

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA.No. 4455/MUM/2016 (A.Y:2012-13)

Nitin Avantilal Doshi
Plot No. 3 to 5, Plot No. 13-A,
Magazine Street, Darukhana,
Reay Road Railway station,
Mumbai – 400 010

v. Dy. Commissioner of Income
Tax – 20(2), Room No. 217,
2nd Floor, Piramal Chambers,
Lalbaug, Mumbai – 400 012

PAN No: AABPD 1214 A

(Appellant)

(Respondent)

Assessee by : Shri Viral Doshi
Revenue by : Ms. Pooja Swarup

Date of Hearing : 05.03.2018
Date of Pronouncement : 31.05.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) – 32, Mumbai dated 28.04.2016 for the Assessment Year 2012-13.

2. The assessee has raised two issues in its grounds of appeal. The first ground is in respect of confirming the adhoc disallowance on alleged bogus purchases at 12.5% of the purchases. The Second grounds of appeal is in respect of confirmation of the disallowance of 10% of transport expenses which was made on adhoc basis.

3. At the time of hearing the Ld. Counsel for the assessee submitted that Ground No. 2 is not pressed and may be disposed off accordingly. Thus, Ground No. 2 which is in respect of adhoc disallowance of transport expenses is dismissed as not pressed.

4. Coming to Ground No.1 regarding disallowance in respect of alleged bogus purchases, the Ld. Counsel for the assessee submitted that identical issue where same parties are involved came up before the Tribunal for the Assessment years 2009-10 & 2010-11 in ITA.No. 2619/Mum/2013 dated 04.10.2017 and ITA.No.4739/MUM/2014 and ITA.No.5119/MUM/2014 dated 23.08.2017 and the Tribunal sustained the order of the Ld. CIT(A) in restricting the disallowance to 12.5%. Copies of the orders are placed on record. It is also submitted that during the Assessment Year under consideration the parties are same. Ld. Counsel for the assessee submitted that the entire purchases are genuine and therefore the addition sustained by the Ld. CIT(A) is not justified.

5. On the other hand, the Ld. DR strongly supported the orders of the Authorities below.

6. We have heard the rival submissions and perused the orders of the authorities below and coordinate Bench order. Similar issue came up in assessee's own case for the Assessment year 2010-11 wherein the Tribunal sustained the order of the Ld. CIT(A) in restricting the addition/disallowance towards bogus purchases to 12.5% observing as under:

"5. We have heard the contentions and perused the relevant material on record. We are of the considered opinion that there could be no sale without purchases. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The assessee is a trader and a perusal of Tax Audit Report reveal that quantitative details are being maintained by the assessee. On the other hand, none of the supplier was found at the given address and no confirmation etc. was filed to substantiate the purchases. 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 earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against bogus purchases, which Ld.CIT(A) has rightly done. Moreover the revenue in the immediately succeeding year accepted addition of 12.5% and therefore, we find the order of Ld.CIT(A) quite fair and reasonable. Therefore, we find no reason to interfere with the same."

7. Similarly, for the Assessment Year 2009-10 the Tribunal following its order for the Assessment year 2010-11 sustained the addition on purchases at 12.5%. We also find that the decision of the Ld.CIT(A) adopting 12.5% for disallowing the bogus purchases has been accepted by the Revenue as no further appeal has been filed. In the circumstances,

we uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on the 31st May, 2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 31/05/2017
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mum