

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

[Coram: Pramod Kumar (Vice President)]

ITA No. 1937/Mum/2019
Assessment year: 2011-12

Income Tax Officer 27 (2)(1)
Mumbai

.....Appellant

Vs

Shri Kamal Ramesh Bhai Doshi
*15 Platinum Near BMC Office,
Jawahar Road Opp Ghatkopar Station,
Chatkopar East, Mumbai – 400 077
[PAN: AABPD5831H]*

.....Respondent

Appearances by

Samatha Mullamudi *for the appellant*
None *for the respondent*

Date of concluding the hearing : June 10th, 2020
Date of pronouncement : July 13th, 2020

ORDER

Per Pramod Kumar, VP:

By way of this appeal, the Assessing Officer has challenged correctness of the order dated 7th January 2019, passed by the learned CIT(A)-26, Mumbai for the assessment year 2011-12.

2. Grievances raised by the Assessing Officer are as follows:

1. *On the facts and circumstances of the case and in law, the The Ld. CIT(A) erred in directing the AO to restrict the addition to 6% of Rs. 1,01,72,553/- as against addition @12.5% of Rs. 1,01,72,553/- made by the assessing officer account of bogus purchases, without appreciating the fact that the assessee had failed to discharge the onus to establish the genuines of the transactions and also failed to furnish corroborative evidences in support of the claim.*

2. On the facts and circumstances of the case and in law, The Ld.CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs. 6,10,353/- being 6% of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc were not full filled by the assessee.

3. The appellant prays that the order of the CIT(A) on the above grounds bereversed and that of the Assessing Officer be restored.

3. None appeared on behalf of the assessee, but we have heard the Id. DR and duly considered the facts available on record in light of the applicable position.

4. Even though the issues raised in this appeal are admittedly covered by the decision of coordinate bench dated 13th April 2018, in assessee's own cases in ITA No. 3378/Mum/2015 and ITA No. 3601/Mum/2015 for the assessment year 2010-11. We however see no reasons to take any view of the matter then the view taken by the coordinate bench in the aforesaid decision wherein the coordinate bench has inter alia observed as follows:-

6. We have heard the rival submissions and perused the relevant material on record. We find that the assessee is undoubtedly a beneficiary of bogus purchases as has been observed by AO and Ld. CIT(A). The undisputed facts are that assessee purchased the goods from these seven hawala parties, made the payments by cheques and recorded the purchases in the books of accounts as well as the corresponding sales. As a matter of fact the hawala operators are very common in the market and there is every likelihood that assessee has resorted to the taking of hawala entries from the said parties. But when the sales of the assessee are not disputed, the another theory which comes into play is that the assessee purchased goods from the grey market and thus in order to make up the non delivery of goods in the hawala purchases, in the whole process the assessee is likely to make a saving by way of non payment of VAT and other incidental levies. Therefore, under these circumstances, the assessee has to brought to tax on a reasonable basis considering the gross profit rates and other attendant factors in the past. In the present case, the GP of the assessee ranged between 2.85% to 1.89% from 2007-08 to 2010-11. So under these circumstances, we are of the view that the disallowance as sustained by Ld. CIT(A) is excessive and needs to be reduced further. Considering the gross profit rate of past three years, we are of the opinion that restriction of addition to 6% of the total purchases in order to bring the said purchases to tax which would be suffice to cover any possible leakage of revenue. The AO is directed accordingly

7. In the result, appeal of the assessee is partly allowed. ITA No.3601/M/2015 (Revenue's appeal)

8. Since we have already decided the issue in appeal No.3378/M/2015, therefore, the cross appeal of the Revenue stands dismissed.

5. Learned Departmental Representative has also fairly agreed that the issues raised on this appeal are squarely covered by the aforesaid decision. I see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the coordinate bench order, I confirm action of the CIT(A) and decline to interfere in the matter.

6. In the result, the appeal filed by the Revenue stands dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 13th day of July, 2020

Nishant Verma, Sr. SP

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai