

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

**ITA No.7107 & 7108/Mum/2018  
(Assessment Years: 2010-11 & 2011-12)**

ITO-6(1)(3) Room No.508, 5 <sup>th</sup> Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	Auto Sales Pvt.Ltd. 63/69, 3 <sup>rd</sup> Floor Nagdevi Cross Road Mumbai-400 003
		<b>PAN/GIR No.AACCA0108J</b>
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Ms. Kavitha P.Kaushik, DR
Assessee by	Shri Hiten Vasant, AR
<b>Date of Hearing</b>	<b>18/02/2020</b>
<b>Date of Pronouncement</b>	<b>13 /03/2020</b>

**आदेश / O R D E R**

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

These two appeals filed by the assessee are directed against orders of the Ld. Commissioner of Income Tax (Appeals)-12, Mumbai, both dated 19/09/2018 and they pertain to AY 2010-11 & 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has raised more or less common grounds of appeal for both Asst. Years. Therefore, for the sake of brevity, grounds of appeal filed for AY 2010-11 are reproduced as under:-

1. *'On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing the Assessing Officer to disallow 12.5%*

*of the bogus purchases rather than the whole of such purchases amounting to Rs. 96,956/-..*

*2. On the facts and in the circumstances of the case and in law, Ld.CIT(a) has erred in directing the Assessing officer to disallow 12.5% of the bogus purchases rather than the whole of such purchases without appreciating that such allowance of 87.5% of expenditure imply allowance of purchases made n cash from the grey market, thereby rendering the provisions of section 40(A)(3) of the Income Tax Act, 1961 totally redundant which could not have been the intention of the statute.*

*3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in failing to abide by the landmark decision of Hon'ble Supreme Court in the case of N.K.Protiens Ltd 16/01/2017 wherein the Hon'ble Supreme Court has confirmed the addition of 100% of the bogus purchases.*

*4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the quantum addition to the extent of Rs.84,836/- made by the AO on account of bogus bill purchases from six parties by not appreciating that the assessee had failed to furnish the confirmation of transaction with the purchase parties, as also the proof of transportation*

*5. On the facts and in the circumstances of the case and in law Ld.CIT(A) has erred in restricting the quantum addition ignoring that the information on account of bogus purchases is received from the external agency that the assessee had received accommodation entry from such parties.*

*6. Though the tax effect in this case is Rs.26,215, however this appeal has been filed because it is covered by exception mentioned in para 10(e) of the CBDT Circular No.3/2018 dt 11-7-2018 as subsequently clarified by Board letter dated 20/08/2018 vide no.279/misc./142/2007-ITJ(Pt.)*

*7. The Appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.*

3. The brief facts of the case are that the assessee is engaged in the business of Trading in nuts Bolts and Bearings, filed its return of income for AY 2010-11 on 27/09/2010, declaring the total income at Rs. 20,84,871/- and said return was processed u/s 143(1) of the I.T.Act, 1961. 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 3 of his assessment order amounting to Rs. 96,956/-. 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 31/12/2015 and determined total income of Rs. 21,93,160/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 96,956/-.

4. Being, aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT (A). Before the Ld.CIT (A), the assessee has reiterated his submissions made before the 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 and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) has scaled down addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total 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. 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, considered 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, whereas the Ld.CIT(A) has scaled down addition to 12.50% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from 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 opinion that the Ld. CIT(A) has taken a fair view and estimated 12.50% gross profit on

alleged bogus purchases to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue.

7. In the result, appeal filed by the revenue is dismissed.

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8. The facts and issues involved in this appeal are identical to the facts and issues, which we had considered in ITA No. 7108/Mum/2018 for Asst. Year 2010-11. The reasons given by us in preceding paragraphs in ITA No.7108/Mum/2018 shall *mutatis-mutandis* apply to this appeal, as well. Therefore, for similar reasons recorded in ITA No. 7108/Mum/2018, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue.

9. In the result, appeals filed by the revenue for Asst. Years 2010-11 and 2011-12 are dismissed.

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**