

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**  
**&**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.3777/Mum/2018**  
**(Assessment Year: 2011-12)**

ITO-19(2)(3) Room No.218, 2 <sup>nd</sup> Floor Matru Mandir, Tardeo Road Mumbai-400 007	Vs.	Mr. Mithalal Bhavarlal Jain Pro.M/s.Aristo Pipe & Fittings, Shop No.3 Ground Floor,86/72 Durgadevi Street Mumbai-400 004
		<b>PAN/GIRNo.ADMPJ5673P</b>
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**&**  
**ITA No.3436/Mum/2018**  
**(Assessment Year: 2011-12)**

Mr. Mithalal Bhavarlal Jain Pro.M/s.Aristo Pipe & Fittings, Shop No.3 Ground Floor,86/72 Durgadevi Street Mumbai-400 004	Vs.	ITO-19(2)(3) Room No.218, 2 <sup>nd</sup> Floor Matru Mandir, Tardeo Road Mumbai-400 007
<b>PAN/GIRNo.ADMPJ5673P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Michael Jerald, Sr. AR
Assessee by	None
<b>Date of Hearing</b>	<b>03/08/2020</b>
<b>Date of Pronouncement</b>	<b>03/08/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA: ACCOUNTANT MEMBER**

These cross appeals filed by the revenue, as well as the assessee are directed against order of the Ld. Commissioner of Income tax (Appeals)-30, Mumbai, dated 15/03/2018 and pertains to the Asst.Year 2011-12. Since, facts are identical and issues are

common, for the sake of convenience, these appeals were heard together and are being disposed-off by this consolidated order.

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

1. *whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in not confirming the addition in view of the decision of the Hon'ble Supreme Court dated 10.01.2017 in the case of N. K. Proteins Ltd. wherein the Hon'ble Supreme Court confirmed the entire addition on account of bogus purchase?"*
2. *"Whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of unexplained expenditure of Rs. 76,68,201/- made on account of bogus purchase by the Assessing Officer and limiting it to 12.5%."*
3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in confirming the addition @12.5% profit rate on total purchases of Rs. 76,68,201/- made by the assessee from two parties when during the investigation made by sales tax department of Maharashtra Government, it was conclusively proved beyond doubt that these parties are only into providing accommodation entries and do not do any real business. ?"*
4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in not appreciating the fact that during the investigation made by sales tax department of Maharashtra Government, directors/Prop./Partners of such parties have accepted on oath that they are providing only accommodation entries and not doing any real business, the treatment of such purchases as being genuine does not hold ground?"*
5. *The appellant prays that the order of the Ld. CIT(A) 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 add a new ground which may be necessary.*

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

1. *The Id. Assessing Officer and CIT Appeal erred in alleging that the purchases made are bogus based on surmises and conjectures.*
2. *The Id. Assessing Officer and CIT Appeal erred in considering evidence for making disallowance without providing the same to the assessee in violation of grounds of natural justice.*

3. *The Id. CIT Appeal and Assessing Officer erred in making addition relying on investigation done by Sales Tax Department without doing any independent investigation.*

4. *The Id. CIT Appeal and Assessing Officer erred in making an addition based on statements taken by Sales Tax Department without providing a copy of the same or an opportunity of cross examination in violation of grounds of natural justice.*

5. *The Id. CIT Appeal and Assessing Officer erred in not considering the fact that the assessee has submitted all the evidences required to claim the expense of purchases.*

6. *The Id. CIT Appeal and Assessing Officer erred in stating that onus of producing the party was on the assessee in spite of the fact that the assessee has no police powers and it was department's claim that the purchases were bogus.*

7. *Without prejudice to above grounds of appeal the Id. CIT Appeal erred in making an addition of 12.3% of purchases without considering the fact that such huge margin cannot be made in trading business of ferrous and non-ferrous metals and that addition of 2% of above purchases would meet the ends of justice.*

8. *Without prejudice to above grounds of appeal the Id. CIT Appeal erred in making an addition of 12.3% of purchases without appreciating that VAT rate on products was 4% and-therefore, following the judgement in the case of CIT v. Smith Seth 2013 38 Taxmann.com 385. The addition should be restricted to 4% of purchases.*

9. *We plead to add, amend, alter or delete any of the above Grounds of Appeal.*

4. The assessee is proprietor of M/s Aristo Pipes and Fittings and is engaged in the business of trading in ferrous and non-ferrous metals. The case has been selected for scrutiny, and during the course of assessment proceedings, the Id. AO, 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 issued show cause notice and called upon the assessee to produce details of purchases. In response, the assessee has filed various

details. In order to verify genuineness of purchases, the AO had issued 133(6) notices to all parties and out of which some parties are not responded or notices issued are returned inserved as listed by the AO in para 5.1 of his assessment order amounting to Rs. 1,32,27,342/-. The assessment has been completed u/s. 143(3) of the I.T.Act, 1961 on 24/03/2014 and determined total income of Rs. 83,57,460/-, after making additions of Rs. 76,68,201/- towards peak amount of investments made for unproved or alleged bogus purchase from those parties.

5. 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 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 and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total purchases from those parties.

6. None appeared for the assessee. We have heard Id. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made peak amount of investments made 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 Investigation wing 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.

7. Having considered arguments of the Ld. DR 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 5% to 12.50% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made peak amount invested in alleged bogus purchases, 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 method and 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 into the business of trading in ferrous and non-ferrous metals and the rate of profit in this kind of business is very low. 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 12.50% gross profit rate adopted by the Id. CIT(A) appears to be on higher side and hence, we direct the Id. AO to estimate 6% gross profit on alleged total bogus purchases from those parties.

8. In the result, appeal filed by the Revenue and appeal filed by the assessee for Asst. year 2011-12 is partly allowed.

Order pronounced in the open court on this: 03/08/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

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

Mumbai;

Dated:03/08/2020

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