

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4736/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2010-11)

Shri Ashwin Purshotam Bajaj, C/o Shri Prakash Jhunjhunwala, Chartered Accountant, 5, Jolly Bhawan No. 2, 7 New Marine Lines, Churchgate, Mumbai - 400020.	<u>बनाम/</u> v.	The ITO - Ward 16(2)(1), Mumbai.
स्थायी लेखा सं./PAN : AACPB7522J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No. 5207/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2010-11)

I.T.O. 16(2)(1), 2 nd floor, Matru Mandir, Tardeo Road, Mumbai - 400 007.	<u>बनाम/</u> v.	Shri Ashwin Purshotam Bajaj, Flat No. 64, Sarnath "B", Bhula Bhai Desai Road, Mumbai - 400026.
स्थायी लेखा सं./PAN : AACPB7522J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Prakash Jhunjhunwala
Revenue by :	Shri Vikash Kumar Agarwal

सुनवाई की तारीख / **Date of Hearing** : 05-10-2016

घोषणा की तारीख / **Date of Pronouncement** : 14-12-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

These are cross appeals filed by the assessee and the Revenue before the Income-tax Appellate Tribunal, Mumbai (Hereinafter called "the Tribunal"). These cross appeals are heard together and are disposed of by this common order for the sake of convenience and brevity. These appeals are directed against the appellate order dated 2nd May, 2014 passed by learned Commissioner of Income Tax (Appeals)- 27, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28th March, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in estimating the undisclosed profit of Rs 14,18,097/- @ 12.50% on alleged bogus purchase of Rs.1,13,44,778/-;

2.0 The Ld. CIT(A) before estimating the undisclosed profit @ 12.50% on disputed purchase ought to have appreciated the understated vital facts, being;

a) The alleged in-genuine purchase are supported with purchase bills, delivery challans, confirmation of accounts, PAN, bank statements, stock statements and other documents;

b) The purchase is treated as ingenuine merely relying on the information received from the Sales tax department and without allowing a copy for confrontation and without allowing an opportunity of cross examination;

c) The appellant had disclosed the G.P @ 45.49% on sales (85% on purchase) which is in par with own past history and Industry's average profit margin;

d) The Ld. A.O had not rejected the appellant's books of accounts u/s 145(3) of the Act and having accepted the book results is unjustified in estimating the profit on alleged unproved purchase;

3.0 Without Prejudice, Ld. CIT(A) ought to have restricted the addition to the extent of 5% of alleged ingenuine purchase of Rs. 1,13,44,778/-.”

3. The following grounds of appeal are raised by the Revenue in ITA No. 5207/Mum/2014 for the assessment year 2010-11 in the memo of appeal filed with Tribunal which reads as under:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in restricting the addition made u/s 69C of Rs.1,31,88,2271- to 12.5% of Rs.1,13,44,7781- i.e. Rs.14,18,097/- on account of bogus purchases?

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in estimating the earning at a very low rate particularly when alleged sellers of goods to the assessee being provider of accommodation entries has admitted before the Sales Tax Department that accommodation entries were provided to the assessee and also the field enquiries resulted in confirmation of bogus purchases.

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in not appreciating the findings of the A.O. in the Assessment Order that the sellers were not available at the address shown in the purchase bills. ”

4. The Brief facts of the case are that the assessee is an individual running a proprietorship firm namely M/s The Shoe Box INC Retail Store of footwear, bags, belts, wallets and leather goods, boutique etc. having shops at Pune, Ahmedabad, Jalandhar and office at Mumbai.

It was observed by the A.O. that the assessee had incurred expenditure in terms of purchases of Rs.4,89,88,555.31 , out of which it was alleged by the AO that purchases of Rs.1,13,44,77/- was made from the allegedly bogus parties as per information received from Sales Tax Department, Government of Maharashtra , who as per Government of Maharashtra web-site are suspicious parties providing accommodation entries and are thus bogus bill giving entities without doing any business , as detailed hereunder:

S No.	Name of parties	TIN	Financial year	Amount
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The sales tax department conducted independent enquiries in each of the above parties and concluded that these parties were engaged in the business of providing accommodation entries only. The notices were issued by the AO u/s 133(6) of the Act to these four parties which returned back unserved. The assessee was asked by the AO to produce all these parties. The assessee failed to produce these parties before the AO to prove genuineness of the claim. The assessee submitted that the purchases were made through brokers who are now not co-operating with the assessee. The assessee requested that GP ratio be estimated at 46% on these purchases. The assessee also could not offer explanation regarding the source of the said expenditure as well that purchases are genuine. The AO observed that these parties denied to supplying goods as being accommodation entries, hence the AO observed that the human probability is that goods as mentioned in the paper transactions have been purchases by the assessee through an undisclosed entity, whose identity the assessee does not wish to disclosed and also purchases were made from undisclosed source of income. The said

unexplained expenditure of Rs. 1,31,88,227/- (being maximum credit balance outstanding in the ledger accounts of the parties, as against purchases of Rs.1,13,44,778/- from these four parties) was deemed to be the income of the assessee and was added to the income of the assessee u/s 69C of the Act which was alleged to be expended through an undisclosed source of income to carry out purchase from an undisclosed entity, vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of the Act.

5. Aggrieved by the assessment order dated 28.03.2013 passed by the A.O. u/s 143(3) of the Act, the assessee filed first appeal before the ld. CIT(A).

6. Before the ld. CIT(A), the assessee has made the following submissions:-

“Ground No.1 to 5 : Addition of Unexplained expenditure u/s.69C of Rs.1,31,88,2271- is erroneous:

The appellant humbly submits that the addition made in assessment u/s.69C of alleged unexplained expenditure of purchase made from 4 parties named M/s Rohit Enterprises, M/s Deep Enterprises, M/s Kwality Enterprises and M/s V3 Enterprises of Rs.1,13,44,776/- and of the Opening balance of such 4 parties of Rs.18,43,451/- totaling to Rs.1,31,88,227/- is erroneous and is unjustified on understated reasons :- .

1.1 The entire addition had been made purely on the basis of assumption and surmise. There is absolutely no evidence or material on record to justify that the appellant had incurred any unexplained expenditure to purchase the goods. The Ld. AO had not brought any evidence on record that the appellant had made the unexplained payments to any unidentified parties, in absence of which the provision of Sec 69C cannot be invoked. The appellant, during course of assessment, furnished various documentary evidences such as purchase and sale bills, confirmation of account, PAN of suppliers, details of purchase, payments made to the said 4 parties and bank statements to justify the genuineness of the recorded purchase and payments thereon. The appellant also furnished a detailed statement

displaying the purchase made from such 4 parties and corresponding sales made against such purchases and profit earned thereon. The Ld. A.O, ignoring the above stated documents, erred seriously in holding that the appellant's purchase as ingenuine and assumed that the appellant would have incurred unexplained purchase expenditure to source the sales;

1.2 The Ld. A.O is not justified in making a harsh presumption that the appellant would have procured the goods from some unidentified sources and incurred unexplained expenditure (purchases) against the sales accepted as genuine. In this context, the appellant submits that its purchases had been made only through brokers who supplied the goods at premise (on site) of the appellant and furnished the bills of such 4 parties to the appellant for making the payment at agreed terms. The appellant, as desired by brokers, made only the cheque payments against these purchase bills and appellant had not made any unaccounted cash payment for purchase of goods. The appellant alternatively submits that even it is presumed that the appellant had not made purchases from such 4 parties, then it is possible that such brokers would have procured the goods from grey (local) market and had supplied the physical goods with alleged ingenuine bills. The Ld. A.O had not denied the fact that the appellant had actually received the goods, through brokers, at its site office and such goods had been actually sold by the appellant at profit margin of over 85 % on purchase (45.49% on sales). The appellant does not have any source of unaccounted income, thus the possibility of unexplained payment would not arise. In any case, Ld. A.O did not bring any evidence on record to justify any sort of unexplained payments made to the alleged unidentified parties, accordingly the addition u/s.69C is unjustified, (92 TTJ 1126 (Ahd), 31 DTR 456 (Jp), 147 TTJ 308 (Del), 10 DTR 281 (Jp);

1.3 The Ld. A.O had not rejected the appellant's books of accounts u/s.145(3) of the Act and having accepted the book results is not justified in invoking the provision of Sec 69C of the Act on incorrectly assuming that the appellant had incurred unexplained expenditure to source the purchase made from unknown parties;

1.4 The appellant also submits that the addition of entire purchase is unjustified as it would lead to a case of taxing the entire sales without allowing the deduction of the corresponding purchase. There cannot be a case of only sales without the purchases. In short, if there is a sale, then it is required to be presumed that there is a corresponding purchase against each such sale and moreover, in impugned case,

there is a direct nexus of sales with the purchases. [38 Taxmann.com 385 (Guj), 355 ITR 290 (Guj), 263 ITR 610 (MP), 304 ITR 52 (MP), 258 ITR 654 (Gu)];

As per comparative chart of sales vis-a-vis purchase (copy enclosed), it is evident that each purchase corresponds to the sales. For example : The purchase of 257 pairs of footwear made vide bill no 16 on 17th September, 2009 aggregating to Rs. 126,333 from Deep Enterprises were sold on 23rd September, 2009 at Rs. 1,44,273/-.

1.5 The appellant in audited P&L account, disclosed a higher Gross-profit @ 45.49 % on sales (85% on purchase) which is most reasonable in trading activity of footwears. In respect of disputed purchase made from the 4 parties, the appellant disclosed the Gross profit @ 41.75 % on sales, stated as under :-

Purchase from the 4 parties	= Rs. 1,13,44,778/-
Sales corresponding to above purchases	= Rs. 1,93,83,886/-
Closing stock from above purchase	= Rs. <u>52,882/-</u>
Gross profit	=Rs.80,91,990/-(41.75%)

Without prejudice, the appellant makes a prayer to adopt the concept of real income and estimate the total income @ 45.49 % on sales which would take care of the ingenuine purchase. It is to further submit that even in case of best judgment assessment is passed , after rejecting the books of accounts, then, in such case, the total income is estimated, on the basis of honest guess work as per the normal profit in the industry. [Kachwala Gems - 288 ITR 10(SC). The appellant makes a prayer to adopt the concept of real income and estimate the suppressed income of Rs. 7,24,957/- (@ 45.49% - 41.75% on Rs.1,93,83,886/-) that reasonably would have been earned in such trading activity;

1.6 The appellant to substantiate, the genuineness of the disclosed purchase and corresponding sales, relied upon the understated documents as under:-' "

- a) Details of the four purchases parties along with their address and PAN;
- b) A tabular chart (quantitywise and valuwewise) displaying Purchase vis-a-vis Sales displaying the bill numbers of suppliers/customers, quantity and amounts;
- c) Bill wise and quantity wise details of purchase made from such 4 suppliers;

- d) Details of payments made to such 4 purchase parties by A/c payee cheques and bank statements;
- e) Purchase bills;

The appellant on furnishing the abovestated details/documents had reasonably discharged his primary onus to substantiate the genuineness of the purchase. However, Ld.AO had not discharged the heavy onus casted upon him to prove contrary the facts and harshly made the addition of unexplained expenditure u/s.69C of the Act. [29 DTR 267 (Pune), 10 SOT 319 (Hyd) (TM)J.

1.7 The appellant submits that no contrary evidence had been brought on record to justify that the appellant's purchases are ingenuine. The said 4 purchase parties irresponsibly gave a general statement, without stating name of the appellant, that it had issued only accommodation bills. Such general statement was recorded at back of the appellant and a copy of the statement was not provided to the appellant for confrontation and even no opportunity of cross examination Was allowed to the appellant, thus addition u/s 69C on the basis of mere statement is unjustified and may kindly be deleted (Kishinchand Chnelterem decision);

1.8 The appellant further submits that Ld. AO is not justified in making the addition of the Opening balance of such 4 parties of Rs.18,43,451/-. The appellant had not claimed the purchase expenses of Rs.18.43,451/- in impugned year, thus addition of such purchases (related to earlier year) cannot be made in impugned year. Further, Ld. A.O. had already issued the notice u/s 148 of earlier year viz. A.Y. 2009-10 and had proposed to make the addition of the purchase of earlier year viz. A. Y- 2009-10, thus the addition of purchase made in earlier year whose closing balances are disclosed as opening balance in impugned year is unjustified. Further, there is absolutely no evidence on record that the opening balance of earlier year (purchase of last year) would have been paid in impugned year out of unaccounted source of funds, thus addition of opening balance of Rs. 18,43,451/- is unjustified,

The appellant relies on understated direct judicial decisions :-

Addition u/s. 69C cannot be invoked in absence of the full proof evidence .

- i) ITO vs. Sunsteel 92 TTJ 1126 (Ahd-ITAT)
- ii) Nisraj Real Estate & Export(P) Ltd vs. ACIT 31 DTR 456 (JP-ITAT) (Trib)
- ii) ACIT vs. Kishan Lal Jewels (P) Ltd 147 TTJ 308(Del-ITAT)

iii) Shubh Laxmi Exports vs. ITO 10 DTR 281 (Jp-ITA T) (Trib)

Onus is the on the Revenue to prove the payment to invoke Sec.69C

- i) Himalaya Distributors vs. ITO 29 DTR 267 (Pune-ITAT)
- ii) M.P. Malliwal vs. JCIT 10 SOT 319 (Hyd-ITA T) (TM)
- iii) Rajmal Leknicnenc: vs. ACIT 791TD 84 (Pune-ITA T)

Only profit embedded in the ingenuine purchase could be brought to tax.

- i) CIT vs. Simit P. Sheth 38 Taxmann.com 385 (Guj-HC)
- ii) CIT vs. Bholanath Poly Fab Pvt Ltd 355 ITR 290 (Guj-HC)
- iii) CIT vs. President Industries 258 ITR 654 (Guj-HC)
- iv) CIT vs. Balchand Ajit Kumer 263 ITR 610 (MP-HC)
- v) Man Mohan Sadani vs. CIT 304 ITR 152 (MP-HC)
- vi) CIT vs. Leaders valves (P) Ltd 285 ITR 435 (P&H-HC)

Merely non appearance of suppliers would not conclude the purchase as ingenuine

- i) CIT vs. Nikunj Eximp Enterprises (P) Ltd 35 Taxmann.com 384 (Bom-HC)

In view of the above, a humble prayer is made :- a) To delete the addition u/s 69C of Rs 1,31,88,227/- or alternatively, b) To adopt the concept of real income and restrict the addition on estimating the suppressed income of Rs 7,24,957/- being 45.49% on sales corresponding to alleged ingenuine purchase (45.49% minus 41.75 % on Rs. 1,93,83,886) for which the appellant shall ever remain grateful and oblige.”

The ld. CIT(A) after considering the submissions of the assessee came to the conclusion that quantitative details were maintained and the assessee being a trader of goods, the A.O. has not doubted the genuineness of sales, could not have gone ahead and made addition in respect of maximum credit balance of purchases especially when the A.O. himself recorded a finding that the assessee made the purchases from some other party. The ld. CIT(A) observed that the element of profit embedded in bogus purchases which the assessee would have made from some unknown entities needs to be computed. It was observed by learned CIT(A) that the purchases made from four parties during

the year was Rs. 1,13,44,778/- on which the GP reflected was 41% as against 46% reflected on over all basis, hence, there was a suppression of GP ratio to the tune of 5%. The learned CIT(A) observed that the A.O. had held that the assessee must have purchased the goods from someone else and not from the four parties in whose names the bills were procured and hence, the only recourse left is to estimate the profit element embedded in the purchases made during the year of Rs. 1,13,44,778/- , rather than on Rs. 1,31,88,227/- (which included opening balance added by the A.O.), which were estimated by learned CIT(A) @12.5% of the purchases made during the year of Rs.1,13,88,227/-. The ld. CIT(A) accordingly partly allowed the appeal of the assessee vide appellate orders dated 02-05-2014.

7. Aggrieved by the appellate orders dated 02-05-2014 passed by the ld. CIT(A) , both the assessee and Revenue are in appeal before the Tribunal.

8. The assessee is challenging the addition made of the undisclosed profit of Rs. 14,18,097/- @12.5% on purchases of Rs. 1,13,44,778/- , while the Revenue in its appeal is challenging deletion of addition made by the AO u/s 69C of the Act to the tune of Rs. 1,31,88,227/- which was restricted to profit element embedded in the purchases to the tune of 12.5% of Rs. 1,13,44,778/. The ld. Counsel for the assessee submitted that the following parties were included in the list of bogus parties by Sales Tax Department of Government of Maharashtra with whom the assessee had made purchases:-

S No.	Name of parties	TIN	Financial year	Amount
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The A.O. observed that the above parties are suspicious parties who were providing accommodation entries without doing any business as per the information received from Sales Tax Department, Government of Maharashtra and the assessee had made purchases from these parties without actual supply of goods. The A.O. also issued notice u/s 133(6) of the Act asking to furnish certain documents of the above parties but the notices were returned back unserved. The assessee was also asked to produce the parties but the assessee failed to produce the parties. The A.O. has made addition u/s 69C of the Act on the peak credit outstanding in the books of accounts, whereby addition of Rs. 1,31,88,227/- was wrongly made, as against total purchases of Rs. 1,13,44,778/- made by the assessee from these 4 parties. The A.O. added the entire amount while the Id. CIT(A) has restricted the addition by estimating GP ratio of 12.5% of Rs. 1,13,44,778/- being total purchases made from these four parties. The Id. Counsel for the assessee submitted that the sales are not in doubt which is accepted by the Revenue. The Id. Counsel also drew our attention to the orders of authorities below. While, the Id. D.R. relied on the order of the A.O.

9. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee is an individual running a proprietorship firm namely M/s The Shoe Box INC Retail Store of footwear, bags, belts, wallets and leather goods, boutique etc. having shops at different places, and office at Mumbai. Information was received by the AO from the Sales Tax Authorities, Government of Maharashtra that the assessee has made bogus purchases to the tune of Rs. 1.13 crores from following four parties who are in the list of hawala dealers giving accommodation entries without supplying any goods:-

S No.	Name of parties	TIN	Financial	Amount
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			year	
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The AO issued notices u/s 133(6) of the Act to the above stated parties to seek relevant information/documents but the notices were returned unserved. The assessee was asked by the AO to produce these four parties but the assessee could not produce the parties from whom the purchases were made. The AO made additions u/s 69C of the Act of the peak credit outstanding to be payable to these four parties during the year to the tune of Rs.1,31,88,227/- as against purchases of Rs.1,13,44,778/- . The credit for purchases from these four parties of Rs.1,13,44,778/- are appearing in the books of accounts of the assessee. The assessee has to discharge the primary onus as to the genuineness and bonafide of the transaction of purchase of goods. It is observed that the A.O. has made addition of the entire purchases amount to Rs. 1.13 crores by making additions of Rs. 1,31,88,227/- being peak credit payable during the year for purchases to these parties which included balance of Rs.18,43,451/- for purchases made in the earlier year, while the AO has , however , not doubted the sales made by the assessee against these purchases. The assessee has reconciled the quantitative details of the stock reflected in these purchases with quantitative details of stock as per sale invoices. The A.O. has doubted the purchases from these four alleged accommodation entry providers being hawala dealers as concluded by Sales Tax Department of Government of Maharashtra to be bogus purchases, that these four parties only provided accommodation bills and the goods were never supplied by these parties and the assessee allegedly made purchases from some other parties for which payments were made through undisclosed income. Thus, the A.O. observed that the assessee has purchased the

material from someone else while bogus bills were organized by these hawala dealers, hence, section 69C of the Act was invoked by the AO and additions were made by the AO. The conclusion of the Id. CIT(A) that the assessee has purchased material from some other dealers but quantitative reconciliation of the stock was duly done by the assessee of the sale and purchase and hence the profit element in this accommodation entries are to be added to the income cannot be faulted . The Id. CIT(A) restricted the addition by estimating GP ratio of 12.5% of Rs. 1,13,44,778/- being purchases from these alleged four accommodation entry providers. We do not find any infirmity in the well reasoned order of the Id. CIT(A) whereby net profit was estimated which was a reasonable estimation made by learned CIT(A) and we sustain/affirm the order of learned CIT(A). In the result , we dismiss both the appeal of the assessee as well of Revenue. We order accordingly.

10. In the result, the appeal filed by the assessee in ITA No. 4736/Mum/2014 and the appeal filed by the Revenue in ITA No. 5207/Mum/14 for the assessment year 2010-11 are dismissed.

Order pronounced in the open court on 14th December, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 14-12-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 14-12-2016

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व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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