

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA NO. 3615/MUM/2019 : A.Y : 2011-12**

Income Tax Officer – 22(2)(1),  
Mumbai. (Appellant) Vs. Kamlesh Prafulchandra Desai  
602, Kalpana, Besant Road,  
Santacruz (W), Mumbai 400 054.  
**PAN : AABPD6487D** (Respondent)

**ITA NOS. 3616 TO  
3618/MUM/2019 : A.Ys : 2009-10 TO 2011-12**

Income Tax Officer – 22(2)(1),  
Mumbai. (Appellant) Vs. Kamlesh Prafulchandra Desai (HUF)  
602, Kalpana, Besant Road,  
Santacruz (W), Mumbai 400 054.  
**PAN : AAEHK0558B** (Respondent)

**Assessee by : None**  
**Revenue by : Shri Jeetendra Kumar**

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

**ORDER**

**PER SHRI SHAMIM YAHYA, AM :**

These are appeals by the Revenue wherein the Revenue is aggrieved that the learned CIT(A) has reduced the addition for bogus purchase by sustaining only 12.5% of the disallowance.

2. The assessee in this case is engaged in the business of dealing in all kinds of paper and boards. The assessment was reopened upon information from Sales Tax Department that assessee has made purchases from bogus dealers. The Assessing Officer made 25% addition of the bogus purchases as under :-

Assessment Year	Amount	Assessee
2009-10	37,16,632/-	Individual
2010-11	10,38,220/-	Individual
2011-12	30,97,333/-	Individual
2011-12	30,69,348/-	HUF

3. Upon assessee's appeal, learned CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case, he sustained 12.5% disallowance out of the bogus purchases by concluding as under :-

*"4.6 In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from two of the hawala operators totalling to Rs.1,48,66,527/-. The A.O attempted to verify such parties by making independent enquiries u/s 133(6) of the I.T. Act, 1961. All these verification letters could not be served on the parties. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc could not be submitted before the A.O. Nor the Principle Officer of these concerns was produced before the A.O for*

*examination. However, it is also a fact that the A.O has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such accommodation entry. As evident from catena of judgements on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The A.O has rightly disallowed part of the purchases claimed such hawala dealers. However, the judgment of Vijay Protein (supra) is a judgment related to manufacturing concern where all the documents were threadbare analyzed and 25% disallowance on purchase was upheld. In the present case, the ratio of Vijay Protein, a manufacturing concern cannot be applied since the appellant is a business concern doing trading. In my opinion, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. Thus the disallowance of purchase is upheld in principle but it should be based on ratio of Simit P. Seth 356 ITR 461 (Guj.) as the appellant is a trader not manufacturer. Thus the A.O is directed to restrict the disallowance to the extent of 12.5% of purchase from suspicious dealers."*

4. Against above order, Revenue is in appeal before the ITAT. We have heard Id. DR and perused the record. We find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble Jurisdictional High Court decision in the case of Nickunj Eximp Enterprises (in Writ Petition No. 2860 order dated 18.06.2014). In this case, the Hon'ble High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However, the facts of the present case indicate that assessee has made purchase from the grey

market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation, in our considered opinion, on the facts and circumstances of the case, the 12.5% disallowance out of bogus purchases done by the learned CIT(A) meets the ends of justice. Accordingly, we uphold the order of learned CIT(A).

5. In the result, these appeals filed by the Revenue stand dismissed.

6. Before parting, we may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Order pronounced under Rule 34(4) of ITAT Rules on 28<sup>th</sup> October, 2020.

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai, Date : 28<sup>th</sup> October, 2020

\*SSL\*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai