pr.CIT vrs. M/s Mohommad Haji Adam & Co.**

6. On the other hand, Ld. DR relied upon the orders passed by revenue authorities and submitted that estimation made by Ld. CIT(A) should be sustained.

7. Considering the rival contentions and material placed on record, we notice that Hon'ble Jurisdictional Bombay High Court in **ITA No. 1004 of 2016 in the case of Pr.CIT vs. M/s Mohommad Haji Adam & Co**, wherein it was held as under:-

8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High

Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

" So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9 In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs.

8. Therefore, respectfully following the aforesaid decision, we notice that since assessee has already declared GP ratio and the products which falls in the slab rate of 4%, which is placed on record. Since the case are different from case to case basis and there is no dispute that assessee has paid VAT to the alleged suppliers of material, however, there is no record to complement that the VAT was actually paid to Govt. account. Therefore, we are inclined to estimate the income @ 5%. Accordingly, we direct the AO to estimate the income of the assessee @ 5% of the alleged purchases.

9. In the net result, the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 30th Sept 2019.

Sd/-

(Ram Lal Negi)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. Dhananjay

Sd/-

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

30.09.2019

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
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai