

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6055/M/2019  
Assessment Year: 2009-10**

ITO 21(1)(5), Room No.120, 1 <sup>st</sup> Floor, Piramal Chambers, Parel, Mumbai – 400012	Vs.	Shri Jitendra P. Shinde, 50, Manubhai Chawl, T.H. Katariya Marg, Mahim, Mumbai – 400 016 <b>PAN: ANCPS 4359P</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 24.06.2021  
Date of Pronouncement : 24.06.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 10.07.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The common issue raised in the various grounds of appeal by the Revenue is against the order of Ld. CIT(A) restricting the disallowance to Rs.4,38,327/- being 20% of the bogus purchases as against Rs.6,57,491/- being 30% of bogus purchases of Rs.21,09,635/- made by the AO.

3. The facts in brief are that the assessee filed the return of income on 26.09.2009 declaring an income of Rs.8,50,480/- which was processed under section 143(1) of the Act.

Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act dated 07.02.2014 after the AO received the information from DGIT(Inv.), Mumbai and Sales Tax Department that assessee is beneficiary of hawala purchase accommodation entries from 13 parties to the tune of Rs.21,91,635/-. The statutory notices were duly issued and served upon the assessee. The assessee is engaged in the business of trading and installation of electrical items, motor engineering items and servicing thereof. During the course of assessment proceedings, the AO called upon the assessee to prove the genuineness of these purchases. The AO also issued notice under section 133(6) of the Act dated 26.06.2014 to all the parties which were returned unserved. The assessee in response to notice under section 142(1) of the Act filed before the AO the copies of bills, vouchers, delivery challans in case of a few suppliers and also bank statements highlighting the payments. The AO also required the assessee to produce these parties in person which could not be done by the assessee. Finally, the AO after following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj) came to conclusion that such type of purchases are normally made to save the profit margin and accordingly applied a profit margin of 30% on the bogus purchases in order to tax the profit element embedded therein thereby making an addition of Rs.6,57,491/- in the assessment framed under section 143(3) read with section 147 of the Act dated 16.03.2015.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply a profit

margin of 20% on the bogus purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra) by holding that in view of the investigation carried out by the Sales Tax Department and non service of notices issued under section 133(6) of the Act, it is undoubtedly proved that assessee has indulged in making bogus purchases but these are to be assessed reasonably.

5. After hearing both the parties and perusing the material on record, we observe that undisputedly the assessee is beneficiary of hawala purchase entries and the assessee has made the payments by banking channel and also placed before the authorities below the copies of bills, vouchers, delivery challans etc. Historically, in such type of cases it has been consistently held by the co-ordinate bench of the Tribunal that rate to be applied to assess the profit embedded in the bogus purchases varies from 2% to 12.5% whereas in the present case the Ld. CIT(A) has directed the AO to apply 20% of the bogus purchases which is quite good and consequently we do not find any reason to interfere in the findings of the Ld. CIT(A). Accordingly, we are upholding the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 24.06.2021.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

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

Mumbai, Dated: 24.06.2021.

\* 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.