

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

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

ITA NO.904/MUM/2017 (A.Y: 2009-10)

Shri Sheetal Pradip Shah
Raj Sons, 3, Latif House, 250,
Sant Tukaram Road,
Carnac Bunder, Mumbai – 400 009

v. Income Tax Officer – 17(3)(3)
Room No. 123, First Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020

PAN NO: ASEPS 2196 K

(Appellant)

(Respondent)

Assessee by : Shri Ryan Saldanha
Department by : Shri Arju Garodia

Date of Hearing : 28.06.2018
Date of Pronouncement : 11.07.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 28, Mumbai dated 11.11.2016 for the Assessment Year 2009-10.

2. The only issue in the appeal of the assessee is in respect of confirming the disallowance of purchases treating them as non-genuine by the Assessing Officer.

3. Briefly stated the facts are that, the Assessing Officer received information from DGIT (Inv.) Mumbai and the Sales Tax Department wherein the list of hawala dealers who indulged in providing accommodation entries for issuing bogus sales bills, tax invoices etc., were provided. Based on this list Assessing Officer treated the assessee as one of the beneficiaries to such transactions and the purchases made from K.R.C. Trading Co. Pvt Ltd., and ISK Trading Company Pvt. Ltd., amounting to ₹.80,52,750/- was treated as non-genuine as the assessee could not file the details about these purchases. The assessee did not file the explanations / information's in respect of these purchases in spite of the opportunities given by the Assessing Officer and therefore the assessment was completed u/s. 144 r.w.s. 147 of the Act.

4. Assessee preferred appeal before the Ld.CIT(A) even before the Ld.CIT(A) in spite of service of notice on the assessee no body attended on behalf of the assessee and therefore the Ld.CIT(A) sustained the disallowance.

5. Before us, Learned Counsel for the assessee submitted that addition was made based only on the information received from Sales Tax Department that some of the dealers are providing accommodation entries, in assessee's case the purchases are genuine. Learned Counsel

for the assessee submitted that sales have been accepted as genuine and therefore entire purchases cannot be disallowed as non-genuine. Therefore, pleaded that the reasonable profit element may be estimated from the purchases.

6. Ld. DR vehemently supported the orders of the authorities below in treating entire purchases as non-genuine. Ld. DR submitted that no details have been furnished by the assessee proving the genuineness of the purchases made, therefore entire purchases have to be treated as non-genuine.

7. We have heard the rival submissions, perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases

cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. Thus, following the above decision of the Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd (supra), we direct the Assessing Officer to restrict the disallowance to 12.5% of the purchases treated as non-genuine by estimating profit element in such bogus purchases.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on the 11th July, 2018.

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Mumbai / Dated 11/07/2018
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