

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
HON' BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1894/Mum/2019  
(Assessment Year: 2011-12)**

Chintamani's NX (Firm) 2 & 3, Radhe Gopal Indl. Estate Senapati Bapat Marg Dadar(W) Mumbai-400 028	Vs.	ACIT,Circle-18(2) Piramal Chambers Lalbaug Mumbai-400 012
<b>PAN/GIR No.AADFC1379B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri. Akhtar Hussain Ansari – JCIT, Sr. DR
<b>Date of Hearing</b>	<b>18/06/2020</b>
<b>Date of Pronouncement</b>	<b>18/06/2020</b>

**आदेश / O R D E R**

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

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income tax (Appeals)- 48, Mumbai, dated 29/01/2019 and it pertains to AY 2011-12.

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

- 1. The Hon. Commissioner (Appeals) erred in confirming arbitrary part disallowances of Rs.331,250/- computed @ 25% of purchases of Rs.13,25,001/- alleged as doubtful from two vendors declared as suspicious by Sales Tax Dept. of Maharashtra, ignoring the facts and circumstances of the case as well as the stand taken by her on the similar facts in the case of Appellant for AY 2009-10 vide her Order dtd. 14.08.2018, wherein the disallowance has been restricted to 12.5% done by the Assessing Officer.*

3. The brief facts of the case as culled out from Asst. Year 2011-12 are that the assessee is engaged in the business of trading and wholesalers, filed its return of income for AY 2011-12 on 28/09/2011, declaring total income at Rs. 23,42,480/- and said return was processed u/s 143(1) of the Income Tax Act, 1961. The case has been selected for scrutiny and the assessment has been completed u/s. 143(3) of the I.T.Act, 1961 on 27/03/2014 and determined total income of Rs. 27,44,710/-, after making additions of 25% gross profit on alleged bogus purchase from those parties and made additions of Rs. 3,31,250/-.

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 filed elaborate written submissions which has been reproduced at para 4 on pages 3 to 6 of the Id. 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 upheld addition made by the Id. AO towards alleged bogus purchases to 25% gross profit on total purchases from those parties.

5. None appeared for the assessee. We have heard the Ld. DR, 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 addition of 25% profit 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 Id. DR and also, considering 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 disputed sales declared for the year. Under these circumstances, it is difficult for us 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 25% profit additions, which has been upheld by the Id. Ld.CIT(A). Although, both authorities have taken 25% 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. In this case, the assessee is involved in the business of whole sale trading and from the nature of business it appears that profit rate adopted by both authorities is on higher side. 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 profit rate adopted by both authorities appears to be on higher side and accordingly, we direct the Id. AO to estimate 12.50% gross profit on total alleged bogus purchases.

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

Order pronounced in the open court on this: 18/06/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
VICE PRESIDENT

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

Mumbai; Dated: 18/06/2020

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