

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5182/MUM/2019  
Assessment Year: 2009-10**

ITO-20(1)(3),  
Room No. 114, 1<sup>st</sup> floor,  
Piramal Chambers, Lalbaug,  
Mumbai-400012.

**Appellant**

**Vs.** Mr. Bherchand Tikamchand Jain,  
46/50, Off. No.-16, 1<sup>st</sup> floor, Kika  
Street, CP Tank Road,  
Mumbai-04

**PAN No. AETPJ 2091 M**

**Respondent**

Revenue by : Mr. Sanjay J. Sethi, DR  
Assessee by : None

Date of Hearing : 03/03/2021  
Date of pronouncement : 05/03/2021

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 13.01.2021 and 03.03.2021, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-compliance by the assessee, we are

proceeding to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the Revenue read as under :

1. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in granting relief of Rs.5,87,308/- by restricting the addition to 5% of the alleged bogus purchase from hawala parties.
2. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has failed to appreciate the fact that the onus is on the assessee to explain and substantiate the genuineness and the true nature of the purchase transaction.
3. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in not considering the fact that the hawala dealers admitted on oath before sales tax authorities that they have not sold any material to anybody and assessee failed to produce such parties at assessment stage though specifically asked by the A.O.
4. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in not appreciating the fact that purchases were made from some other parties which were not recorded in books of accounts and only accommodation bills were obtained from hawala parties and thereby attracting provisions of section 40A(3).
5. Though the tax effect is below the monetary limit prescribed in the CBDT instruction No. 3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales tax Authorities.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 18.09.2009 declaring total income of Rs.5,52,843/-. The return was processed u/s 143(1) of the Act. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from six

hawala parties totalling to Rs.1,17,46,149/-, the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 of the Act. In response to it, the assessee *vide* letter dated 12.06.2014 submitted that the original return filed on 18.09.2009 may be treated as return filed in response to notice u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notices u/s 133(6) of the Act to the suspected parties. However, those notices were returned un-served by the postal authorities with the remarks 'not known'. Further in response to a query raised by the AO, the assessee filed before him copies of - bills/invoices of the said hawala parties, ledger accounts and statement showing payment details party-wise, item-wise and quantity-wise along with bank statements and sales tax return along with payment of VAT challans. However, the AO was not convinced with the above submission of the assessee for the reason that he has not maintained any stock register/stock inventory. Considering the above facts, the AO estimated profit @ 10% on the disputed purchases of Rs.1,17,46,149/- which comes to Rs.11,74,615/-.

4. Aggrieved by the order of the AO the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 31.05.2019, the Ld. CIT(A) restricted the disallowance to 5% of the disputed purchases by observing that :

"4.2.1 I find that the appellant has filed details of purchase invoice, copy of bank statement to show payments made by cheque, copy of ledger accounts of the supplier, ledger account of the above mentioned parties, but could not submit evidence of receipt of such goods by way of delivery challans etc. Further, the notices sent to those parties u/s 133(6) were returned un-served and subsequently the said 9 parties were not produced before the AO for verification of the genuineness, of those purchases. The AO accordingly made an addition @ 10%

of such suspicious purchases. The submission of the appellant to apply net profit rate is found to be without any basis, in the present facts of the case. The decisions cited by the appellant are found to be distinguishable on facts.

4.2.2 Considering that the said party had not been produced by the appellant and that there was sale by the appellant corresponding to purchases from those party, the AO has correctly held that the appellant must have purchased the material from grey market and the actual purchase bill would have been inflated, since the appellant would have had savings from such purchases on account of vat, cash discount and lower rates. The AO has made an addition in respect of profit element on such purchases @ 10%, which appears to be on the higher side, in the present facts and circumstances of the case when the gross profit rate of 6.02% has been declared by the appellant from its business of trading in ferrous and non-ferrous metals. In this regard, I find that the VAT has been charged at the rate of 4% on such purchases. Considering the savings on account of purchase in the grey market on account of vat, cash discount and lower rates etc, the addition to be made is fairly estimated @ 5% of the bogus purchase. In this regard, reliance is placed on the decision of the ITAT, Mumbai, in the case of Prashant Enterprises, ITA No. 5117/Mum/2013 A.Y 2010-11 dated 24.02.2016 wherein the reasonable disallowance has been made @ 5% of total purchases in the similar line of business. The AO is directed to re-compute the disallowance/addition accordingly @ 5% of total such purchases of Rs.117,46,615/- and allow relief to the appellant.”

5. Before us, the Ld. DR submits that in the facts and circumstances of the case, the order passed by the AO be restored.

We have heard the Ld. DR and perused the relevant materials on record. The gross profit rate of 6.02% has been declared by the assessee from its business of trading in ferrous and non-ferrous metals. VAT has been charged @ 4% on such purchases. Having considered the savings on account of purchase

in the grey market on account of VAT, cash discount and lower rates, the Ld. CIT(A) has rightly restricted the disallowance to 5% of bogus purchases. We also find that the Ld. CIT(A) having considered the order of the Tribunal in the case of *Prashant Enterprises* (ITA No. 5117/Mum/2013) for AY 2010-11 dated 24.02.2016, being similar in nature, has directed the AO to restrict the disallowance to 5% of the disputed purchases of Rs.1,17,46,615/- which comes to Rs.5,87,330/-.

We affirm the above order of the Ld. CIT(A) which is based on sound reasons.

6. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the open Court on 05/03/2021.**

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 05/03/2021  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**