

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH, MUMBAI**  
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

**BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM**  
आयकर अपील सं./ITA No. 5439/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Kaushik N. Tanna, 15-C/25, 3 <sup>rd</sup> Floor, Shankar Bari Lane, Chira Bazar, Mumbai - 400002	Vs.	The Asst. Commissioner of Income Tax- 18 (2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAAPT7941B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Sh. Bharat Kumar (AR)  
राजस्व की ओर से / Revenue by : Sh. Saurabh Kumar Rai (DR)

सुनवाई की तारीख / **Date of Hearing** : **10/08/2017**  
घोषणा की तारीख/**Date of Pronouncement**: **09/11/2017**

**आदेश / O R D E R**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 25/07/2016 passed by the Ld. CIT (A)-29, Mumbai pertaining to the Assessment Year 2010-11, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee a proprietorship concern engaged in the business of export and trading of fabrics filed its return of income for the assessment year under consideration declaring the total income of Rs. 25,50,958/-. The return was processed u/s 143 (1) of the Act. Later on, the assessment was re-opened u/s 147 of the Act on the basis of information

received from the DIT (Inv.), Delhi to the effect that during the financial year relevant to the assessment year under consideration, the assessee had obtained bogus purchase bills amounting to Rs. 4,49,12,169/- from M/s Citybase Multi-Trade Pvt. Ltd. and M/s Siddhpada Trading Pvt. Ltd. Accordingly, notice u/s 148 was served upon the assessee, thereafter, notice u/s 143(2) and 142 (1) were issued. In response thereof the authorized representative of the assessee appeared before the AO and furnished the copies of invoices/bills, details of payments made and bank statements showing payments. The assessee further submitted that the purchases were genuinely made. In order to verify the genuineness of the transaction AO issued notices u/s 133 (6) of the Act to the said parties, however, no response was received from the parties. The assessee also failed to produce the suppliers before the AO. The assessee also failed to submit delivery challan or any substantial proof of purchases in question.

3. Since, the assessee failed to establish the genuineness the transaction, the AO made addition of 12.5% of the total amount of bogus purchases to the income of the assessee. The assessee challenged the assessment order before the Ld. CIT (A) in the first appeal. The Ld. CIT (A) after hearing the assessee, relying on the various judicial pronouncements and decision of the various Benches of the ITAT confirmed the addition of 12.5% of the total amount of bogus purchases. The assessee is in appeal before the Tribunal against the said order.

4. The assessee has raised the following effective ground of appeal against the impugned order passed by the Ld. CIT (A):-

1. *“On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the re-assessment proceeding u/s 147 initiated by the Ld. Assessing Officer.*

2. *On the facts and circumstances of the case and in law the Ld. CIT (A) failed to consider that reassessment proceeding cannot be initiated:-*
  - a) *No reassessment can be made just to make an enquiry or verification.*
  - b) *Reassessment proceeding cannot be initiate merely on the information received from investigation wing.*
  - c) *Reassessment proceeding cannot be initiated when the Ld. AO have reason to suspect and not reason to believe.*
3. *On the facts and circumstances of case and in law, the Ld. CIT (A) erred in confirming the assessment order passed by Ld. AO u/s 143(3) of income tax act, which is passed against the principal of natural justice.*
4. *On the facts and circumstances of the case and law, the Ld. CIT (A) erred in confirming and treating the genuine purchases of Rs. 4,49,12,169/- from Siddhpad Trading Pvt. Ltd. and Citybase Multitrade Pvt. Ltd. as bogus purchases and added Rs. 56,14,021/- to total income being the G.P. @ 12.5% on the purchases of Rs. 4,49,12,169/- from these parties, without any basis.*
5. *On the facts and circumstances of the case and law, the Ld. CIT (A) erred in confirming the addition made on account of estimated ad-hoc gross profit @ 12.5% on turnover merely on assumption basis without considering the facts that defect were pointed out in books of account.”*

5. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has erred in confirming the re-assessment proceedings u/s 147 of the Act initiated by the Assessing Officer. The Ld. CIT (A) has failed to consider that reassessment proceedings cannot be initiated merely on the information received from Investigation Wing. Reassessment proceedings can be initiated

only if the AO has reason to believe that certain income has escaped assessment. So far as confirmation of addition to the extent of 12.5% is concerned, Ld. counsel submitted that since the assessee has furnished the copies of invoices/bills, details of payments made and bank statements showing payments, the Ld. CIT(A) should have deleted the entire addition made by the AO. The Ld. counsel relying on the decision of the Hon'ble Bombay High Court rendered in *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd.* 372 ITR 619 (Bom) submitted that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the assessee. Relying on the various judgments/ decisions the assessee submitted that the fact that the payments were made by account payee's cheque, would over shadow all other shortcomings; since, the AO has not found any defect in books of account the addition cannot be made on the basis of surmises; purchase from gray market is an assumption and addition cannot be made on the basis of assumption; addition cannot be made on the basis of third party statements. Therefore, the CIT (A) has wrongly sustained the addition of 12.5%. The Ld. counsel further submitted that assessee has also filed cross objection.

6. On the other hand, the Ld. Departmental Representative (DR) relying on the concurrent findings of the authorities below submitted that since the assessee has failed to discharge the onus of proving genuineness of the purchases, the Ld. CIT (A) has rightly confirmed the addition of 12.5% of the amount of bogus purchase to the income of the assessee. The findings of the Ld. CIT(A) is in accordance with the decisions of various courts and the ITAT. Hence, there is no infirmity in the order of the Ld. CIT (A) to interfere with the same.

7. We have heard the rival submissions and perused the entire record and also gone through the cases relied upon by the authorities below as well as referred before us by the parties. The assessee has basically challenged the assessment order on two grounds i.e. 1) the Ld. CIT (A) has wrongly upheld the reopening of the assessment by the AO and 2) that the Ld. CIT (A) has wrongly sustained the addition of 12.5% of the amount of bogus purchases.

8. So far as the first issue is concerned the requirement of section 147 of the Act is that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment he may assess or reassess such income. Hence, reason to believe is more important than the source of information. If the AO has reason to believe from any information received or otherwise that income chargeable to tax has escaped assessment, AO can exercise powers under section 147 of the Act. In *Income Tax Officer vs. Purushottam Das Bangur and another* 224 ITR 362, the Hon'ble Supreme Court has held that ITO was justified in reopening the assessment u/s 147(b) on the basis of letter written by Dy. Director of Inspection (Investigation) to jurisdictional IAC containing relevant facts and information. In the said case, notice was issued by the ITO on the basis of letter/information received from DDI (Inv.) without conducting any further investigation. The facts of the present case are identical to the facts of the case referred above. Since, the findings of the Ld. CIT(A) are in accordance with the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment, we find no reason to interfere with the findings of the Ld. CIT(A) on this issue. Accordingly, we dismiss ground No 1 to 3 of the appeal.

9. So far as the second issue is concerned, we agree with the authorities below that the assessee has purchased the goods in question from the gray market without paying the VAT which was otherwise required to be paid. Hence, in our

considered opinion, findings of the Ld CIT(A) is well reasoned and in accordance with the principles of law laid down by the courts and the ITAT. The Ld. CIT(A) has sustained the addition taking into consideration the estimated profit earned by the assessee by purchasing the goods from the parties other than the parties mentioned in the books of account or from grey market. The Hon'ble Bombay High Court In *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. (supra)*, while upholding the decision of Mumbai Tribunal, has observed that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the respondent/assessee. So, we hold that the assessee has evade VAT by purchasing the goods in question from grey market and obtaining accommodation entries. The Hon'ble Gujrat High Court in *CIT vs. Simit P. Seth 356 ITR 451(Guj)* has upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases holding that only profit element embedded in such purchases can be added to income of the assessee. Hence, following the principles of law laid down by the Hon'ble High Courts of Bombay and Gujarat aforesaid, we uphold the findings of the Ld. CIT(A) and dismiss ground No 4 and 5 of appeal of the assessee. We accordingly, direct the AO to make addition @ 12.5% of the total amount of bogus purchases to the income of the assessee.

In the result, appeal filed by the assessee for assessment year 2010-11 is dismissed

Order pronounced in the open court on 9<sup>th</sup> November, 2017.

Sd/-

(RAJENDRA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 09/11/2017

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेश 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**