

आयकर अपीलिय अधिकरण “जे” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “ J ” BENCH MUMBAI**

**BEFORE SHRI C.N.PRASAD, JM & SHRI N. K. PRADHAN, AM**

**Income Tax Appeal Nos.705, 706 & 707/Mum/2016**

(निर्धारण वर्ष / Assessment Years : 2009-10, 2011-12 and 2010-11)

Shri Amit Davani  
601, Shri Nidhi Apartments  
Cama Lane, Ghatkopar (W)  
Mumbai – 400 086

Vs. ITO 22 (1) (1)  
Vashi Railway Station  
Navi Mumbai

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./**PAN/GIR No. : ACCPD7658R**

अपीलार्थी **की ओर से** /Appellant by : Shri Kirit S Sanghavi  
प्रत्यर्थी **की ओर से** /Revenue by : Shri Kailash Gaikwad  
सुनवाई की तारीख / **Date of Hearing** : **05/10/2016**  
घोषणा की तारीख / **Date of Pronouncement** : **28/12/2016**

**आदेश / O R D E R**

**PER C.N.PRASAD (J.M.) :**

These appeals are filed by the Assessee against the orders of the CIT(Appeals) No. CIT(A)-25/IT/327/14-15, CIT(A)-25/IT/328/14-15 and CIT(A)-25/IT/329/14-15, dated 02.11.2015 for the Assessment Years 2009-10, 2011-12 and 2010-11.

2. The first issue in all these three appeals is that Ld. CIT (Appeals) erred in law in confirming the addition being 20% of the purchases being alleged to be hawala or bogus purchases.

3. Briefly stated the facts are the Assessee, an individual is engaged in the business of trading in electrical goods filed returns of income for all these three assessment years and the assessments were completed under Section 143(3) read with Section 147 determining on 28.03.2014. While completing the assessments, the Assessing Officer disallowed purchases made by the Assessee treating them as not genuine and they are bogus purchases in the absence of Assessee's failure to produce the parties for verification and no supporting evidence like delivery challans, transportation bills etc. were filed before the Assessee. In the Assessment Year 2010-11, one more addition was made on account of bogus loans for the reason that Assessee has not furnished any confirmations to prove the genuineness of the loan. On appeal, the Ld. CIT (Appeals) restricted the disallowance in so far as bogus purchase are concerned to 20% of the purchases. With respect to the loan credits, the Ld. CIT (Appeals) sustained the addition on account of bogus loans stating that the Assessee failed to explain this in the proceedings before him.

4. The Ld. Counsel for the Assessee before us submits that the purchases are genuine, the addition was made based on mere assumptions. The Ld. Counsel submits that entire purchases cannot be treated as bogus merely because supplier is declared hawala dealer by Sales Tax department and their statements before the Sales Tax department. He submitted that the purchases from the 7 parties mentioned in assessment order were genuine for the following :

“(a) All the above seven parties were registered with the Sales Tax department.

(b) Payments were made by a/c payee cheques as reflected in bank statements.

- (c) A statement of purchase and sales quantity wise is enclosed herewith. No stock remains.
- (d) There was no evidence of cash received back from the above suppliers.
- (e) Gross profit is 24.28%.
- (f) No suppression of profit is made.
- (g) GP is more than local tax or 12.5% highest decided by courts.”

5. We have heard the rival submissions, perused the orders of the authorities below. This aspect of the matter has been elaborately considered by the Ld. CIT (Appeals) with reference to the details placed on record and the submissions of the Assessee and it was held that the entire purchases cannot be treated as not genuine and therefore disallowance cannot be made under 69C of the Act. However, Ld. CIT (Appeals) concluded that there is a possibility of the Assessee making purchases in grey market and in order to support such purchases, entries had been made to show from some bogus entities., and therefore profit element relating to these bogus purchases should be treated as Assessee's income. Since the GP of the Assessee during the year is shown at 24%, the Ld. CIT (Appeals) concluded that 20% of the purchases should be brought to tax observing as under :

“I have carefully considered the submissions of the appellant and I have also perused the details on record. The only ground for the addition u/s.69C is the inability of the appellant to produce details like; the transportation charges delivery challans etc. The Assessing Officer has also observed that the appellant has only tallied the purchases and sales, but, that by itself cannot be decisive in the absence of crucial details like; the delivery challans, transportation details etc. But the appellant had contended before the Assessing Officer that he had not spent much on for transportation etc., as, most

of the goods were hand delivered or brought by taxi. The Assessing Officer has also not considered the appellant's submission that the purchases were paid through banking channels. If the Assessing Officer had doubted the veracity of the claim of the purchases, he could have verified the payments are effected through banking channels, as noted by the Hon'ble ITAT 'D' Bench in DCIT Vs. Rajeev G. Kalathil (ITA No. 6727/Mum/2012). The Assessing Officer could have verified the bank account of the bogus suppliers to find out how the payments made by the appellant were withdrawn by the sellers whether the amounts were withdrawn immediately as cash etc. In the absence of any such verification and also because the stock reconciliation filed by the appellant had not been doubted by the A.O., it cannot be stated that there was no purchase at all relating to these entries. The Hon'ble Bombay High Court in the case of CIT Vs. Nikunj Eximp Enterprises Pvt.Ltd. (372 ITR 619) has held that, just because the suppliers had not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the assessee. Therefore, the disallowance made by the Assessing Officer u/s.69C cannot be upheld. At the same time, the inability of the appellant to produce details regarding these purchases cannot be over-looked altogether. There is a good possibility that the appellant had made the purchases were grey market and in order to support the claim that the purchases were genuine, the entries had been made to show purchases from some bogus entities who were in fact only name lender. The consideration paid for purchases from the grey market would be less than what is normally given for a purchases in the normal course of business, and therefore, in a situation like this, the appellant would have been getting a profit out of these transactions. Gujarat High Court in the case of CIT Vs. Bholanath Holyfab Pvt.Ltd. (355 ITR 290) & CIT Vs. Simit P. Sheth (365 ITR 451) has held that when purchases were made from parties other than those mentioned in the books of accounts, the profit element embedded in such purchases could be added to an assessee's income. Therefore, the profit element relating to these bogus purchases, shall be brought to tax. In the case of the appellant, the gross profit is around 24% during the year. In order to bring the profit embedded in these transactions, an amount equal to 20% of the purchases is brought to tax in the place of total disallowance of the purchases made by the Assessing Officer. This gross profit amounts comes to Rs. 2,57,339/-. The disallowance made by the Assessing Officer is sustained for an amount of Rs.2,57,340/-. Therefore, the appellant gets a relief of Rs.10,29,357/-."

6. On perusal of the order of Ld. CIT (Appeals), we do not find any valid reason to interfere with the findings of the Ld. CIT (Appeals) that the entire purchases cannot be treated as bogus purchases, cannot be disallowed u/s 69C of the Act. We also see no reason to interfere in the finding that there is possibility of Assessee making purchases in grey market cannot be overlooked and therefore certain percentage of purchases should be brought to tax. However, at the same time, in our considered view, the estimation made by the Ld. CIT (Appeals) at 20% is on a higher side. Taking the submissions and total facts into consideration, we direct the Assessing Officer to disallow 10% of the purchases instead of 20% estimated by the Ld. CIT (Appeals) for all these three Assessment Years 2009-10 to 2011-12.

7. Coming to the additions made towards un proved loan creditors, the Ld. Counsel submits that before the Assessing Officer, as well as before the Ld. CIT (Appeals), Assessee himself appeared and there was no proper representation from Assessee's side, therefore, the addition was sustained by the Ld. CIT (Appeals), stating that confirmations have not been filed and Assessee could not explain the transactions properly. The Ld Counsel further submits that in so far as Amit Davani, he submits that this is an amount of Rs.1,00,000/- lakh introduced by the Assessee towards capital from savings account. Coming to Prudent International, the Ld Counsel submits that there is no such entry appearing in the books which the Assessing Officer treated as bogus loan. With regard to Daksha Enterprises, the Ld Counsel submits that this represents the payments made by the Assessee and it is not a loan received by the Assessee. And lastly with regard to Shreeji Pressure G, it is submitted that an amount of Rs.1,00,000/- was considered by the Assessing Officer as loan, but it was only Rs.7,313/-. Therefore, the Ld. Counsel submits that all these aspects have

not been properly examined and there was no proper representation by the Assessee before the lower authorities. Therefore, he requested that the matter may be considered for restoring back to the Assessing Officer to which the DR has no serious objection.

8. After hearing both the sides we are of the considered view that regarding the bogus loans, the matter is to be examined thoroughly by the Assessing Officer and the Assessee shall provide necessary details to the Assessing Officer to substantiate his claim. Thus, we restore the issue to the file of the Assessing Officer who shall examine in accordance with law after providing adequate opportunity to the Assessee.

9. In the Assessment Year 2010-11, the Assessee also challenged the Order of the Ld.CIT (Appeals) stating that it had not made any purchases from Rup International, Bhawani Trade Link and Shrinath Trading amounting to Rs.7,20,063/-. It was the submission of the Ld. Counsel that the Assessee has not made any kind of purchases from these parties, but the Assessing Officer has made addition based on some information. We find from the statement of facts and grounds of appeal filed by the Ld. CIT (Appeals) that the Assessee has made a specific submission that purchases from Rup International, Bhawani Trade Link, Shrinath Trading amounting to Rs.7,20,063/- out of Rs.18,69,360/- disallowed by the Assessing Officer are not forming part of the purchases which was submitted before the Assessing Officer in the party wise breakup. We find that this aspect of the matter was not examined by the Ld.CIT (Appeals). Therefore, it is the claim of the Assessee, it had never made any purchases from these parties, we are of the view that this matter is to be examined by the Assessing Officer afresh.

Shri Amit Davani  
ITA Nos. 705, 706 & 707/Mum/2016

Thus, we restore this issue to the file of the Assessing Officer, who shall decide this issue afresh in accordance with law.

10. In the result, appeals of the Assessee are partly allowed as indicated above.

Order pronounced in the open court on the 28<sup>th</sup> Day of December 2016.

Sd/-  
**N.K.PRADHAN**  
लेखा सदस्य /  
ACCOUNTANT MEMBER

Sd/-  
**C.N.PRASAD**  
न्यायिक सदस्य /  
JUDICIAL MEMBER

मुंबई / Mumbai; दिनांक / Dated 28/12/2016

LR, SPS

**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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार  
(Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai