



**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &
SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA NO.1171/MUM/2019 : A.Y : 2009-10
ITA NO.1172/Mum/2019 A.Y : 2010-11**

**ITO – 29(2)(3)
Mumbai
Building No.C-10, 2nd Floor
Room No.204, Pratyakshakar
Bhavan, Bandra Kurla
Complex, Bandra (E)
Mumbai**

**vs. Shri Mayur Lalji Chheda
A-10, Karmayog Building
Papermintch Chawl
LBS Marg
Bhandup (W)
Mumbai – 400 078**

PAN NO: AACPC4499H

**Revenue by : Shri Satishchandra Rajore
Assessee by : None**

**Date of Hearing : 27/02/2020
Date of Pronouncement : 28/02/2020**

ORDER

PER R.C. SHARMA, ACCOUNTANT MEMBER

These are the appeals filed by revenue against the order of CIT(A)-40, Mumbai dated 03/12/2018 for A.Y.2009-10 & 2010-11 in the matter of order passed u/s.144 of the Income Tax Act.

2. Solitary grievance of revenue relates to CIT(A)'s action for upholding addition on account of bogus purchases to the extent of 12.5% in place of 100% made by the AO.

3. Nobody appeared on behalf of assessee inspite of issue and service of notice nor any adjournment petition was filed by assessee, bench therefore, decided to dispose the appeal after hearing Id. DR and considering materials placed on record.

4. Contentions of Id. DR have been heard and record perused. Facts in brief are that assessee is engaged in the business of trading in edible oil and got information from the DGIT Investigation, Bombay, regarding assessee involved in hawala purchases. AO reopened the assessment and made 100% addition in respect of the alleged bogus purchases.

5. By the impugned order, CIT(A) restricted addition to the extent of 12.5% after having the following observation:-

“I have gone through the reasons recorded by the AO and the submission made by the appellant.

The appellant is engaged in the business as re-seller of edible oil, The AO on the basis of information received from office of the DGIT (Inv) Mumbai estimated the profit element at 100% on alleged non-genuine purchases and made an addition of Rs. 1,80,625/- to the total income. The AR of the appellant argued that the entire issue of suspected dealers has arisen because of provisions contained in section 48(5) of MVAT Act. The main reason for declaring the dealer as suspected is attributed to non-payment of tax collected by such suspected dealers. Had the dealer paid the taxes to collected, no question would have arisen for declaring him as hawala / suspected dealer. On the basis of information from sales tax department and the statement of some party, without carrying out independent inquiry in the matter, the purchases from suspected dealer cannot be disallowed. Such dealers at the most may be treated as defaulters but not bogus. The AR of the appellant also enclosed a copy of purchase invoice from M/s. R.R. Oil (hawala operator) and copy of bank statement showing payment made to such suppliers. The such transaction is a normal course of business. The appellant pressed that if the same is to be considered as unexplained expenditure then 12.5% of purchase amount from hawala dealer may be considered as unexplained expenditure.

Having gone through the submissions made by the AR of the appellant as well as the assessment order, the appellant once having furnished details of

purchase and payment made through banking channels, the same cannot be treated as bogus or hawala transactions at the most the AO should have estimated GP at 12.5% (as per the Gujrat High Court judgment) of purchase amount from hawala dealer which can be considered as unexplained expenditure. Hence, the AO is directed to work out 12.5% on the amount of purchases made at Rs.1,80,625/- and treat the profit element i.e. G.P. earned out of unexplained expenditure u/s. 69C of the I.T. Act. Therefore, this ground of appeal filed by the appellant is allowed in favour of the appellant.”

6. We have considered rival contentions and found that in respect of bogus purchases, the CIT(A) has upheld addition in respect of the profit element embedded in such purchases. The CIT(A) observed that corresponding sales have not been denied, therefore, 100% addition is not warranted. The detailed finding so recorded by CIT(A) has not been controverted by Id. DR, accordingly, we do not find any reason to interfere in the order of CIT(A) for restricting the addition to the extent of 12.5% of alleged bogus purchases.

6. In the result, appeal of the revenue is dismissed.

7. Facts and circumstances in both the years under consideration i.e. 2009-10 and 2010-11 are parimateria, therefore, following the above reasoning, we do not find any infirmity in both the orders of CIT(A).

8. In the result, both the appeals of revenue are dismissed.

Order pronounced in the open court on this 28/02/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/02/2020

Karuna 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