

**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.1780/Mum/2019  
(Assessment Year: 2009-10)**

ITO- 20(1)(2) Room No.119, 1 <sup>st</sup> Floor Piramal Chamber Lalbaug, Parel Mumbai-400 012	Vs.	M/s. Arjunlal Sohanlal Jain (HUF) Prop. M/s Shree Light Craft Room No.10, Manuber Mantion Dr. Ambedkar Road, Dadar(E) Mumbai-400 014
		<b>PAN/GIR No.AABHJ7788K</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 revenue is directed against order of the Ld. Commissioner of Income tax (Appeals)-32, Mumbai, dated 31/01/2019 and it pertains to AY 2009-10.

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

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in granting relief of Rs.1,61,916/- by restricting the addition to 6.37% of alleged bogus purchase from hawala parties.
2. " On the facts and in the circumstances of the case and in law, the Ld.CIT(A), failed to appreciate the fact that onus is on the assessee to explain and substantiate the genuineness and true nature of the purchase transaction."

3. *“ On the facts and in the circumstances of the case and in law, the Ld.CIT(A), has erred in not considering the facts that the hawala dealers admitted on oath before Sales Tax Authorities that they have not sold any material to anybody.”*
4. *“ On the facts and in the circumstances of the case and in law, the Ld.CIT(A), has erred in not appreciating the fact that purchases were made from some other parties which were not recorded in the books of accounts and only accommodation bills were obtained from hawala parties and thereby attraction provisions of section 40A(3) of the Income tax Act, 1961.”*
5. *The Appellant prays that appeal is being filed because it is covered under the exception provided in para 10(e) of the amended Instruction No.3 of 2018 dated 20.08.2018.*
6. *The appellant prays that the order of the CIT(A) on the above ground be reversed and that of the Assessing Officer be restored.*

3. The brief facts of the case are that the assessee is engaged in the business of dealing in electrical goods under the name & style of M/s Shree Light craft, filed his return of income for AY 2009-10 on 29/09/2009, declaring total income at Rs. 3,25,422/- and said return was processed u/s 143(1) of the Income Tax 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. 2 of his assessment order amounting to Rs. 26,41,374/-. 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 25/03/2015 and determined total income of Rs. 5,71,470/-, after making 12.50% gross profit addition on

alleged bogus purchase from those parties and made additions of Rs. 3,30,172/- to the returned income.

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 4 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 scaled down addition made by the Id. AO and direct the AO to allow further deduction towards gross profit already declared by the assessee.

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. As regards, addition made by the Id. AO towards alleged bogus purchases, we find that the Ld. AO has made addition of 12.50% 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 addition of 12.50% profit, whereas the Id. CIT(A) has scaled down addition by allowing further deduction towards gross profit already declared by the assessee on alleged bogus purchases. 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 rate of profit adopted by the Id. CIT(A) appears to be reasonable and accordingly, 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: 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