

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

**BEFORE SHRI C. N. PRASAD, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 3340/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2011-12)

ITO – 29(2)(4), Mumbai	बनाम/ Vs.	Shri Nilesh Natwarlal Doshi D-101, Shrinath Dham CHS Opp. Dream Mall, LBS Marg, Bhandup(W) Mumbai – 400 708
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAPD8477A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Kavita P. Kaushik, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Aditya, AR

सुनवाईकीतारीख/ Date of Hearing	:	22.10.2020
घोषणाकीतारीख / Date of Pronouncement	:	04.11.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the revenue against
the order of Ld. Commissioner of Income Tax (Appeals)-40,

Mumbai, in short 'Ld. CIT(A)' dated 25.02.2019 for AY 2011-12.

2. The brief facts of the case are, assessee is engaged in the business of trading in hardware items, pipes, fittings, iron & steel and electric goods. Assessee filed the return of income, declaring total income of Rs 6,74,011/- on 05.7.2009 and the same was processed u/s 143(1) of the Act. On information from DGIT(Inv), it was informed that the purchases made by assessee from the parties are not genuine or hawala purchases. As assessee has not submitted copies of receipts of VAT paid, sales tax paid, transport receipts, octroi receipts, godown receipts, consumption details of goods purchased, toll receipts, insurance receipts of goods in transit, dispatch vouchers and copy of receipts of loading and unloading charges. Subsequently, the case was selected for scrutiny u/s 148 of the Act and it was alleged that assessee is indulged in bogus purchases. Accordingly, assessment order was reopened u/s 143(3) r.w.s 147 of the Act thereby making 100% disallowance of the alleged bogus purchases determining the total income at Rs. 2,00,31,740/-.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of assessee, restricted the disallowance @ 12.5% of the alleged bogus purchases with the following observations:-

The AO disallowed the entire amount during the assessment proceedings an amount of Rs.1,86,74,051/- purchases from various parties by one Mr.Dharmesh Vinaykumar Shah who is not the assessee himself but by mistake, the AO added the entire amount as unexplained expenditure u/s. 69C. Hence, the same is deleted. The appellant succeeds on this ground of appeal However during the remand proceedings, the AO has worked out an amount of Rs. 21,24,584/- which the assessee purchased from the parties mentioned in the above table which are alleged to be bogus purchases. However keeping in view of the various judicial precedents in the case of Hon'ble apex court decision in the case of H.M. Esufali Adbdulali as well as Hon'ble Gujrat High Court decision in the case of Simith P. Sheth [2013][356 ITR 451(Guj.)], wherein it was held that 12.5% being the possible profit element embedded in the purchases made through non genuine parties (bogus purchases) . Therefore, the addition made by the AO on such purchases at 12.5% is

appropriate and would be justified. In case, the appellant has already shown some G.P which is less than 12.5%, the differential G.P amount may be added to the income of the assessee. Hence, the AO is directed to work out the addition after deducting the gross profit/ net profit already shown in his regular books against the proposed addition at 12.5% of the alleged bogus purchases. This ground of appeal is allowed partly.

4. Now before us, the revenue has preferred the appeal challenging the order of Ld. CIT(A) in restricting the addition on account of bogus purchases.

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds raised by the revenue are squarely covered by the order of Coordinate Bench of Hon'ble ITAT in ITA No. 3338 & 3339/Mum/2019 for AY 2009-10 & 2010-11 in assessee's own case on merit, wherein the Hon'ble ITAT has sustained the order of Ld. CIT(A).

6. On the other hand, Ld. DR supported the orders passed by the revenue authorities, however he conceded the above grounds are covered by the order of Coordinate Bench of ITAT.

7. Considered the rival submissions and material placed in record. We find that the identical grounds raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 3338 & 3339/Mum/2019 for AY 2009-10 & 2010-11 in assessee's own case on merit. For the sake of clarity, which is reproduced below:-

3. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of trading in hardware items, pipes, fittings, iron and steel and electric goods. During the course of re-assessment proceedings, the assessee furnished details of purchases and sales as called for by the ld. AO. We find that assessee had made certain purchases from certain parties as listed out in pages 1 & 2 of the assessment order to the extent of Rs.26,97,416/-. These parties names appeared in the tainted list of hawala dealers in the website of Sales Tax department of Government of Maharashtra and that information was passed on by DGIT

(Investigation) to the ld. AO for which the case of the assessee was reopened. The ld.AO observed that since the suppliers names appear in the tainted list of hawala dealers, he proceeded to make addition u/s. 69C of the Act in respect of the aforesaid purchase @100% value of the purchases. Assessee submitted before the ld. CIT(A) that he had submitted before the ld. AO party-wise details of purchases exceeding Rs.25,000/-; ledger accounts of all the parties alleged as bogus; extract of bank statements highlighting the payments made to those parties; working of one to one correlation of purchases from the parties with the corresponding sales out of the said purchases, corresponding sale invoices alongwith lorry receipts / freight challans of the parties to whom goods were sold by the assessee out of the purchases alleged to be bogus and VAT audit report in Form 704. The ld. CIT(A) observed that since the sales of the assessee has not been disputed by the ld. AO, he restricted the addition to be made on account of bogus purchases to the extent of 12.5% as against 100% made by the ld. AO. The ld CIT(A) further reduced the gross profit already declared by the assessee from the estimated 12.5%. Against this order of the ld. CIT(A), the revenue is in appeal before us. We find that the case law relied upon by the revenue in the case of NK Proteins Limited had

already been considered by the ld. CIT(A) in his appellate order. We find that the sales made by the assessee out of the purchases from the alleged suppliers are not disputed by the revenue. Hence, the law is now well settled that the profit percentage thereon needs to be brought to tax in respect of purchases made by the assessee from the grey market. We find that this Tribunal in number of decisions held that the estimation of profit @12.5% would be reasonable. We also further find that this Tribunal in the case of ITO vs. Babulal Jetharamji Vishnoi in ITA No.6974/Mum/2018 for A.Y.2010-11 dated 15/01/2020 in similar facts and circumstances held that profit percentage @12.5% estimated should be further reduced by gross profit percentage already declared by the assessee. Hence, we find that this case law relied upon by the ld. AR is well founded. We direct the ld. AO accordingly. Hence, we do not find any infirmity in the order of the ld. CIT(A) granting this relief to the assessee. Accordingly, the grounds raised by the revenue are dismissed.

8. Therefore, respectfully following the decision of Coordinate Bench of ITAT, which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of

AR. Accordingly, the grounds raised by the revenue are **dismissed.**

9. In the net result, the appeal filed by the revenue stands **dismissed.**

10. *Order pronounced in the open court 04.11.2020.*

Sd/-

Sd/-

(C. N. Prasad)

(S. Rifaur Rahman)

न्यायिकसदस्य / Judicial Member

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04.11.2020

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai