

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

ITA No.3439/Mum/2016

(A.Y:2009-10)

ITA No.3440/Mum/2016

(A.Y:2010-11)

ITA No.3441/Mum/2016

(A.Y:2011-12)

David Bhaskaran 409 Raheja Arcade, Sec 11 CBD Belapur Navi Mumbai-400 614 PAN No. ABDPD2033L	Vs.	Asst. Commissioner of Income Tax Income Tax Office Panvel Circle, Panvel Dist. RAIGAD
Appellant	..	Respondent
Assessee by	..	Shri. Dr. P Daniel, AR
Revenue by	..	Shri. M.C. Omi Ningshen, DR
Date of hearing	..	09-05-2017
Date of pronouncement	..	31-05-2017

ORDER

PER MAHAVIR SINGH, JM:

These three appeals by the assessee are arising out of the common order of CIT(A)-2, Thane, in appeal No. CIT(A)-525/14-15 611 & 612/14-15 dated 26-02-2016. The Assessments were framed by ACIT, DCIT Panvel Circle, Panvel for the A.Y. 2009-10, 2010-11, 2011-12 vide their orders dated 12-03-2014 & 23-02-2015 u/s 144 read with section 147 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The only common issue in all these three appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in adding the entire bogus purchases without any evidence and also rejecting the books of accounts without any basis. The assessee has also challenged the ground regarding the reopening under section 147 in all the three years

3. At the outset, the learned Counsel for the assessee stated that he is not interested in prosecuting the issue of reopening in all the three years and also

rejection of books of account. Accordingly, the grounds of reopening and rejection of books of account is dismissed as not pressed.

4. Now, the only issue remains for adjudication is the issue of bogus purchases added by the AO and confirmed by CIT(A).

5. Briefly stated facts are that the assessee made bogus purchases to the tune of Rs. 10,25,754/-in AY 2009-10, Rs. 3,29,316 in AY 2010-11 and Rs. 2,49,795 in AY 2011-12 respectively. The details of bogus purchases from the following parties are reads as under: -

S.No.	Name of the entry provider	Amount of bill(in Rs.)		
		A.Y.09-10	A.Y.10-11	A.Y.11-12
1	M/s Shivsagar Steel (I) Ltd.	3,68,058/-	21,424/-	54,928/-
2	M/s Tyson Steel Tubes (P) Ltd.	6,57,696/-	-	-
3	M/s Jacob Industries	-	3,07,892/-	-
4	Avantika Metals	-	-	1,86,867/-
	Total	10,25,754/-	3,29,316/-	2,41,795/-

6. The AO received information from Director General of Income Tax (DGIT in short) (Investigation), who in turn received information from Sales Tax Department Maharashtra Government giving the name, addresses and other details of certain persons, who were entry providers for purchase of bogus bills to a large number of tax payers. The above said parties are included in the list prepared by Sales Tax Department. The Sales Tax Department of Maharashtra Government gathered this information that these hawala dealers are only providing bogus bills on papers and no actual goods are transacted in these transactions. They also admitted that they received payment by cheques but return the money to these parties after encashing the cheques. When these facts were confronted to the assessee he could not provide the details except the copies of bills issued by these parties and payment made by cheques and also stock statements. But the AO issued noticed under section 133(6) to these parties, letter issued returned back by the postal authorities with the remark 'not known'. Therefore, the AO added the entire purchase as bogus to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who also

confirmed the action of the AO, the CIT(A) also gone into the details furnished by the assessee in respect of Gross Profit / Net Profit for the last two-three years which was considered as under: -

	FY 2007-08	FY 08-09		FY 2009-10		FY 10-11		F.Y11-12
		With Hawala	Without Hawala	With Hawala	Without Hawala	With Hawala	Without Hawala	
Turnover	6,81,41,021	4,73,03,944	4,73,03,944	7,62,91,078	7,62,91,078	8,83,03,691	8,83,03,691	6,92,37,078
Gross profit	91,58,131	93,83,965	1,04,09,719	1,09,03,638	1,12,32,954	1,72,50,524	1,74,92,319	1,50,68,376
Net profit	34,82,696	25,25,597	35,51,351	42,00,269	45,29,585	48,46,210	50,88,005	46,21,835
G.P.Ratio	13.44	19.84	22.01	14.29	14.72	19.54	19.81	21.76
N. P. Ratio	5.11	5.34	7.51	5.51	5.94	5.49	5.76	6.68

7. The CIT(A) after considering the normal purchase and hawala purchase, applied 8% by relying on the decision of Hon'ble Supreme Court in the case of M/s Kanchwala Gems Vs JCIT (2007) 288 ITR 10 (SC) & provisions of the section 44AD of the Act vide Para 11.15, which reads as under: -

“11. 15 As against 8% of NP, the appellant, being contractor, had shown NP @5.34% in AY 09-10, 5.51% in A.Y 10-11 & 5.49% in AN 11-12, which is much lesser than the NP After disallowance of bogus purchases, in these years, the resultant NP is worked out at 7.51%, 5.49% & 5.76%, respectively, as against 8%, provided in the said provision, which is still lower than the NP of 8% in the case of contract business. In this regard, the reliance is also placed on the decision of the Hon'ble Supreme Court in the case of M/s Kanchwala Gems Vs JCIT, 288 ITR 10 (SC), Sri Ganesh Rice Mills Vs. CIT 294 ITR 316 (Alt) etc. as quoted above, wherein on account of similar set of circumstances, the estimation of profit was held, as justified. Since the suppression of profits, during the years under appeals, are more than the disallowance of hawala purchases, therefore, the entire disallowances of bogus purchases are liable to be sustained. In view of these facts, the disallowance of 100% hawala purchases, i.e. Rs.10,25,754/-, Rs.3,29,316/- & Rs. 2,41,795/-, as against total turnover

*of Rs.4,73crs., Rs.7.63Cr. &Rs.8.83Cr., in these years,
in my considered opinion, is fully justified, in the
appellant's case. All the grounds of appeal are decided
accordingly."*

Accordingly, the CIT(A) sustained the entire bogus purchases as addition to the income in all three years. Aggrieved assessee, in all the three years is in appeal before us.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee is engaged in the business of Fabrication on contract basis. For this he makes purchases and sales and the sales made by him are not at all doubted. It is also a fact that the assessee has procured bills from hawala parties and made payments by account payee cheques to these parties. Further, the assessee also produced the stock register for raw material and purchases. Once this is a fact that the payments are by account payee cheques, the stock register is maintained and produced the bills from hawala parties, the assessee has used the material for sale which he might have purchased from grey market. It is common presumption which has not be rebutted by the Revenue. Hon'ble Supreme Court in the case of Kanchwala Gems (supra) wherein Hon'ble Supreme Court has held that the disallowance of bogus purchases is to be restricted to certain percentage of profit, wherein it is held that the purchases from grey market is made. Accordingly, we direct the AO to apply net profit rate @ 8% of the bogus purchases made by the assessee and recompute the income accordingly. These appeals of the assessee are partly allowed.

9. **In the result, appeals of assessee are partly allowed.**

Order pronounced in the open court on 31-05-2017.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-05-2017

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

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

//True Copy//
BY ORDER,
Assistant Registrar
ITAT, MUMBAI