

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.479/M/2020  
Assessment Year: 2010-11**

Smt. Lalita Babulal Kanungo, Shop No.5, F Wing, Ground Floor, Shripati Jewels, Sukanand Wadi, Near C.P. Tank, Mumbai – 400 004 <b>PAN: AFQPK7454R</b>	Vs.	Income Tax Officer- 19(2)(1), Room No.217, 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo, Mumbai – 400 007
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Sanjay T. Sethi, D.R.

Date of Hearing : 23.08.2021  
Date of Pronouncement : 14.09.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 21.11.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. At the time of hearing when the case was called for hearing, neither assessee nor his authorised representative was present to attend the hearing nor any application for adjournment was filed. Therefore, we are deciding the appeal of the Revenue after hearing the Ld. D.R. and after considering the merits of the case.

3. The only issue raised by the assessee is against the order of Ld. CIT(A) enhancing the addition @ 100% of the bogus purchases as against 12.50% addition made by the AO.

4. The facts in brief are that the assessee filed the return of income on 22.09.2010 declaring total income of Rs.4,32,140/- which was processed under section 143(1) of the Act. The case of the assessee was thereafter reopened by the AO after receipt of information from DGIT (Inv.), Mumbai that assessee is beneficiary of hawala purchase entries to the extent of Rs.77,55,118/- and accordingly the notice under section 148 of the Act was issued on 20.03.2015. The AO called for various details and information from the assessee from time to time during the course of assessment proceedings which were duly filed before the AO. The AO finally rejected the contentions of the assessee and treated the purchases as non genuine thereby making an addition of Rs.9,69,390/-, being 12.5% of the purchases, to the income of the assessee by framing assessment under section 143(3) read with section 147 of the Act dated 30.03.2016.

5. In the appellate proceedings, the Ld. CIT(A) not only dismissed the appeal of the assessee but also enhanced the addition to 100% of the bogus purchases thereby directing the AO to make addition of Rs. 77,55,118/- instead of Rs. 9,69,390/- on the ground that the assessee has failed to establish as from whom the purchases were made.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that Ld. CIT(A) has passed the appellate

order enhancing the addition equal to 100% of the bogus purchases as against the 12.50% applied by the AO. The only reasoning given by the ld CIT(A) is that though the assessee has shown sales but the onus of the assessee is to prove the sources of purchase. We note that the despite the assessee's undisputed facts as to purchases being made from grey market, the ld CIT(A) has tried to distinguish the decision of Gujrat High court in the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451(Guj) wherein it has been held that in case of bogus purchases only profit element embedded in the bogus purchases is to be assessed. Similarly the ld CIT(A) tried to distinguish the decision of Hon'ble Bombay High Court in the case Mohommad Hazi Adam & Co dated 11.02.2019. After taking into account the facts of the assessee we are of the considered opinion that the above decisions have wrongly been distinguished by the ld CIT(A). In fact the ld AO has rightly taxed the profit element after giving findings that the assessee has made hawala purchases. Moreover, the co-ordinate benches of the Tribunal have been taking a consistent view that in case of bogus purchases only a GP rate ranging between 2% to 12.5% has to be taxed depending on the facts of each case. We are thus not in agreement with the conclusion of the Ld. CIT(A) and accordingly set aside the same by restoring the order of AO.

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

**Order pronounced in the open court on 14.09.2021.**

**Sd/-  
(Mahavir Singh)  
VICE PRESIDENT**

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

Mumbai, Dated: 14.09.2021.

\* 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.