

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 4320/Mum/2017 (Assessment Year 2009-10)

Mr. Dharmesh Bhagat 9, Shree Ganesh Kunj Above Kala-Niketan Vile Parle (West) Mumbai-400 056. PAN : AEEP6764C (Appellant)	Vs.	ITO 25(2)(3) C-10, Bandra Krula Complex Bandra East Mumbai-400051. (Respondent)
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Assessee by	Ms. Chaitee Londhe
Department by	Ms. N. Hemlatha
Date of Hearing	18.10.2017
Date of Pronouncement	18.10.2017

ORDER

The appeal filed by the assessee is directed against the order dated 3.3.2017 passed by the learned CIT(A)-37, Mumbai and it relates to A.Y. 2009-10. The assessee is aggrieved by the decision of the learned CIT(A) in partially confirming the addition relating to bogus purchases.

2. I heard the parties and perused the record. The assessee is engaged in the business of trading in gift articles under trade name M/s. Ad-Venture. Major clients of the assessee are ICICI Bank and Insurance companies. The revenue received information from Sales Tax Department of Maharashtra that certain dealers are indulging in providing accommodation bills, without actually supplying the material. It was noticed that the assessee has purchased goods from two of such dealers aggregating to ₹ 54.80 lakhs during the year under consideration. Hence the Assessing Officer reopened the assessment by issuing notice u/s. 148 of the Act. Before the Assessing Officer, the assessee furnished details of purchases, details of payment, stock register, quantity details etc. However, the assessee could not furnish certain important evidences like evidence for transportation of goods. The Assessing Officer

issued notice u/s. 133(6) of the Act to the suppliers but they were returned back unserved with the remarks "not known". The assessee also could not obtain confirmation from the suppliers nor could he produce suppliers before the Assessing Officer. Hence, the Assessing Officer rejected the books of account of the assessee and held that the assessee has failed to prove the genuineness of the purchases. Since the assessee had reconciled the purchases and sales, the Assessing Officer took the view that the profit element embedded in such non-genuine purchases alone should be brought to tax. In this regard, he placed reliance on the decision rendered by Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth (ITA No. 553 of 2012 dated 16.1.2013) and CIT Vs. Bholanath Poly Fab (P) Ltd. (ITA No. 63 of 2012 dated 23.10.2012). Accordingly the Assessing Officer estimated the profit at 25% of bogus purchases and accordingly added a sum of ₹ 13.70 lakhs to the total income returned by the assessee.

3. In the appellate proceedings, the learned CIT(A) reduced the addition to 12.5% of the value of bogus purchases. Still aggrieved, the assessee has filed the appeal before the Tribunal.

4. The Ld A.R contended that the assessee has proved the genuineness of purchases by furnishing all the details and hence no addition is called for. On the contrary, the ld D.R supported the order passed by Ld CIT(A). I noticed that the assessee has supplied gift articles to ICICI Bank and Insurance companies i.e. reputed concerns. Even though, the learned AR argued that genuineness of the purchases have been proved by the assessee, yet I notice that the assessee has failed to furnish convincing explanations/evidences with regard to transportation of materials. Further the assessee has failed to obtain confirmation letters from the suppliers nor could he produce them before the Assessing Officer. The Assessing Officer has noticed that the impugned suppliers filed affidavits/given statement before the Sales Tax Department that they were providing only accommodation bills. Since, the assessee has reconciled purchase and sales, the presumption could be that the assessee

would have purchased impugned gift articles from some other persons, which would result in saving of taxes and reducing in prices also. Hence the Assessing Officer has estimated the profit element involved in such purchases at 25%, which was reduced to 12.5% by the learned CIT(A). However, considering the fact that the assessee had supplied material to reputed concerns, I am of the view that the estimate made at 12.5% is on higher side. Considering the facts and circumstances of the case, I am of the view that the addition may be restricted to 8% of the value of bogus purchases and the same would meet ends of justice. Accordingly, I modify the order passed by the learned CIT(A) and direct the Assessing Officer to restrict the addition to 8% of the value of bogus purchases.

5. In the result, appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 18.10.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/10/2017

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//

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BY ORDER,
(Asstt. Registrar/Senior PS)
ITAT, Mumbai