

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 7422/Mum/2018 (Assessment Year 2009-10)

ITA No. 7423/Mum/2018 (Assessment Year 2010-11)

ITO 33(1)(4) C-12, 7 <sup>th</sup> Floor, Room No. 707, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051.	Vs.	M/s De & Nephew 41, Mantri House, Handrix Lane, M.G. Road, Kandivali (West), Mumbai-400067 <b>PAN: AAAFD1844R</b>
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Appellant

Respondent

Appellant by : Mohammed Rizwan (Sr. DR)

Respondent by : Shri Kiran Mody (AR)

Date of Hearing : 03.03.2020

Date of Pronouncement : 03.03.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. These two appeals by revenue are directed against the order of Id. CIT(A)-45, Mumbai dated 10.09.2018 & 11.09.2018 for Assessment Year 2009-10 & 2010-11 respectively. In both the appeals, the revenue has raised the identical grounds of appeal except variation of figures deleting the addition on account of bogus purchases. The revenue has raised the identical grounds of appeal on both the appeals, therefore, both the appeals were clubbed, heard and are decided by common order. The revenue has raised the following grounds of appeal:

- (1) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting GP percentage to 12.5% of the bogus purchases without appreciating the fact that the AO has held it to be non-genuine after carrying out proper independent investigation in the case.
- (2) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that investigation were carried out by the AO and it was the finding of independent investigation which proved that the purchases were bogus.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of rubber product for industrial use, filed its return of income for Assessment Year 2009-10 on 25.09.2009 declaring total income of Rs. 4,28,041/-. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. The notice under section 148 dated 14.03.2014 was served upon the assessee. The assessee in response to the notice under section 148 filed its reply dated 16.04.2014 and stated

that return filed originally be treated as return in response to the notice. The Assessing Officer after serving notice under section 143(2) proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases of Rs. 15,55,398/- from the following eight parties, which were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	<b>Name of the party</b>	<b>Bill amount (Rs.)</b>
1	Raj Traders	1,35,460
2	Nisha Enterprise	1,49,750
3	Shubham Enterprises	4,80,610
4	Real Traders	79,076
5	Deep Enterprises	2,45,924
6	Hi-Tech Industries East India Co.	57,251
7	Riddhi Dyechem Corporation International Chemicals	1,47,669
8	Arihant Corporation	2,59,658
<b>Total</b>		<b>15,55,398</b>

3. The Assessing Officer in order to verify the transaction issued notice under section 133(6) to all the parties. The notice sent through registered post was returned back. The assessee was asked to show-cause as to why the purchases shown from all the parties should not be treated as non-genuine. In response to the show-cause notice, the assessee filed reply dated 13.03.2015 wherein the assessee stated that he is ready to accept the addition of income as deemed income from all suspicious purchase at 5 to 6% and undertake to pay the due tax. The

contention of assessee was not accepted by Assessing Officer by taking view that from the records furnished by assessee that assessee has furnished only ledger account, cheque payments, sales invoices and no proof of delivery challan, purchase party, lorry receipt or proof of transportation not furnished. On this observation, the AO took his view that purchases shown by assessee from these firms are bogus. The AO rejected the books of account of the assessee. The AO estimated 33% of bogus purchases for disallowance of purchases from said hawala dealers. On appeal before the Id. CIT(A), the addition was restricted to 12.5% of the impugned/hawala purchases. The Id. CIT(A) while restricting the addition relied upon the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Sheth (356 ITR 451). Thus, aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

4. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR further submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to

inflate the profit. The Id. DR for the revenue submits that the Assessing Officer has brought sufficient material on record to prove that the purchases shown by assessee were bogus. The assessee is not entitled for any relief. The Id. DR for the revenue prayed for setting-aside the order of Id. CIT(A) and to restore the order of Assessing Officer.

5. On the other hand, the Id. AR of the assessee submits that the assessee furnished all details of purchases and the corresponding sales made against the purchases. The Assessing Officer has not disputed the consumption of material and further sale of the finished goods. The Assessing Officer made the disallowance of 33% of the alleged bogus purchases. The Assessing Officer has not considered the Gross Profit Ratio for earlier years as well as for the year under consideration. The additions made on account of alleged bogus purchases by Assessing Officer was unreasonable. The Id. CIT(A) after considering the Gross Profit declared in three earlier consecutive years restricted the disallowance to 12.5%. Though, the purchases of assessee are genuine, however, the assessee offered reasonable disallowance before AO, only to buy peace. The Id. AR prayed for dismissal of present appeal.

6. We have considered the submissions of both the representatives and perused the record. The Assessing Officer made the disallowance of 33% of the alleged bogus purchases. The Assessing Officer has not disputed the sales of the assessee. The Assessing Officer solely relied

upon the report of Investigation Wing of Sale Tax Department. The Assessing Officer has not rejected the books of account of the assessee. Before the Id. CIT(A), the assessee urged that the purchases shown by assessee are genuine. The payments of purchases were made through account payee cheques. Before the Id. CIT(A), the assessee made the similar submission as made before us. The Id. CIT(A) after considering the decision of Hon'ble Gujarat High Court in Simith P. Seth (supra) held that the addition made by AO on estimated profit is on higher side and restricted the same to 12.5%. We are also of the view that under Income Tax Act, the revenue is entitled to tax the profit element only and not the transaction, therefore, we affirm the order of Id. CIT(A).

7. In the result, appeal of the revenue is dismissed.

**ITA No. 7423/Mum/2018 for A.Y. 2010-11**

8. As we have noted above that the assessee has raised the identical grounds of appeal as raised in appeal for A.Y. 2009-10, the facts for the year under consideration is also identical. Considering the fact that we have dismissed the appeal for A.Y. 2009-10, therefore, the appeal for A.Y. 2010-11 is also dismissed with similar directions.

9. In the result, appeal of the revenue for this A.Y. is also dismissed.

Order pronounced in the open court on 03/03/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 03.03.2020

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**