

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

**BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3816/MUM/2019  
Assessment Year: 2010-11**

The Income Tax Officer 11(2)(4), Room No. 349, 3 <sup>rd</sup> Floor, Aayakar Bhavan, M.K. Road, Marine Lines, Mumbai - 400020	<b>Vs.</b>	M/s Superflow Filters Pvt. Ltd., B-5/103-104, Greenland Co-op Society, Shrinivas Bagarka Road, J.B. Nagar, Andheri (East), Mumbai - 400059 PAN: AADCS4955N
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Jeetendra Kumar (DR)

Assessee by : Shri Jitendra Singh (AR)

Date of Hearing: 21/10/2020  
Date of Pronouncement: 28/10/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against the order dated 14.03.2019 passed by the Commissioner of Income Tax (Appeals)-18 (for short 'the CIT(A), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, assessment was reopened on the basis of information received from the Sales Tax Department through Directorate General of Income Tax (DGIT) (Investigation), Mumbai to the effect that during the previous year the assessee had obtained bogus entries for Rs. 12,40,195/- from three bogus entities which used to provide accommodation entries without supplying goods. Accordingly, the AO made addition of the said amount to the income of the

assessee and passed assessment order u/s 143 (3) r.w.s. 147 of the Act. The assessee challenged the assessment order before the Ld. CIT (A). Ld. CIT (A) after hearing the assessee restricted the addition to 12.5% of the alleged bogus purchases of Rs. 12,40,195/-. Aggrieved by the impugned order passed by the Ld. CIT (A), the revenue is in appeal.

3. The revenue has challenged the impugned order by raising the following effective grounds:

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance of bogus purchases to the extent of 12.5% without appreciating the fact that the assessee failed to prove the genuineness of the parties by not producing the confirmation letters during the course of assessment proceedings as well as during the course of appellate proceedings.?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance of bogus purchases to the extent of 12.5% in spite of the Ld. CITs (A) himself concluded during the course of appellate proceedings that the documentary evidences furnished by the appellant did not adequately prove that the purchases were genuine.”*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody?*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance of purchases to the extent of 12.5% without appreciating the decision of Hon’ble Punjab & Haryana High Court in the case of J.R. Solvents Industries (Pvt) Ltd (2012) (22 taxmann.com 115) wherein it was held that where*

*purchases were made from a non-existing seller, same would be held to be bogus even if complete quantitative details of the purchases were available in the assessee's books of account?*

6. *Whether on the facts and in the circumstances of the case and in law, has the Ld. CIT (A) failed to uphold the decision of Hon'ble Apex Court in the case of NK Proteins Ltd vs. DCIT in SLP (Civil) No. 769/2017 dated 16.01.2017 where 100% of addition was confirmed by the Hon'ble Apex Court.?*

4. The Ld. Departmental Representative (DR) submitted before us that the Ld. CIT (A) has wrongly restricted the addition to 12.5% without appreciating the fact that the assessee could not establish the genuineness of the purchases. The Ld. DR further pointed out that the Ld. CIT (A) has restricted the addition ignoring the fact the 'hawala' operators have admitted on oath before the Sales Tax Authorities that they did not sell any material to anybody. The Ld. DR further submitted that since the findings of the Ld. CIT (A) are contrary to the ratio laid down by the Hon'ble Apex Court in the case of N.K. Protein Ltd. Vs. DCIT in SLP (Civil) No. 769/2017 and the Hon'ble Punjab & Haryana High Court in the case of J.R. Solvent Industries Pvt. Ltd. 22 taxman.com 115, the same is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee submitted that the facts of the cases relied upon by the revenue are different from the facts of the present case. The Ld. counsel further pointed out that the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth* 356 ITR 451, has upheld the addition of 12.5% of bogus purchases shown by the assessee holding that in such cases only profit element embedded in such purchases could be added to the income of the assessee. The Ld. counsel further submitted that since the findings of the Ld. CIT (A) are based on the ratio laid down by the Hon'ble Gujarat High Court and the decisions of the Mumbai Benches of the Tribunal, there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

6. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the parties and the

authorities below. As pointed out by the Ld. counsel, the Ld. CIT (A) has restricted the addition to 12.5% of the alleged bogus purchases by following the ratio laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth* (supra). The concluding paras of the Ld. CIT (A) read as under:-

*"7.9 In the light of the foregoing discussion, it can be concluded that the appellant has failed in proving the genuineness of purchases from the aforesaid parties. Therefore, necessary disallowance has to be made. However, the question to be answered is what the quantum of disallowance should be. The Assessing Officer has made disallowance of 100% of alleged bogus purchases amounting to Rs.12,40,195/-.*

*7.10 I find that the issue is covered in the following decisions wherein the ITAT, Mumbai, has upheld estimation out of alleged bogus purchases.*

- 1. Salim Ebrahim Petiwala v/s. Ito 17(3)(2) ITA No 4772/Mum/2017*
- 2. Tubes India v/ s. Asst CIT Circle 19(3) ITA No 2230 to 2232/Mum/2016*
- 3. The ACIT 19(2) v/s. M/s. Nocil Steels ITA No 4505/Mum/2015*
- 4. Satish R. Rathod v/s. ITO 15(3)(1) ITA No 567/Mum/2016*
- 5. Vinod H. Sanghvi v/s. DCIT 15(2)(old) ITA No 125 to 127/Mum/2016*
- 6. M/s. Pentagon System and Services P. Ltd v/s. DCIT (OSD) Cir 2(3) ITA No 4804/Mum/2015*
- 7. Turnkey Electrical Engineers P. Ltd v/s. DCIT 7(3) ITA No 1936,1937,1938 86 1939/Mum/2015*
- 8. Montex Glass Fibre v/s. DCIT 2(2) ITA No 1520/Mum/2017*
- 9.R.A. Industrial Metals v/s. ITO 14(1)(1) ITA No 1850/Mum/2015*
- 10. Mehul K. Mehta v/s. ITO 15(1)(3) ITA No 3227/Mum/2016*

*7.11 Further, in the case of CIT vs. Simit P Sheth, 356 ITR 451, Hon'ble Gujarat High Court has upheld estimation @ 12.5% of alleged bogus purchases by holding as under:*

*"If the payments to the abovementioned parties are made through cheque and the subsequent sales made have been accepted in total by*

*the assessing officer, then it can be concluded that purchases have been made from persons in the open market. That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee."*

*7.12 It may also be noted that I have also confirmed the same issue in appellant's own case for A.Y. 2011-12 vide order dated 28.01.2019 on estimated basis @ 12.5% of alleged bogus purchases. Further, relying on the decision of Hon'ble Gujarat High Court and other judicial pronouncements, I hereby confirm estimation @ 12.5% of alleged bogus purchases of Rs. 12,40,195/-. Therefore, addition of Rs. 1,55,025/- is sustained. The balance addition Rs. 10,85,170/- is hereby deleted."*

7. Admittedly, in the present case the AO has not doubted the sales. As per the settled law, when sales are not doubted 100% disallowance cannot be made. Further, there cannot be any sale without actual purchases. In the present case, the assessee could not establish the genuineness of the transaction to the satisfaction of the AO. This does not mean that the assessee had not made any purchase. However, it can be concluded from the facts of the case that assessee had made purchases from grey market. As per ratio laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth* (supra), when the total sale is accepted by the Assessing Officer then entire purchases cannot be added to the income of the assessee. Therefore, only the profit element embedded in such purchases could be added to the income of the assessee. Since, the Ld. CIT (A) has restricted the addition to 12.5% by following the ratio laid down by the Hon'ble Gujarat High Court and various decisions rendered by the coordinate Bench in the cases having similar set of facts, we do not find any reason to interfere with the findings of the Ld. CIT (A). Hence, in our considered view, the addition of 12.5% is reasonable to meet the ends of justice. Further, as pointed out by the Ld. counsel, the facts of the present case are different from the facts of the cases relied upon by the Ld. DR. We therefore, uphold the findings of the Ld. CIT (A) and the dismissed the revenue's appeal.

In the result, appeal filed by the revenue for assessment year 2010-2011 is dismissed.

Order pronounced on 28<sup>th</sup> October, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 28/10/2020

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai