

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'SMC' BENCH, KOLKATA**

**Before Sri J. Sudhakar Reddy, Accountant Member**

**I.T.A. No.1490/Kol/2018**  
Assessment Year: 2012-13

**Ratan Lal Jagat Singh.....Appellant**  
**[PAN : AADFR 2770 H]**

**ITO, Ward-43(3), Kolkata.....Respondent**

**Appearances by:**

*Shri Ashish Rustagi, FCA, appeared on behalf of the Appellant.*

*Shri Robin Choudhury, Addl. CIT, appeared on behalf of the Respondent.*

Date of concluding the hearing : March 14, 2019

Date of pronouncing the order : April 30, 2019

**ORDER**

**Per J. Sudhakar Reddy :-**

This appeal by the assessee directed against the order of the Id. Commissioner of Income Tax (Appeals) - 13, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dated 02.05.2018 for Assessment Year 2012-13.

2. The assessee is a partnership firm and is in the business of trading in cloth. It filed its return of income electronically on 30.09.2012 declaring total income of Rs.1,97,030/-. The Assessing Officer completed the assessment u/s 143(3) on 27.03.2015 determining the total income at Rs.17,58,581/- inter alia making an addition on account of undisclosed income/bogus purchases of Rs.13,57,946/- and disallowance under the head 'brokerage and commission' of Rs.2,03,605/-.

3. On appeal, the Id. CIT(A) confirmed the order of the Assessing Officer.

4. Further Aggrieved the assessee is in appeal before us. We have heard Mr. Ashish Rustagi, the Id. Counsel for the assessee and Mr. Robin Choudhury, Sr. Departmental Representative on behalf of the revenue. On a careful consideration on

the facts and circumstances of the case, perusing the papers on record and orders of the authorities below, I hold as follows.

5. On the issue of bogus purchases, the facts are that, the assessee had disclosed purchases of goods worth Rs.80,62,152/- from M/s Vimal Export International. The Assessing Officer had issued a notice u/s 133(6) to M/s Vimal Export International. In their reply, they had stated that goods worth Rs.94,20,098/- was sold to the assessee company. The difference amount of Rs.13,57,946/- which would not be explained by the assessee was added by the Assessing Officer as bogus purchases. The explanation of the assessee that certain wrong entries were passed by M/s Vimal Export International and that purchases were only Rs.80,62,152/- some other sales made to third parties were accounted for by M/s Vimal Export International in the accounts of the assessee and that the assessee has not paid any amount for the alleged purchases and that all other purchases were paid by way of cross-cheques to M/s Vimal Export International, was rejected. On appeal, the Id. CIT(A) called for a remand report and in the remand proceedings the Assessing Officer once again issued a letter to M/s Vimal Export International. M/s Vimal Export International had reiterated its earlier statement. The remand report was confronted to the assessee. The assessee explained that certain supplies which were made to other parties was wrongly mentioned in the name of the assessee by M/s Vimal Export International. This explanation was not supported by any evidence. The Id. CIT(A) confirmed the order of the Assessing Officer.

6. We find that the revenue has given adequate opportunity to the assessee and has conducted proper enquiry in the matter. The assessee was finding fault with the statement made by M/s Vimal Export International, a third party, without leading evidence in support of its contention. The Id. CIT(A) at last para of page 5 held as follows:

*“The copy of remand report was provided to the appellant and date of hearing was fixed on 02-05-2018 but the appellant did not appear. Perusal of order sheet noting by the undersigned shows that the appellant was asked to submit the confirmation from the supplier regarding its claim of wrongly mentioning the transaction in the name of the appellant. The appellant was asked to get clarification from M/s. Vimal Export International along with transportation details, sale bill and corresponding payment in order to controvert his earlier submissions. But*

*no such compliance was made. It is also a matter of record that no denial letter was submitted by the appellant from M/s. Vimal Export International in spite of providing various opportunity by the AO and the undersigned. The confirmation from the supplier is that the goods were supplied to the tune of Rs.94,20,098/-. The action of the appellant for not submitting any reconciliation or denial letter from M/s. Vimal Export International establish that the appellant has purchased goods to the tune of Rs.94.20 lac. The appellant submit the reason for difference that the aforesaid goods were supplied to other parties and inadvertently its name was mentioned but no such detail was submitted through confirmatory letter as to whom these goods were dispatched. The appellant was regular customer of M/s. Vimal Export International he could have got it confirmed. As regard argument of the appellant that it has purchased to the tune of Rs.80,62,152/- and if the purchase was shown to the extent of Rs.94,20,098/- then income could have been less by the Rs.13,57,946/-. The appellants argument on this account does not held's goods as the aforesaid purchases and sales were made out of books and neither purchase is mentioned nor the appellant has shown corresponding sale. The AO has added only the purchase which has not been recorded in the books of account and the appellant has also not recorded the corresponding sale of the same. As regard the brokerage is concerned the appellant has failed to provide any detail as to whom it was paid. The appellant has not been able to prove the genuinity and the address of the persons to whom brokerage payment were claimed to be made. In this case perusal of record shows that the sufficient opportunity was provided by the AO at the remand stage too but the appellant did not brought a single record to sustain his argument that the aforesaid confirmation of crediting Rs.13,57,946/- extra, was a mistake. Had it been so it could have been easily proved with the help of the supplier. In spite of specific query and direction given during the course of appellate proceeding and also asked by the AO, the appellant could not submit any detail. Keeping in view of the facts the addition made by the AO on account of purchase and sale made out of brokerage and commission is hereby confirmed and the ground of appeal is hereby dismissed.”*

7. The finding that the assessee might have purchased undisclosed goods, on these facts and circumstances has to be upheld. But non-disclosure of purchases of Rs.13,57,946/-, for which a payment was yet to be made, does not become income of the assessee. These undisclosed purchases were not part of the closing stock of the assessee and then it has to be presumed that the same has been sold. If it is part of closing stock, as no payment was made, the source of purchase is explained. In such circumstances, in our view, only the gross profit from such purchases, should be brought to tax. Keeping in view the gross profit percentage earned by the assessee for the last three assessment years, we direct that 3.3% of the undisclosed purchases only be brought to tax. The balance of the addition is deleted. Ground No.2 of the assessee is allowed.

8. As regards, commission/brokerage, the addition was confirmed because the assessee was not able to prove the genuinity and could not furnish the address of the persons to whom brokerage has been paid. After hearing both parties, we hold that no

evidence has been furnished before the lower authorities by the assessee in this regard and hence the disallowance is confirmed. Ground No.2 is dismissed.

9. In the result, the appeal of the assessee is allowed in part.

***Kolkata, the 30<sup>th</sup> April, 2019.***

Sd/-

**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 30.04.2019  
(RS, Sr. PS)

*Copy of the order forwarded to:*

1. Ratan Lal Jagat Singh,5/1, Lucas Lane, Gr. Floor, Kol-1.
2. ITO, Ward-43(3), Kolkata.
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Assistant Registrar , Kolkata Benches