

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2998/M/2019  
Assessment Year: 2011-12**

ACIT-28(1), Room No.306, 3 <sup>rd</sup> Floor, 6 <sup>th</sup> Tower, Vashi Railway Station Complex, Vashi, Navi Mumbai – 400 703	Vs.	Mr. Anand Phulchand Vaishya, C-4/2-2, Sector 28, Shree Ganesh CHS Ltd., Nerul, Navi Mumbai, Mumbai <b>PAN: ADPPV5325F</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Brajendra Kumar, D.R.

Date of Hearing : 28.12.2020  
Date of Pronouncement : 08.01.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 08.02.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. At the outset, we would like to mention that neither assessee nor his authorised representative was present when the case was called up for hearing, nor any adjournment application was received. Therefore, we are disposing of this appeal after hearing the Ld. D.R. and after considering the merit of the case.

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) partly deleting the addition at 87.50% of the bogus purchases as against 100% disallowance made by the AO.

4. The facts in brief are that the assessee is a contractor and during the year filed return of income on 24.09.2011 declaring income of Rs.26,67,410/-. Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act on 03.09.2014 on the ground that assessee is beneficiary of hawala bogus purchases. Accordingly, during the assessment proceedings the AO called upon the assessee to prove the genuineness of the purchases from 8 parties from whom the total purchases of Rs.65,48,171/- were made. The AO after recording a finding that assessee has not purchased the said goods from the supplier from whom the bills were obtained and these purchases were made from other parties details whereof such as names and addresses, mode of payment were not disclosed in the books and finally added the entire amount of income to the assessee under section 69C of the Act by framing assessment under section 143(3) read with section 147 vide order dated 28.02.2015.

5. The Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition equal to 12.5% of the total bogus purchases by following the decision of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) by holding that the entire purchases can not be taxed but the only profit element embedded in the purchases would be brought to tax and thus allowed the appeal partly.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that the order passed by the Ld. CIT(A) is quite reasoned which has been passed after following the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra) wherein it has been held that in case of bogus purchases only the profit element can be brought to tax. Accordingly, we are inclined to uphold the order of Ld. CIT(A) and consequently the appeal of the Revenue is dismissed.

7. In the result the appeal of the revenue is dismissed.

**Order pronounced in the open court on 08.01.2021.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 08.01.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.