

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI  
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
&  
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.894/Mum/2019  
(Assessment Year: 2010-11)**

ACIT-24(2) Room No.613, 6 <sup>th</sup> Floor Piramal Chambers, Lalbaug, Parel, Mumbai-400 012	Vs.	King Metal Works A-6, Nanddham Indul.Estate, Marol Maroshi Road, Andheri(E) Mumbai-400 059
		<b>PAN/GIR No.AAAFk4021F</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Rahul Hakani, AR
Revenue by	Shri R.Bhoopathi, DR
<b>Date of Hearing</b>	<b>27/02/2020</b>
<b>Date of Pronouncement</b>	<b>20/05/2020</b>

**आदेश / O R D E R**

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

This appeal filed by the revenue is directed against order of the Ld. Commissioner of Income Tax (Appeals)-36, Mumbai, dated 31/10/2018 and it pertains to Assessment Year 2010-11.

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

1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the additions at 12% made by the AO pertaining to Hawala Purchases, notwithstanding that the assessee name was listed by the Sales Tax Department as a beneficiary of accommodation entries provided by bogus dealers/sellers and that, during the course of assessment proceedings, the assessee was unable to produce the impugned parties or to furnish the substantiating evidence in the form of Weighment slips, delivery challans, etc to prove the genuineness of the purchases". ( Tax effect Rs.6,89,997/-)

2. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition 12% made by the AO, pertaining to Hawala Purchases, without appreciating the fact that payments made through cheque would not prove the genuineness of transaction and the same principal is upheld by the Hon'ble Apex Court in the case of CIT vs P Mohan Kala (291 ITR 278(SC))."*

3. *"On the facts and circumstance of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12% made by the AO, without considering the decision of Hon'ble Apex Court on the issue of bogus purchases dated 16.01.2017 in the case of N K Proteins vs DCIT (2017) (84 Taxmann.com 195)(SC)."*

4. *"On the facts and circumstance of the case and in law, the Ld. CIT(A) erred in restricting the addition at 12% made by the AO, without considering the decision of Hon'ble Bombay High Court in the case of Shoreline Hotel (P) Ltd. Vs CIT, Central 1 (98 taxmann.com 234)."*

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

6. *"The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary".*

3. The brief facts of the case are that the assessee is engaged in the business of generation of Electricity and manufacturing of Stainless/Aluminum Utensils, filed its return of income for AY 2010-11 on 28/09/2010, declaring total income of Rs.6,38,16,997/-. The assessment has been completed u/s 143(1) of the I.T.Act, 1961 on 8/3/2011 and determined total income at Rs. 9,48,98,440/-. 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 Id. AO in assessment order para 4 amounting to Rs. 3,63,78,412/-. 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 29/03/2016 and determined total income of Rs. 9,74,35,942/-, after making addition of Rs. 25,37,501 towards alleged bogus purchases from 3 parties.

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 filed elaborate written submissions, on the issue, which has been reproduced at Para 3 on pages 3 to 5 of Ld.CIT(A) order. 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% gross profit on total purchases from three parties. The relevant findings of the Ld.CIT(A) are as under:-

*4.2.6 Thus, a study of different cases, wherein addition on account of bogus purchases has been dealt with by various Courts and Tribunals shows that such additions have been upheld in their entirety only in a few cases including decisions rendered in the cases of La Medica. Sri Ganesh Rice Mills, Vicky Foods (P.) Ltd. etc. where apart from various other factors there was lack of reliable record with reference to quantitative details etc. and where evidence produced for payment was found lacking. In other cases, where the lull quantitative details are not available or details produced were not fully reliable inasmuch as consumption of material was shown but yield was too low and payments were also doubtful (including the cases of Vijay Proteins Ltd., Bholanath Poly Fab Pvt. Ltd., Simit P.. Sheth, Sanket Steel Traders, Salhyanarayan P. Rathietc.) addition was upheld in the range of 25% (as in Vijay Proteins case) to 12.5 % to augment the possible suppression in GP applying real income theory depending on the facts of the case. However, perusal of decisions of Tribunals and High Courts on this issue shows*

*that all such cases are decided on the basis of facts and involve no uniform question of law. From the above decisions, the ground-rule that emerges is that where suppliers are not available, the presence of reasonable quantitative details and payments by account payee cheques are primary tests on when the genuineness of purchases is required to be tested. In addition, from cases like NikunjEximp Enterprises (P.) Ltd (High Court as well as IT AT). M. K. Brothers, Nangalia Fabrics Pvt. Ltd., Rajiv G. Kalathil, Permanand, Sagar Bose, Diagnostics etc.. it emerges that other aspects such as statements of hawala providers recorded by Sales Tax Authorities; affidavits filed by such suppliers before Sales Tax Authorities; absence of evidence in support of transportation/delivery of material etc.. have been held less relevant as mere indicators and not decisive factors, to draw a conclusion regarding genuineness of purchases. Thus, in essence, the benefit derived by the assessee by showing purchases from such bogus parties is the lowering of GP that would have been earned by the assessee had such purchases and corresponding sales been removed from the accounts. In other words, the effective lowering of the GP is the real additional income of the assessee by showing such purchases and only such component would therefore be taxable.*

*4.2.7. Keeping in mind the totality of the facts and circumstances and the guidelines laid down in judicial decisions discussed above, **it would be adequate to meet the ends of justice, if the disallowance is to be restricted to 12 percent of the bogus purchases of Us. Rs.25,37,501/- which amounts to Rs. 3,04,500/-**. The AO is, therefore, directed to restrict the disallowance as above.*

*AO is directed to give appeal effect keeping in mind appellant's objection after examination of record and law. The grounds of appeal are treated as disposed.*

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 towards 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. 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. 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% 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 view that the Id. CIT(A) has taken a fair view and estimated 12% 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.

Order pronounced in the open court on this 20/05/2020

**Sd/-**  
**(RAVISH SOOD)**  
JUDICIAL MEMBER

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

Mumbai; Dated 20/05/2020  
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**