

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJEET SINGH, JUDICIAL MEMBER**

**ITA Nos.722 & 723/M/2018  
Assessment Years: 2009-10 & 2011-12**

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| Shri Chandan Jangid,<br>Prop. Welldone Concept,<br>702, Meghraj Sarswati<br>Baug Society,<br>Jogeshwari (E),<br>Mumbai - 400 060<br><b>PAN: AABPJ8158K</b> | Vs. | ACIT 31(1),<br>C-13, 1 <sup>st</sup> Floor,<br>Pratyakshkar Bhavan,<br>Bandra Kurla Complex,<br>Bandra (E),<br>Mumbai - 400051 |
| (Appellant)  |     | (Respondent)   |

**Present for:**

Assessee by : Shri S.C. Agarwal, A.R.  
Revenue by : Shri Abi Rama Kartikeyan, D.R.

Date of Hearing : 27.02.2019  
Date of Pronouncement : 29.03.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled two appeals have been preferred by the assessee against the common order dated 27.09.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2009-10 & 2011-12.

**ITA No.722/M/2018 (A.Y. 2009-10)**

2. The issue raised in ground No.1 is against the confirmation of addition of Rs.89,981/- by Ld. CIT(A) as made by the AO on account of bogus purchases from Roopam Impex.

3. The facts in brief are that the assessee filed the return of income on 30.09.2009 declaring an income of Rs.77,47,530/-.

Thereafter, the AO received information from the office of DGIT(Inv.), Mumbai that assessee is a beneficiary of hawala purchase entries and accordingly the case of the assessee was reopened under section 147 and the notice under section 148 of the Act was issued on 18.11.2013 which was served upon the assessee on 19.12.2013. During the course of re-assessment proceedings, the AO issued show cause notice to the assessee as to why the purchases made from hawala party M/s. Roopam Impex to the tune of Rs.89,981/- should not be treated as non genuine and added to the income of the assessee which was replied by the assessee by submitting that the assessee has in fact purchased goods and material from the said party and the same was used in the Andheri and Goregaon sites. The assessee also filed copy of bank statement evidencing the payment through banking channel besides filing copies of bills, vouchers etc. The AO also issued notice under section 133(6) which was returned by the postal authority with the remark that non known. Finally, the AO added the same to the income of the assessee by holding that the said purchases are not genuine in view of the fact that no stock register has been maintained showing receipt of material, day to day consumption and production of material etc.

4. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by upholding the order of AO after considering the contentions and submissions of the assessee made during the appellate proceedings. The Ld. CIT(A) held that assessee has failed to prove that goods were received from the said party and also failed to produce the consumption of records with the supporting evidences and consumption details and

thus upheld the order of AO that the said purchase was a non genuine purchases. The Ld. A.R. therefore submitted before the Bench that the disallowance of the total purchases equal to 100% amounting to Rs.89,981/- was confirmed by Ld. CIT(A) by ignoring the fact that the VAT applicable to the assessee is only 4% and the material purchased in fact used in the sites at Andheri and Goregaon. The Ld. A.R. also submitted before the Bench that assessee has filed all the necessary bills and vouchers in the form of invoices, copy of ledger accounts, bank statements etc. and in any case the disallowance can not be made @ 100% as the material was purchased and utilised on the sites of the assessee. The Ld. A.R. therefore prayed before the Bench that a reasonable disallowance may be made to bring so called purchases to tax.

5. The Ld. D.R., on the other hand, relied heavily on the order of Ld. CIT(A).

6. After hearing both the parties and perusing the material on record, we observe that in this case the AO has disallowed 100% of purchases from Roopam Impex which was a hawala party as assessee could not produce before the AO the supplier in person or any confirmation from the said supplier. Moreover, the notices issued under section 133(6) were not served and returned by the postal authority with the remark "not known". Under these circumstances though the assessee was indulged in bogus purchases same can not be brought to tax @ 100%. Under these circumstances, we are of the view that it would be reasonable and fair that the said purchases are brought to tax @20%. The AO is directed accordingly.

7. The issue raised in 2<sup>nd</sup> ground of appeal is against the order of Ld. CIT(A) upholding the disallowance to the tune of Rs.21,085/- under three heads of expenses.

8. During the course of assessment proceedings AO called upon the assessee to furnish the log books of the vehicle, details of telephone calls besides other evidences to prove the genuineness of the expenses. However, the assessee failed to furnish necessary details to prove such expenses. Therefore, AO came to the conclusion that there is a personal element in the said expenses and accordingly disallowed a sum of Rs.21,085/- being 10% of the total expenses of Rs.2,10,855/- comprising telephone Exp Rs. 89,143/-, Vehicle Exp Rs. 42,383/- and Vehicle Dep. Rs. 79,329/-and added the same to the income of the assessee.

9. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by observing that in A.Y. 2012-13 in which the assessment proceedings were concluded on 25<sup>th</sup> March wherein the assessee could not furnish the details of such expenses and summarily dismissed the appeal of the assessee without giving any cogent reasons for such disallowance which was made on the adhoc basis.

10. After hearing both the parties and perusing the material on record, we observe that the disallowance of 10% of the total expenses is based upon presumptions that some part of the total expenses related to personal use of the assessee. Under these circumstances, we feel that it would be proper if the expenses are disallowed to the extent of 5% to the total expenses in place

of 10%. The AO is directed accordingly and the appeal of the assessee is partly allowed.

**ITA No.723/M/2018 (A.Y. 2011-12)**

11. The issue raised in this appeal by way of ground No.1 & 2 are identical to one as decided by us in ITA No.722/M/2018 wherein the appeal of the assessee is partly allowed. Accordingly, our decision in ITA No.722/M/2018 for A.Y. 2009-10, would mutatis mutandis apply to both the grounds in this appeal as well and the appeal of the assessee is partly allowed.

12. In the result, both the appeals of the assessee are partly allowed.

**Order pronounced in the open court on 29.03.2019.**

**Sd/-  
(Amarjeet Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.03.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.