

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 4566/Mum/2019  
(निर्धारणवर्ष / Assessment Year: 2010-11)

ITO Ward 3(3), R. No. 8, 6 <sup>th</sup> floor, B- Wing, Ashar IT Park, Road No. 16Z, Wagle Industrial Estate, Thane (w), Pin-400 604	<b>बनाम/ Vs.</b>	Shri Sandeep Namdeo Chavan, 1, Near Thakur Engg. Works, Pokharan Road No. 1, Upvan, Thane-400 601
स्थायीलेखासं ./जीआइआरसं ./PAN No. AFTPC1326H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Sanjay J. Sethi, DR
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	None
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	11.01.2021
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	25.01.2021

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) - 2 in short referred as ‘Ld. CIT(A)’, Thane, dated 10.04.19 for Assessment Year (in short AY) 2010-11.

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are, based on the information received from the DGIT(Inv) and Maharashtra Sales Tax Department about the accommodation entries obtained by the assessee. Accordingly, assessment was reopened u/s 147 of the Act and subsequently assessment was completed u/s 143(3) r.w.s 147 of the Act by the AO thereby making 100% addition on account of bogus purchases.

4. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and based on the submission of assessee, Ld. CIT(A) agreed with the AO that this purchases were not genuine and does not mean that purchases made from these parties are genuine. The courts have held that payment made by cheque itself is not sacrosanct so as to prove the genuineness of the

purchases when the surrounding circumstances are suspect. However, the assessee has shown onwards sales which has not been doubted by the AO. By relying on the decision of Hon'ble Gujrat High Court in the case of **CIT vrs. Smith P. Sheth 356 ITR 451 (Guj)**, he reduced the disallowance @ 5%. Accordingly, Ld. CIT(A) **partly allowed** the appeal of the assessee.

5. Aggrieved with the above order, revenue has preferred the appeal before us on the ground mentioned herein below:-

*1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee could not establish the genuineness of the purchases from the nonexistent vendors as per information received from Law enforcement agency of State Govt. of Maharashtra i.e. Sales Tax Department, and established by the Assessing Officer.*

*2. On the facts and in the circumstances of the case, and in law, the Ld.CIT(A) -has erred in 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.*

*3. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement of goods, stock register, etc. to restrict the addition to 5% of bogus purchases from the non-existent vendors.*

*4. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court.*

*5. It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11.07.2018 amended vide letter dtd. 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.*

6. *The appellant craves leave to add, amend, alter or delete any ground of appeal.*

6. Considered the submission of Ld. DR and material placed on record. We are of the considered view that no doubt the purchases made from the suspected parties are not genuine. However, the purchases itself cannot be doubted as rightly adjudicated by Ld. CIT(A) that AO has not doubted sales declared by the assessee, only he suspects the purchases. By respectfully following the decision of Hon'ble Gujrat High Court in the case of **CIT vrs. Smith P. Sheth (supra)**, we are inclined to agree with the findings of Ld. CIT(A). Therefore, grounds raised by the revenue are **dismissed**.

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

*Orders pronounced in the open court on 25.01.2021.*

*Sd/-*  
(Vikas Awasthy)  
न्यायिकसदस्य / Judicial Member  
मुंबई Mumbai; दिनांक Dated :  
*Sr.PS. Dhananjay*

*Sd/-*  
(S. Rifaur Rahman)  
लेखासदस्य / Accountant Member  
25.01.2021

**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**