

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

**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.439/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-31(1)(1) Room No.603, 6 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, 'G' Block, Bandra (E), Mumbai- 400051.	<b>बनाम/</b> Vs.	GopalBhai Shamjibhai Kalsaria 122/10, Jawahar Nagar, Road No.10 Goregaon (W), Mumbai- 400062.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPK6469B		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Revenue by:	Shri Prasoon Kabra	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 25/11/2021

घोषणा की तारीख /Date of Pronouncement: 21/12/2021

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 21.01.2020 passed by the Commissioner of Income Tax (Appeals) -42 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The revenue has raised the following grounds: -

*"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit to 12.5% of bogus purchases against 100% addition made by the AO.*



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*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in not considering that the addition was made on the basis of information received from DGIT(Inv.) and Sales Tax Department Maharashtra with regard to bogus purchases made by the assessee from dealers without supply of actual goods.*

*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody.*

*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in not considering that the assessee could not prove the genuineness and creditworthiness of purchase transactions during the course of assessment proceedings.*

*The appellant craves leave to amend or to alter any ground or add a new grounds, which may be necessary. ”*

**3.** The brief facts of the case are that the assessee filed its return of income on 27.09.2009 declaring total income to the tune of Rs.3,46,167/-. The return was processed u/s 143(1) of the I. T. Act, 1961. The case of the assessee was reopened u/s 147 of the Act on the basis of information received from the DGIT(Inv.), Mumbai/Sales Tax Department, Govt. of Maharashtra. Necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee had made the bogus purchases and billings from various parties during the F.Y.2008-09 relevant to the A.Y.2009-10 amounting to Rs.9,36,414/-. The assessee has taken the bogus purchase entry from the following parties: -



Om Corporation	AYZPS5296B	20,925
Nikhil Enterprise	AKWPM0095R	65,594
Jigan Enterprises	AFWPJ6885R	31,806
VM Udyog	AGKPC6868L	92,247
Daksha Enterprises	BJNPS1964G	1,68,724
GR Trade Link	AMDPR6514R	2,44,932
Top Shop Trading Company Pvt. Ltd.	AACCT2855M	15,122
Maulik Enterprises	BMCPS0117D	4,725
Mahavir Enterprises		42,089
Amizara Trading Corporation	AQRPM8229L	2,50,250

The bogus purchases was to the tune of Rs.9,36,414/-. The assessee is engaged in the business of fabrication of sheet metal components etc. The AO also issued the notices to the parties u/s 133(6) of the Act. The notices issued to the four parties were received from the postal authorities with the remark 'Not known'. The notice was issued of the assessee and after the reply of the assessee, the AO raised the addition to the extent of 100% of the bogus purchases of Rs.9,36,414/-. The assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 12.5% but the revenue was not satisfied, therefore, revenue has filed the present appeal before us.

#### **ISSUE NOS. 1 to 5**

4. All the issues are in connection with the restriction of the addition to the extent of Rs.12.5% of the bogus purchases. The Ld. Representative of



the revenue has argued that the AO has rightly restricted the addition to the extent of 100% of the bogus purchase, therefore, the finding of the CIT(A) is not justifiable, hence, liable to be set aside. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -

*“7. Decision:*

*7.1 I have considered the submission of the appellant, perused the material placed op, record and carefully gone through the order of the AO and Remand Report submitted during appellate proceedings. The contentions raised by the appellant have been carefully examined with reference the factual matrix of the case as also the relevant provisions of the Act and the legal position as applicable to year under reference. The grounds of appeal are discussed and decided as under:*

*7.2 Ground of Appeal No. 1, 6, 7 & 8 being general grounds were not processed. Accordingly, these grounds of appeal are “Dismissed”.*

*7.3 Ground No. 2 of the appeal is regarding addition of Rs. 9,36,414/- as alleged bogus purchases being 100% of non-genuine purchases. As per the investigations carried out by the Sales Tax Authorities, the aforementioned parties were found to be involved in giving accommodation ‘entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the Same, the AO had made enquiries by issuing notices u/s 133(6) which were returned unserved by the postal authorities. This party was found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of} the party.*



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*'During the scrutiny assessment the appellant furnished details of purchases 'and corresponding sales, However, the appellant could not produce the party before the AO\Inspire of opportunity being given. The appellant also failed to produce delivery challans or transportation details. The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on-oath that it had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from these parties will have to be considered, taking this into, consideration while examining the documentation submitted by the appellant if support of its claim. The documentary evidences such as purchase bills, payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The Hon'ble Gujrat High Court in this case has held that profit margin of 12.5% of the bogus purchases*



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*will be reasonable. Respectfully following the Order in the case of Simit P. Sheth the addition is restricted to 12.5% of the bogus purchases of Rs. 9,36,414/-. This ground of appeal is 'Partly Allowed'.*

*7.4 Ground No. 3 & 5 are regarding disallowance of 20% out of telephone expense and other miscellaneous expenses. During the appellate proceedings, only copy of Ledger Account / confirmation were filed. The AO made adhoc disallowance as the exclusive business use of these expenses was not proved. Appellant has not made any submission on this. However, the disallowance of 20% seems to be slightly on higher side and it will be reasonable if the disallowance is restricted to 10%. Accordingly, the grounds of appeal are 'Partly Allowed'.*

*7.5. Ground No. 4 of the appeal is regarding addition of Rs.38,000/- treating the same as unexplained cash credit. The AO has stated that unsecured loans of Rs. 18,500/- and Rs. 19,500/- respectively have been shown to be taken from Sh. Raj Kadam and Ms. Vipali Gohel. These persons are employee of the appellant and getting monthly salary of Rs.5,000/- to 6,000/-. Further, the loan has been taken in cash. Except Ledger Account/ confirmation no other documents to prove credit worthiness was furnished during the appellate proceedings. Therefore, | have no reason to deviate from the decision of the AO and it is held that the credits are not proved. Accordingly, the addition of Rs. 38,000/- is confirmed and ground of appeal is Dismissed".*

**5.** On appraisal of the above mentioned finding, we find that the CIT(A) has decided the matter of controversy on the basis of the decision of



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Hon'ble Gujarat High Court in the case of **CIT Vs. Simit P. Sheth (2013) 38 taxmann.com 385**. Accordingly, the CIT(A) has restricted the addition to the extent of 12.5% of the bogus purchases. No law contrary to the law relied by the CIT(A) has been produced before us. The addition to the extent of 12.5% seems justifiable. The issues has been covered by the decision of Hon'ble Gujarat High Court as well as various decision of the Tribunal as well as Hon'ble High Court also. We find it justifiable to restrict the addition to the extent of 12.5%, therefore, we affirm the finding of the CIT(A) on this issue and decide all the issues 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 21/12/2021

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 21/12/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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**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**