

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Pawan Singh, Judicial Member**

ITA No.1223/Mum/2015
(Assessment Year: 2010-11)

Shri Mankeshwar Mechanical Works Shri Mankeshwar Bldg. 110, B.N. Pai Marg Reay Road, Mumbai 400033	Vs.	A C I T 15(1) [presently ACIT, Circle-20(3)] 615, Piramal Chambers Lalbaug, Parel Mumbai 400012 PAN – ABCFS2901H
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Appellant

Respondent

Appellant by: Shri Shailesh N. Doshi
Respondent by: Shri Suman Kumar

Date of Hearing: 09.11.2017
Date of Pronouncement: 09.11.2017

ORDER

Per Pawan Singh, J.M.

This appeal by the assessee under Section 253 of the Income Tax Act is directed against the order of the CIT(A)-26, Mumbai dated 13.11.2014 for A.Y. 2010-11.

2. The assessee has raised the following grounds of appeal: -

- “1. *On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming the action of AO in making addition of Rs.42,32,185/- being purchases from four parties by treating them as bogus merely on the basis of information from Sales Tax Department, Maharashtra that the said parties are engaged in providing accommodation bills (a) without bringing on records any independent and reliable evidences and (b) without conducting any enquiry whatsoever on the documents furnished by the Appellant.*
2. *On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming the action of AO in making addition of Rs.42,32,185/- being purchases from four parties by treating them as bogus by completely ignoring (a) various documentary evidences submitted by the Appellant in*

respect of transactions with the said parties such as invoices, delivery challans, entries in the bank statements reflecting payments by account payee cheques to the alleged parties and further supported by the certificate from the bankers to that effect and (b) the fact that Gross Profit rate and Net Profit rate were highest during the year as compared to preceding four years.

- 3. Without prejudice to Ground No.1 and 2 here above, on the facts and circumstances of the case, 100% disallowance of purchases from the said four suppliers/parties is not called for (a) on the ground that the Appellant has not maintained quantitative tally and use/consumption of material purchased from those parties specifically when sales are accepted by AO and (b) also in view of judicial pronouncements available on the issue in the present case.”**

3. The brief facts of the case are that the assessee firm, engaged in the business of Ship repair, Marine workshop, Steel removal, General fabrication job, Mechanical repairs and Machinery jobs, filed its return of income for the relevant assessment year on 26.09.2010 declaring total income of ₹45,32,154/-. The assessment was completed on 30.03.2013 under Section 143(3). The AO while passing the assessment order disallowed a sum of ₹42,32,185/- as bogus purchases. The AO disallowed the purchases on the basis of the information received from the Sales Tax authorities that the assessee is one the beneficiary who had made purchases from parties whose names were listed in the list of 'havala dealers'. The AO made the disallowance on the aggregate purchases from four parties as under: -

(i)	Reliance Enterprises	₹7,99,510/-
(ii)	Paras Enterprises	₹12,30,242/-
(iii)	Krish Corporation	12,09,748/-
(iv)	D.N. Enterprises	₹9,92,685/-

The AO disallowed 100% of the purchases made from the disputed/havala dealers. On appeal before the CIT(A) the entire disallowances were sustained. Further aggrieved by the order of the CIT(A) assessee filed the present appeal before us.

4. The learned A.R. of the assessee argued that the assessee has furnished all details as required by the AO to prove the genuineness of the purchases consisting proof of payment, purchase invoices and delivery challans. It was argued that the AO made the disallowance on the basis of third party information. The AO has not given any finding on the various evidences furnished by the assessee. The learned A.R. finally argued that the disallowance may be restricted to a reasonable percentage of the total purchases.

5. On the other hand, the learned D.R. for Revenue supported the order of the Authorities below.

6. We heard the rival submissions and gone through the orders of the Authorities below. We have noted that the AO has disallowed the entire purchases from all the four impugned/alleged bogus parties. The AO has not rejected the books of account or the contents of the material on record. The AO has not examined the gross profit ratio for earlier and subsequent years. The learned CIT(A) confirmed the disallowance made by the AO. We are of the view that under the income tax only real income can be taxed by Revenue. Even if the transaction is not verifiable the only taxable amount is the taxable income component therein and not the entire purchases. Considering the submissions of the learned A.R. of assessee that a reasonable disallowance may be made and considering the factual materials of the case we are of the opinion the in order to fill the gap of revenue leakage disallowance of a reasonable percentage of impugned purchases will meet the end of justice. In our view disallowance of 12.5% of the total disputed purchases would be sufficient to fulfil the gap of revenue leakage. The Hon'ble Bombay High Court in the case of CIT vs. Shri Hariram Bhambhani in ITA No. 313 of 2013 decided on 04.02.2015 also held that Revenue is not entitled to bring the entire sale consideration to tax, but only the profit element of such unrecorded sales consideration which alone can be subject to income tax. With these observations the grounds of appeal raised by the assessee are partly allowed.

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

Order pronounced in the open court on 9th November, 2017.

Sd/-
(G.S. Pannu)
Accountant Member

Sd/-
(Pawan Singh)
Judicial Member

Mumbai, Dated: 9th November, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -26, Mumbai*
4. *The CIT -15, Mumbai*
5. *The DR, "B" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.