

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

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

**ITA No.6306/M/2017
Assessment Year: 2012-13**

Dy. CIT – 11(1)(1), Room No.204, Aayakar Bhavan, M.K. Marg, Mumbai - 400020	Vs.	M/s. Renaissance Jewellery Ltd., Plot No.36A & 37, MIDC, Marol, SEEPZ, Andheri (East), Mumbai – 400 096 PAN: AACCR2148B
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sanjay R. Parikh, A.R.
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 13.06.2019
Date of Pronouncement : 26.06.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 13.07.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue in the various grounds of appeal is against the deletion of addition of Rs.1,08,33,441/- as made by the AO towards bogus purchases.

3. The facts in brief are that during the course of assessment proceedings, the AO observed that assessee is beneficiary of accommodation entries in the nature of bogus purchases from

M/s. Aadi Impex. During the year, the AO found that assessee has made purchases from M/s. Aadi Impex, a firm engaged in supplying bogus purchase bills and is connected to Shri Rajendra Jain, Shri Sanjay Choudhary, and Shri Dharmichand Jain who were hawala operators as admitted by them during the course of search that they and their associated concerns were engaged in providing bogus purchase entries and bogus unsecured loans. During the course of the assessment, the assessee submitted copy of ledger account of M/s. Aadi Impex, invoices of purchases and bank statement etc to prove the genuineness of the purchases. According to the AO the assessee failed to prove the genuineness of purchases by furnishing stock register, delivery challans, name and identity of the person delivering the goods and octroi receipts etc. The AO also issued noticed under section 133(6) of the Act in order to verify the genuineness of the purchases which was not responded and finally the AO treated the said purchases as non genuine and made addition to income of the assessee equal to 100% of the purchases vide assessment order dated 22.03.2016 passed under section 143(3) of the Act.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after taking into account the contentions of the assessee by holding that though the purchases made by the assessee were bogus purchases without taking the delivery of the goods but the entire purchases can not be treated as income and thus came to the conclusion on the basis of decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 only profit element on the said purchases could be assessed. The Ld. CIT(A) further observed

that the assessee is in the business of diamond jewellery in which the VAT rate is only 1% and custom duty is about 2% and thus partly sustained the addition at 3% of the said purchases by directing the AO to assess the income of bogus purchase at 3%.

5. After hearing both the parties and perusing the material on record, we observe that in this case the assessee is undisputedly a beneficiary of hawala purchase entries where there is a possibility that assessee might have made saving in the form of non payment of VAT , custom duty and other incidental charges which come to around 3%. The only presumption in the case is that the assessee might have purchased the goods from the grey market and therefore when the sales are not disputed, the 100% disallowance can not be justified. We are therefore in agreement with the conclusion drawn by the Ld. CIT(A) on this issue. However, in our view, savings as made by the assessee by purchasing the goods from grey market plus reasonable profit should be assessed on the alleged bogus purchases. Accordingly, we hold that it would be reasonable if the bogus purchases are brought to tax at the rate of 4%. Accordingly, the order of Ld. CIT(A) is set aside and we direct the AO to assess the bogus purchases at 4%.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.06.2019.

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

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 26.06.2019.

* 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.