

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2552/MUM/2019
Assessment Year: 2009-10**

ITO-27(2)(1),
Room No. 421, 4th Floor,
Tower No. 6, Vashi Railway
Station Complex, Vashi,
Navi Mumbai-400703.

Appellant

Shri Kamal Ramesh Bhai Doshi,
Vs. M/s Alpa Enterprises 15,
Platinum, Near BMC Office,
Jawahar Road, Opp. Ghatkopar,
Railway Station, Ghatkopar (E),
Mumbai-400077.

**PAN No. AABPD5831H
Respondent**

Revenue by	:	Mr. R. Bhoopathi, DR
Assessee by	:	Ms. Ruchi Rathod, AR
Date of Hearing	:	21/10/2020
Date of pronouncement	:	02/11/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-25, Navi Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under :

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to restrict the addition to Rs.14,72,494/- as against addition of Rs.1,73,42,35/- made by the assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidences in support of the claim.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.14,72,494/- being 6% of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc. were not full filed by the assessee.

3. Briefly stated, the facts of the case are that the assessee, a trader in iron & steel filed its return of income for the assessment year (AY) 2009-10 on 17.04.2014 declaring total income of Rs.5,58,430/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills by accommodation entries amounting to Rs.2,45,41,572/-, the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 of the Act. In response to it, the assessee submitted that the return filed on 17.04.2014 may be treated as returned filed in response to notice u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the concerned parties to verify the genuineness of the purchases. However, those notices were returned back by the postal authorities. Thereafter, the AO deputed his Inspector of Income Tax to locate the parties. The Inspector, after inquiry reported that 13 parties were not traceable. It is recorded by the AO that the assessee failed to produce the parties, brokers or transporters, in spite of specific opportunity provided to

him. As per the AO, the assessee failed to file before him the evidence of purchases like delivery challans, transport bills etc. The assessee submitted before the AO, as recorded in the assessment order at page 4, reconciliation of sales corresponding to purchase statement along with copy of bills of the said parties. The assessee also submitted before the AO that payments were made by account payee cheques. However, the AO was not convinced with the above reply of the assessee and considering the working of peak of the cumulative outstanding of the said parties, made an addition of Rs.17,342,325/- as unexplained expenditure u/s 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that vide order dated 04.02.2019, the Ld. CIT(A), by following the order of the Tribunal in assessee's own case for AY 2010-11 restricted the disallowance to 6% of the said bogus purchases. Thereby the Ld. CIT(A) directed the AO to restrict the addition to Rs.14,72,494/-.

5. Before us, the Ld. Departmental Representative (DR) supports the order of the AO. On the other hand, the Ld. counsel for the assessee relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, as mentioned earlier the assessee had filed before the AO reconciliation of sales corresponding to purchase statement along with copies of bills of the said parties. Similar issue arose before the ITAT 'H' Bench, Mumbai in assessee's own case for the AY 2010-11. The Tribunal *vide* order dated 13.04.2018 held that :

“6. We have heard the rival submissions and perused the relevant material on record. We find that the assessee is undoubtedly a beneficiary of bogus purchases as has been observed by AO and Ld. CIT(A). The undisputed facts are that assessee purchased the goods from these seven hawala parties, made the payments by cheques and recorded the purchases in the books of accounts as well as the corresponding sales. As a matter of fact, the hawala operators are very common in market and there is every likelihood that assessee has resorted to the taking of hawala entries from the said parties. But when the sales of the assessee are not disputed, the another theory which comes into play is that the assessee purchased goods from the grey market and thus in order to make up the non delivery of goods in the hawala purchases, in the whole process the assessee is likely to make a saving by way of non payment of VAT and other incidental levies. Therefore, under these circumstances, the AO has to bring to tax on a reasonable basis considering the gross profit rates and other attendant factors in the past. In the present case, the GP of the assessee ranged between 2.85% to 1.89% from 2007-08 to 2010-11. So under these circumstances, we are of the view that the disallowance as sustained by Ld. CIT(A) is excessive and needs to be reduced further. Considering the gross profit rate of past three years, we are of the opinion that restriction of addition to 6% of the total purchases in order to bring the said purchases to tax which would suffice to cover any possible leakage of revenue. The AO is directed accordingly.”

6.1 Facts being identical, we follow the above order of the Co-ordinate Bench and uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 02/11/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai