

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.1798 and 1799/Ahd/2019**

निर्धारण वर्ष/ Asstt.Year : 2009-10 and 2011-12

ACIT, Sabarkantha Circle Himatnagar 383 001.	Vs.	Shri Hiren K. Mehta Prop. of Vitrang Chem C-107, Saidham Society Sosawal Lane, Borivali West Mumbai 00 092. PAN : ABLPM 3015 H
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**ITA No.1800/Ahd/2019**

निर्धारण वर्ष/ Asstt.Year : 2010-11

ACIT, Sabarkantha Circle Himatnagar 383 001.	Vs.	Shri Jagisha S. Mehta Prop. of Ruby Chem C-107, Saidham Society Sosawal Lane, Borivali West Mumbai 00 092. PAN : AIXPM 4475 C
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<b>(Applicant)</b>		<b>(Responent)</b>
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Revenue by :	Shri Kamlesh Makana, Sr.DR
Assessee by :	None

मुनवाई की तारीख/Date of Hearing : 12/11/2021

घोषणा की तारीख /Date of Pronouncement: 17/11/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT:**

Present three appeals are directed at the instance of the Revenue against separate orders of the Id.CIT(A)-2, Ahmedabad of even dated 25.9.2019 for the above three assessment years.

Since common issues are involved in all these appeals, we proceed to dispose of them, by this consolidated order.

2. None appeared on behalf of the assessee. Therefore, after hearing the Id.DR and considering the material available on record, we proceed to dispose of them *ex parte qua* the assessee-respondent.

3. It has been brought to our notice a letter of the assessee dated 10.11.2021 contending therein that appeals of the Revenue are not maintainable because the same are filed in violation of CBDT Circular No.17 of 2019 dated 8.8.2019 by which the CBDT prohibited Revenue not to file appeals before the Tribunal where tax effect is below Rs.50.00 lakhs. In the instant appeals, since tax effect is below Rs.50.00 lakhs, all three appeals of the Revenue are liable to be dismissed at the threshold.

4. After hearing the Id.DR, we find that the Revenue has presented appeal before the Tribunal on 13.12.2019 i.e. after issuance of CBDT Circular NO.17 of 2019 dated 08.8.2019. The Id.DR pointed out that appeal of the Revenue falls within the exception provided in para-10 of Circular 03/2018 dated 20.8.2018. Para-10 *inter alia* provide for cases where tax effect is not relevant, such as, where addition is based on information received from various other law enforcement agencies such as Central Bureau of Investigation India / Enforcement Directorate / Department of Revenue Intelligence / Serious Fraud Investigation

Office / Directorate General of GST Intelligence (DGGI). Admittedly, in the instant case, the addition was made by the AO in 143(3) assessment based on the information received from Maharashtra Sales Tax Authority. It is pertinent to note here that this exception is effective from 20 August 2018, and thus, it is permissible for the Tax Department to appeal before the Tribunal even if the tax effect is within the revised monetary threshold. In this scenario, we find merit in the submission of the Revenue, because case of the Revenue falls in the cases covered under the para-10. Therefore, we proceed to dispose of appeals of the Revenue on merit.

5. Before going to decide the appeals on merit, we have noticed that all the impugned orders of the Id.CIT(A) are verbatim on same line except variations in the quantum and names of alleged bogus billers. Solitary common grievance of the Revenue in all these appeals is, that the Id.CIT(A) has erred in restricting the following additions made by the AO on account of bogus purchases from *hawala* billers.

ITA No. & AY _____	Addition by AO _____	Addition restricted by CIT(A)
ITA No.1798/A/19 A.Y.2009-10	14,91,767/-	1,49,176/-
ITA No.1799/A/19 A.Y.2011-12	6,45,676/-	1,79,563/-
ITA No.1800/A/19 A.Y.2010-11	15,38,784/-	76,939/-

6. For adjudicating the appeal, we take brief facts from ITA No.1798/Ahd/2019; being common in all three appeals. Assessee

is an individual running a proprietorship concern. He is a chemical dealer. The assessee filed return of income declaring total income of Rs.2,86,220/- on 29.9.2009. The return was processed but selected for scrutiny assessment under section 147 by issuance of notice under section 148 of the Income Tax Act, 1961. Scrutiny assessment was initiated on the basis of information received by the Department from Maharashtra Sales Tax Authority relating to bogus purchase from *hawala* billers namely, K.C. Enterpirse, Manav Impex and Raj International to the tune of Rs.14,91,767/-. The ld.AO sought explanation from the assessee in this regard. However, assessee failed to give any explanation, accordingly the ld.AO made the impugned addition. However, in appeal before the ld.CIT(A), the assessee has explained that the assessment was reopened by the AO on the basis of borrowed satisfaction from the information of Maharashtra Sales Tax Authorities; that except general information nothing was before the ld.AO for making the impugned addition; accounts of the assessee were audited under section 44AB of the Act; quantitative details were maintained and the details were furnished during the assessment proceedings; that the alleged sellers have valid sales tax numbers and the goods purchased from them were sold, which were not disputed by the Revenue. For the financial year, 2006-07, 2007-08 and 2008-09, GP ratio was 8.25%, 3.08% and 3.98% respectively. Previous years GP ratio and current year did not show any material variation so as to doubt the alleged bogus purchase. To support

his case, the assessee has relied upon various case laws, which were noticed by the CIT(A) in his impugned order. After going through the reply of the assessee and relying on various judgments, and also decision of ITAT, Mumbai Bench in the case of Shri Tagaram G. Prajapati Vs. ITO in ITA No.1613, 1614 and 1615/Mum/2008 restricted the impugned addition by estimating 10% of alleged bogus purchase i.e. 10% of Rs.14,91,767/-. Aggrieved by the decision of the CIT(A), Revenue is in appeal before the Tribunal.

7. None appeared on behalf of the assessee. The Departmental Representative supported order of the Assessing Officer.

8. After hearing, the Id.DR, we have gone through the record carefully and also orders of the Revenue authorities. We find that the impugned addition on account of alleged bogus purchased was made by the Id.AO on account of information received from Maharashtra Sales Tax Authorities. There is no other material with the Revenue to corroborate the information so received from the Sales Tax Department in order to make the impugned addition nor established that the so-called bogus purchase or the sum equivalent thereof was returned to the assessee in any manner. It appears from the record that no internal inquiry has been carried out by the Revenue to vouch the fact of bogus purchases. The Id.CIT(A) has recorded that the appellant has submitted documentary evidence to establish the genuineness of purchase

made from the parties, but the factum of the said billings parties being engaged in the bogus bills was not ruled out. Accordingly, after examining all the facts and circumstances and also relying upon decision on the ITAT, Mumbai Benches cited (supra) on similar issue, he restricted the impugned addition and estimated the same at 10% of alleged bogus purchases i.e. Rs.14,91,767/-. We do not find any infirmity in the approach of the Id.CIT(A) in restricting the impugned additions, and therefore, his order does not warrant our intervention in this score. We confirm the order of the Id.CIT(A) and dismiss this ground of appeal of the Revenue.

9. As far as other two appeals of the Revenue are concerned, as aforementioned, the same are identical on both issue and the facts and the conclusion of both the authorities on similar line. Therefore, for the reasons recorded by us in the foregoing paragraphs of this order, we reject the grounds raised in other two appeals also.

9. In the result, all three appeals of the Revenue are dismissed.

**Order pronounced in the Court on 17<sup>th</sup> November, 2021 at Ahmedabad.**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

Ahmedabad; Dated 17/11/2021