

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

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR  
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.6417/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT-11(2)(2) Room No.421, 4 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b><u>बनाम/</u></b> Vs.	Siddharth Praful Mehta 167/2, Vishal Villa, Road No.5, Shivaji Park, Mahim (W), Mumbai-400016.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEXPM2847Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Sanjay J. Sethi (DR)	
Assessee by:	Shri Prateek Jain	

सुनवाई की तारीख / Date of Hearing: 05/07/2021

घोषणा की तारीख /Date of Pronouncement: 07/07/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 10.07.2019 passed by the Commissioner of Income Tax (Appeals) -33 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2008-09.

2. The revenue has raised the following grounds: -

” 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition up to the extent of 5% as against 125% made by the Assessing officer in respect of purchases from the bogus entities as the suppressed profits embedded in such purchases, without appreciating the fact that the Ld. CIT(A)



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himself has acknowledged the impugned order that the assessee has availed accommodation entries in relation with bogus purchases from all the five parties?"

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition up to the extent of 5% as against 12.5% made by the Assessing officer in respect of purchases from the bogus entities as the suppressed profits embedded in such purchases, without appreciating the fact that the assessee has failed to prove the genuineness of the transactions entered into with the two bogus entities as it has failed to produce both the parties before the authorities be it assessing officer or the First Appellate Authorities?"

3 "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition up to the extent of 5% as against 12.5% made by the Assessing officer in respect of purchases from the bogus entities as the suppressed profits embedded in such purchases, without appreciating the fact that Hon Me Apex Court in the case of M/s Kachwala Gems V/s JCIT (2006) 206 CTR (SC) 585, 288 ITR 10 (SC), has held that payment by account payee cheque is not sufficient to establish the genuineness of purchases, thereby making the assessee contention made before and accepted by the Ld. C1T(A), insignificant that the transaction were undertaken through banking channel?"

4. "Whether on the facts and circumstances of the case and in law. the Ld. CIT(A) was justified in restricting the addition up to the extent of 5% as against 12.5% made by the Assessing officer in respect of purchases from the bogus entities as the suppressed profits embedded in such purchases, without appreciating the fact that Hon'ble Calcutta High Court has held in the case of CIT Vs. Prashant (P) (1994) 1231 (Cal)



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20, that even payment by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine?'

5. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A). was justified in restricting the addition up to the extent of 5% as against 12.5% made by the Assessing Officer in respect of purchases from bogus entities as the suppressed profits embedded in such purchases, without appreciating that on similar issue "C" Bench of Hon'ble ITA T Mumbai in the case of Pratibha Pipes & Structural Limited Vs. DCIT Cen. Cir-17 & 28 Mumbai in ITA No. 3874, 3875, 3876/Mum/2015 & 7120/Mum12016 dated 10 04.2019 has upheld the decision of Assessing Officer making 100% addition towards bogus purchases while relying upon the decision of Hon'ble Apex Court in the case of NK Protiens Limited (Supra)?"

6. "Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition up to the extent of 5% as against 12.5% made by the Assessing officer in respect of purchases from the bogus entities as the suppressed profits embedded in such purchases, without appreciating the fact that on similar issue in the case of Vijay Protein Ltd. Vs. CIT in Income Tax Reference No. 139 of 1996 with tax Appeal no. 243 of 2002, the Hon'ble Gujarat High Court has sustained addition of 25% of the alleged bogus purchases made by the Tribunal in the case.?"

**3.** The brief facts of the case are that the assessee filed its return of income on 10.02.2009 declaring a total income to the tune of Rs.40,28,633/- for the A.Y.2008-09. The return was processed u/s 143(1) of the Act. The case of the assessee was reopened on the basis of information



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received from the Sales Tax Authorities in which it was conveyed that the assessee has taken the bogus purchase entry of Rs.75,15,480/- from the following five parties: -

Sr. No.	Name of the parties who have issued bogus bills to the assessee	Amount of such bogus bills (In Rs.)
1	Dharmesh Trading Co.	486200
2	Jain Corporation	1146617
3	Om Enterprises	1502263
4	Supreme Enterprises	591760
5	Yash Impex	3788640
	Total	75,15,480

The notice was given and after the reply of the assessee, the AO raised the addition to the extent of 12.5% of the bogus purchase. The income of the assessee was assessed to the tune of Rs.49,68,070/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 5% of the bogus purchase but the revenue was not satisfied, therefore, filed the present appeal before us.

**4.** We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. We find that the CIT(A) has restricted the addition to the extent of 5% of the bogus purchase on the basis of the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2009-10 & 2010-11 Bearing ITA. No.2447 & 2446/Mum/2015 dated 20.09.2017. The finding of the CIT(A) is hereby reproduced as under.:-

*"8. I have carefully gone through the findings given in the assessment order and the written submissions of the appellant on the issue and material available on record. The information about the 5*



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*parties who have issued bills for purchase to the assessee clearly reveal that the assessee is a beneficiary of accommodation bills. The Sales Tax Department had conducted detailed investigation/enquiries against the hawala suppliers. Notices u/s 133(6) issued to one party was returned unserved and no reply was received from others. The appellant could not furnish evidence of actual transportation and delivery. The parties were not produced before the AO. Therefore, it is logical to conclude that the goods were purchased from some other parties and only bills were obtained from the 5 parties under consideration.*

9. *As discussed above, this is a clear cut case of bogus purchase and the additional profit element embedded in such purchase needs to be added to the total income of the appellant. The AO has estimated additional profit @12.5 % of purchase amount. I have gone through the order of the ITAT in case of appellant itself for AY 2009-10 & 2010-11 dated 20.09.2017 wherein the ITAT has sustained addition @ 5 % of bogus purchase in the identical facts taking into consideration the fact that the assessee was dealing in products of reputed companies whose rates are standardized one but there is possibility that the assessee might have saved VAT tax from such purchases. As the facts involved in present appeal are identical to the facts in appeal for AY 2009-10 & 2010-11, respectfully following the decision of the [TAT, the addition to the extent of 5% of bogus purchase is hereby sustained and the balance addition is deleted. The grounds are partly allowed.”*

**5.** Since the issues is squarely covered by the decision of the Hon’ble ITAT in the assessee’s own case for the A.Y.2009-10 & 2010-11 bearing ITA. No.2447 & 2446/Mum/2015 dated 20.09.2017, therefore, we are of the view that the finding of the CIT(A) is quite justifiable and is not liable to be interfered with at this appellate stage. Accordingly, we affirm the



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finding of the CIT(A) on this issue and decide this issue in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 07/07/2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/07/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai