

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

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 438/MUM/2016
Assessment Year: 2009-10**

Pragna C. Mehta, 1003, Ashopalav CHSL, S. V. Road, Borivli (W), Mumbai-400092	Vs.	ACIT Circle-32(2) Aayakar Bhavan, Mumbai-400020
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PAN No. AAHPM4038R
Appellant

Respondent

Assessee by	: Mr. Ajay R. Singh, AR
Revenue by	: Ms. Arju Garodia, DR

Date of Hearing	: 13/03/2018
Date of pronouncement	: 28/03/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-44, 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').

2. The Ld. counsel of the assessee submits that the appellant would not like to press the 2nd ground of appeal regarding validity of re-opening u/s 148 of the Act. He submits the same and signs as not pressed in the relevant portion of the grounds of appeal. Accordingly, the 2nd ground of appeal is dismissed as not pressed.

3. The 1st ground of appeal reads as under:

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred by confirming the addition made by AO by making an addition u/s 69C by taking fair profit @ 31.88% of non-genuine purchases from parties declared by sales tax department as Hawala parties amounting to Rs.56,92,486/- and make addition thereby of Rs.18,14,765/-.

4. Briefly stated, the facts of the case are that the assessee filed her return of income for the assessment year (AY) 2009-10 declaring total income of Rs.33,53,140/-. On the basis of inquiries conducted by the Sales Tax Department, the AO received information from the Director General of Income Tax (Inv.) that the assessee had obtained bills of bogus purchases from Sachi Mercantile Pvt. Ltd., Anshu Mercantile Pvt. Ltd., Surachi Multitrade Pvt. Ltd. and Dhiren Mercantile Pvt. Ltd. amounting to Rs.56,92,486/-. During the course of assessment proceedings, the AR of the assessee filed a letter dated 30.12.2014 and submitted (i) ledger account of the four parties, (ii) copies of bills of purchases, (iii) banks statements for the account payee cheques issued to the four parties and (iv) corresponding sales invoices made against the purchases.

The AO, in order to verify the genuineness of transaction, issued notice u/s 133(6) on 16.12.2014 to the four parties. However, the said notices were received back in the office of the AO as unserved. Then he asked the assessee *vide* order sheet noting dated 27.12.2014 to produce the said parties. The assessee failed to produce the parties before the AO to prove the genuineness of transaction.

In view of the above facts, the AO adopted a profit ratio of 31.88% on the said purchases of Rs.56,92,486/- and thus made an addition of Rs.18,14,765/- u/s 69C of the Act.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) agreed with the reasons given by the AO and confirmed the addition of Rs.18,14,765/-.

6. Before us, the Ld. counsel of the assessee submits that on identical facts, the ITAT 'B' Bench Mumbai in assessee's own case has restricted the disallowance to 8% of the alleged bogus purchases and the same may be followed.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. We find that similar issue arose before the ITAT 'B' Bench Mumbai in assessee's own case for AY 2011-12 (ITA No. 3715/Mum/2017). The Tribunal vide order dated 08.09.2017 held at para 5 the following:

"5. We have heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be no sale without purchase / consumption of material keeping in view the assessee's nature of business which was material intensive and could not be carried out without consumption of material. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The purchases were backed by invoices. At the same time, the assessee could not produce the party for confirmation and notice sent u/s 133(6) remained un-served, which cast serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be

made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against bogus purchases, which lower authorities have rightly done so. However, on totality of facts, we consider estimated addition to be on the higher side and therefore, restrict the same to 8% of alleged bogus purchases. The Ld. AO is directed to re-compute the income of the assessee in the light of addition sustained by us.”

7.1 Facts being identical, we follow the above order of the Co-ordinate Bench and direct the AO to restrict the disallowance to 8% of the alleged bogus purchases in place of addition of Rs.18,14,765/- made by him.

8. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 28/03/2018.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 28/03/2018

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./Asstt. Registrar)
ITAT, Mumbai