

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.2737 & 2738/M/2019  
Assessment Years: 2009-10 & 2010-11**

|   |     |   |
|---|-----|---|
| Income Tax Officer-<br>17(1)(5),<br>Room No.117,<br>1 <sup>st</sup> Floor,<br>Aayakar Bhavan,<br>Mumbai - 400020<br><br>(Appellant) | Vs. | M/s. Late Gunvantrai C<br>Doshi (Through L/H Shri<br>Vipul Gunvantrai Doshi),<br>134, Bazargate Street,<br>Fort, Mumbai – 400 001<br><b>PAN: AABPD1054E</b><br><br>(Respondent) |
|---|-----|---|

**Present for:**

Assessee by : None  
Revenue by : Shri Pramod Nikalje, D.R.

Date of Hearing : 10 . 11 . 2022  
Date of Pronouncement : 22 . 11 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Since common question of law and facts have been raised in both the inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, Income Tax Officer-17(1)(5), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 14.02.2019 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years 2009-10 & 2010-11 on identically worded grounds (grounds are taken from A.Y. 2009-10) inter-alia that :-

**"1. Whether on the facts and circumstances of the case and in law, the Ld. C.I.T. (A) justified in restricting the addition made by the AO to 12.5% of bogus purchases as against the addition made at 100% of the bogus purchases, ignoring that the notices u/s. 133(6), issued by Assessing Officer to the alleged suppliers, were returned with remark "not known" and the assessee was unable to prove the genuineness of the purchases either by producing the suppliers for examination or by furnishing other substantiating documents which were required by the Assessing Officer?"**

**2. Whether on the facts and circumstances of the case and in law, the Learned CIT(A) erred in overlooking the fact that the addition made by the AO was based on credible information received from the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchases from them?**

**(This case falls under the exception 10(e) of the Circular No.03/2018 dated 11.07.2018 as amended on 20.08.2018)**

**3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of AO be restored."**

**4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."**

3. Briefly stated facts necessary for adjudication of the issue at hand are : on the basis of information received from Director General of income Tax (DGIT)(Investigation), Mumbai it has come on record that the assessee had made purchases to the tune of Rs.8,45,983/- & Rs.2,98,028/- for A.Y. 2009-10 & 2010-11 respectively from suspicious/hawala parties, the detail of which is as under:

**For A.Y. 2009-10 & 2010-11**

| Sr.No. | Name of the hawala party  | Amount (Rs.) |
|--------|---------------------------|--------------|
| 1      | RAJ TRADERS               | 48360        |
| 2      | SHAKTI TRADING CO.        | 33280        |
| 3      | NISHA ENTERPRISE          | 84760        |
| 4      | ANKIT ENTERPRISES         | 19913        |
| 5      | PRAKASH ENTERPRISES       | 30940        |
| 6      | KLYAN KIRTI INTERNATIONAL | 41400        |
| 7      | MARCON ENTERPRISES        | 39375        |
|        | Total                     | 2,98,028     |

4. On the basis of aforesaid information the Assessing Officer (AO) initiated the reopening proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act') after recording reasons. During the assessment proceedings the AO also issued a notice under section 133(6) of the Act to the aforesaid hawala parties but all the notices were received back with the remark "not known". Declining the contentions raised by the assessee the AO reached the conclusion that aforesaid purchases made by the assessee from hawala parties amounting to Rs.8,45,983/- & Rs.2,98,028/- for A.Y. 2009-10 & 2010-11 respectively are bogus purchases and thereby disallowed the same under section 69C of the Act and added the same to the total income of the assessee and thereby framed the assessment orders under section 143(3) read with section 147 of the Act.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has restricted the addition made by the AO to 12.5% from 100% of bogus purchases by partly allowing the appeals filed by the assessee. Feeling aggrieved the Revenue has come up before the Tribunal by way of filing present appeals.

6. Present appeals filed by the Revenue were initially decided by the Tribunal ex-parte dated 11.02.2021 on merits on failure of the assessee to put in appearance despite service of notice. However, said order was recalled vide order dated 30.09.2022 passed by the Tribunal in miscellaneous application No.32 & 33/M/2022. Thereafter, numerous notices were issued to the respondent through Registered Post with Acknowledgment Due (RPAD) which were not received back served/unserved. Since a period of more than 30 days has already elapsed from the date of

issuance of such notices for 07.10.2022 and for 07.11.2022 respondent is presumed to have been served but none appeared on behalf of him. It appears that respondent is not interested in prosecuting the present appeals. Consequently, the Bench has decided to dispose of the appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

7. I have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

8. The Ld. CIT(A) decided the issues raised by the assessee by returning following findings:

*“10. The issue is disallowance of sums represented by bogus accommodation entries. These entries are debited to Profit and Loss Account having effect in determination of taxable profit. The disallowance made is Rs.8,45,983 being 100% of total value of accommodation entries of which Assessing Officer had received information. It is a settled legal position that the onus is on assessee to prove the expense is genuine. Here Assessing Officer made effort to verify genuineness of transaction and failed as relevant documents were not placed before him. The onus therefore shifts to assessee, who failed to discharge the same. As clearly brought out in assessment order, the evidence produced are copy of purchase bills and purchase ledger.*

*11. In course of assessment proceedings, the Assessing Officer issued notice under section 133(6) to the alleged suspicious parties / hawala operators. They were returned as not claimed / not found. The matter was put to assessee. Documentary evidence of requisite strength to establish genuineness of transaction w.r.t facts recorded in preceding paragraph was not produced before Assessing Officer to substantiate the claimed transaction.*

*12. A transaction has two parts being payment for goods/services and transfer of goods/rendering of service. Only if both are proved it can be said that the transaction is genuine. The evidence furnished covers only the limb of payment but nothing on actual transfer of goods. Here the case is that the evidence is factitious and hence evidence on actual transfer of goods only substantiate the case. The assessee has failed in substantiating the same. To refresh above, the case is that assessee, A is between X and Y. Only if X procures or manufacture he can transfer to A. Only if A gets the product he can transfer the product to Y. The sequence is X—> A—> Y. No satisfactory evidence regarding the link X —>A link in the chain proving*

*that the goods were procured/manufactured by X and transferred to A is before me.*

*13. Ordinarily once purchase is held bogus, entire purchase is to be disallowed as a book entry having effect of reducing profit is created solely for reducing normal profit. However judicial decisions need to be followed by which a fixed per cent of same i.e bogus entry/accommodation entry is added to income [ eg: DCIT, 14(1)(2), Mumbai vs M/s Fagioli India Pvt. Ltd. (ITA No. 4557 & 4558/Mum/2015 dated 28.07.2017, which inter alia considered decision of Hon. Supreme Court in N K Protiens vs DCIT (SLP 759 to 2017) dated 16.01.2017]. In the cited case of M/s Fagioli India Pvt. Ltd. gross profit was 37% and Hon ITAT decided that estimate of profit be 12.5% on the figure of accommodation entry or bogus purchase. Further in Shri Mehul K. Mehta Prop. Vaishnavi Enterprises vs Income Tax Officer 15(J)(3), Mumbai in I.T.A. No.3227/Mum/2016 dated 14.03.2017 in the context of the case the Hon. ITAT ordered as under:*

*We do not find any infirmity in the well reasoned appellate order of learned. CIT(A) which we are inclined to affirm/sustain except that, in our considered view, the end of justice will be met in the instant case if GP is estimated to tune of 12.5% of the purchases front these alleged hawala operators which will cover urn/ leakage of Revenue by way of VAT, commission etc. Thus, as compared to the GP ratio at 7.11% declared by the assessee, we are estimating GP ratio at the rate of 12.5% on the said bogus purchases wherein the assessee will be allowed credit of declared GP ratio of 7.11% and net addition to GP ratio shall be to the tune of 5.39% on bogus purchases, hence, we allow partial relief to the assessee. We order accordingly.*

*It can be seen that in the above the Hon.ITAT has reduced addition further vis-a-vis the originally accepted figure of 12.5%. Further in case of M/s Geolife Organics vs ACIT ITA Nos.3699,4276,4917,4760/Mum/2016 of Hon. ITAT, Mumbai dated 05.05.2017, despite all deficiencies in assessment procedure, as against 12.5% disallowance made by Assessing Officer/ the Hon. ITAT fixed the rate of disallowance at a lower level.*

*14. All submissions of the appellant is duly considered. The decision is to be fact based. The gross profit rate of assessee is 6.08%. The assessee is in manufacture and reselling of Machinery and Machinery parts. The Assessing Officer disallowed 100% of the alleged amount of accommodation entries. A balanced decision is needed weighing the strength of evidence brought by either side and also giving adequate weightage to submission of the Appellant. On facts and circumstances of the case, I, after considering all aspects (including the fact that notice under section 133(6) was unserved, which goes negatively against assessee ), hold that disallowance under section 37(1) be kept at 12.5% of transactions covered by accommodation entries.”*

9. Undisputedly, entire assessment in this case has been framed by the AO on the basis of alleged information received from the Sales Tax Department. It is also not in dispute that during the

assessment proceedings the assessee was called upon to prove the genuineness of the purchases by producing the parties. Both the AO as well as the Ld. CIT(A) have proceeded to make the addition qua alleged bogus purchases on the basis of estimation without bringing on record the evidence to substantiate these allegations.

10. In the backdrop of the aforesaid undisputed facts the Ld. D.R. for the Revenue relied upon the order passed by the AO that in such cases total amount of the bogus purchases needs to be added to the income of the assessee. However, I am of the considered view that in such type of cases entire addition or the addition @ 25% as has been done by the Ld. CIT(A) is not sustainable because sales in this case have not been disputed by the Revenue Authorities and in these circumstances addition of the gross profit on average basis in the range of 5% to 12.5% can be made as per the decision rendered by the Hon'ble Bombay High Court in the case cited as Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 and the decision rendered by the co-ordinate Bench of the Tribunal cited as M/s. Pavapuri Metals & Tubes vs. Income Tax Officer in ITA No.1148/M/2019 order dated 29.09.2020 and in the case of Ravindranathan Nair vs. Income Tax Officer in ITA No.2662/M/2018 order dated 31.12.2018.

11. In the identical facts and circumstances of the case where though the purchases found to be bogus by the Revenue Authorities but sales by the assessee have been accepted as genuine as against these bogus purchases, we are of the considered view that when sales have been accepted being genuine the entire purchases cannot be treated as non genuine to make addition of the entire bogus

purchases amount. Hon'ble High Court of Bombay in the case of JK Surface Coatings Pvt. Ltd. (supra) upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:

*“4. Having considered the memo of Appeal and the Orders passed by AO / CIT(A) and the Order of ITAT, the only issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.*

*5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.”*

12. In view of what has been discussed above and following the order passed by the Hon'ble High Court and co-ordinate Bench of the Tribunal, I am of the considered view that the Ld. CIT(A) has passed a legal and valid order in the light of the decision rendered by the co-ordinate Bench of the Tribunal and Hon'ble Bombay High Court by restricting the addition to 12.5% of the bogus purchases made by the assessee during the years under considerations i.e. A.Y. 2009-10 & 2010-11. Finding no illegality or perversity in the impugned findings both the appeals filed by the Revenue are hereby dismissed.

**Order pronounced in the open court on 22.11.2022.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 22.11.2022.

\* 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.