

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7084/Mum/2018  
(Assessment Year: 2009-10)**

Girish D. Kulkarni 202, Rajgruh CHS Subhash Road Vile Parle East Mumbai-400 057	Vs.	ITO, Ward-25(2)(3) BKC, Bandra East Mumbai-400 051
<b>PAN/GIR No.AAEPK2245B</b>		
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Ms. Kavitha P.Kaushik, DR
Assessee by	Shri Mandar Bapat, AR
<b>Date of Hearing</b>	<b>20/02/2020</b>
<b>Date of Pronouncement</b>	<b>13/03/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals)-53, Mumbai dated 18/09/2018 and it pertains to the A.Y 2009-10.

2. The assessee has raised the following grounds of appeal:

*1) The Ld.CIT(A) has erred upholding disallowances made by AO by treating genuine purchases as bogus purchases only on the ground that the seller party confirmation could not be produced, which is matter not in control of the appellants; by neglecting overwhelming other evidences on record including invoices, banker payment certificates.*

3. The brief facts of the case are that the assessee is engaged in the business of Civil Construction, filed his return of income for AY 2009-10 on 30/09/2009, declaring total income at Rs. 42,03,510/- The case has been subsequently, reopened u/s 147 of the Act, on

the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in para 1 of his assessment order amounting to Rs. 8,10,167/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 23/03/2015 and determined total income of Rs. 50,13,680/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 8,10,167/-.

4. Aggrieved by the assessment order, the assessee has preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his arguments made before the Id. AO. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee has upheld 100% addition made by the AO towards alleged bogus purchases from those parties.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by both parties. We find that the Ld. AO has made 100% addition on alleged bogus purchases on the ground that

the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of both the parties and also, material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. Further, mere payment by cheque does not prove the genuineness of purchase, more particularly when other circumstantial evidence says otherwise. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax

Department. The AO neither pointed out any discrepancies in books of accounts nor made out a case of sales outside books of accounts. In fact, the AO did not dispute sales declared for the year. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% additions, which has been upheld by the Id. Ld.CIT(A). Although, both authorities have made 100% additions on alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered view that the addition made by the Id. AO and the Id. CIT(A) is on higher side and contrary to the settled position of law and hence, we direct the Id. AO to estimate 12.50% gross profit on alleged bogus purchases.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 13 /03/2020

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 13/03/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai