

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

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

**ITA No.1615/M/2020  
Assessment Year: 2011-12**

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| Income Tax Officer-<br>33(2)(5),<br>Room No.851, 8 <sup>th</sup> Floor,<br>Kautilya Bhavan,<br>Bandra Kurla Complex,<br>Bandr (East),<br>Mumbai - 400051 | Vs. | Mr. Priyesh Sashikant<br>Nanavati,<br>Rasik Kunj,<br>Mathuradas Road,<br>PNB Compound,<br>Kandivali (W),<br>Mumbai – 400 067<br><b>PAN: AAAPN6699Q</b> |
| (Appellant)  |     | (Respondent)   |

**Present for:**

Assessee by : None  
Revenue by : Shri Bbagchi, D.R.

Date of Hearing : 21.09.2021  
Date of Pronouncement : 26.10.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal by the Revenue has been preferred against the order dated 31.07.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The only issue raised in the grounds of appeal by the Revenue is against the order of Ld. CIT(A) wherein the Ld. CIT(A) has deleted the part addition to the extent of 87.5% of the bogus purchases thereby sustaining addition to the extent of 12.5% of the bogus purchases.

3. The facts in brief are that assessee filed return of income on 30.09.2011 declaring an income of Rs.12,88,202/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny and assessment under section 143(3) was framed vide order dated 27.02.2014. Thereafter, the AO received information that the assessee is beneficiary of hawala purchase entries from various parties. Accordingly, the case was reopened under section 147 of the Act by issuing a notice under section 148 of the Act on 29.03.2017 which was duly complied with by the assessee by submitting that the return filed originally may be treated as return in response to notice u/s 148 of the Act. The assessee was called upon to file the details of purchases from M/s. Reveka Trade Impex Pvt. Ltd. beside other evidences to prove the genuineness of the purchases. The AO also issued notice under section 133(6) of the Act to the said parties which was duly served, however, not responded to by the said party. Finally, the AO issued show cause notices to the assessee as to why the purchases from M/s. Reveka Trade Impex Pvt. Ltd. should not be treated as non genuine which has been replied by the assessee requesting the AO that purchases were in fact made and were genuine purchases. The AO rejected the contention of the assessee on various grounds such as identity of supplier was not proved, non production of supplier, non production of delivery challan, lorry receipt, weigh bridge, octroi receipt, mode of transportation and stock register etc. and finally added entire purchases to the income of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to assess the profit element embedded in the purchases @ 12.5% instead of 100% by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth – 356 ITR 451 (Guj.) by holding that in case of hawala purchases the materials is procured from the grey market and therefore only a profit element in the said purchases could be brought to tax and not the entire purchases.

5. After hearing both the parties and perusing the material on record, we find that in this case the assessee was undoubtedly and undisputedly beneficiary of hawala purchases from M/s. Reveka Trade Impex Pvt. Ltd. to the tune of Rs.3,60,97,808/- the genuineness whereof could not be proved before the AO and consequently the AO added the entire purchases to the income of the assessee. The Ld. CIT(A) partly allowed the appeal of the assessee on the ground that only the profit element embedded in the said bogus purchases could be brought to tax and while allowing the appeal of the assessee partly the Ld. CIT(A) followed the decision of the Hon'ble Gujarat High Court in the case of "CIT vs. Simit P. Sheth" (supra). We also note that in similar type of cases the co-ordinate Benches of the Tribunal have taken a consistent view that only profit rate has to be applied on the bogus purchases and not the entire purchases be added to the income of the assessee. Accordingly, we are inclined to uphold 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 26.10.2021.**

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

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

Mumbai, Dated: 26.10.2021.

\* 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.