

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.1380/Mum/2018
(Assessment Year :2009-10)**

Shri Jitendra S. Mamania (Prop. M/s. Roundline Industries) 1309-A, Agarwal Industries, S.V. Road Jogeshwari (W) Mumbai – 400 102	Vs.	The Income Tax Officer 31(2)(1), Mumbai
PAN/GIR No.ADDPM0623P		
(Appellant)	..	(Respondent)

Assessee by	Shri Nimesh Chothani
Revenue by	Shri Rajeev Gubgotra
Date of Hearing	24/07/2019
Date of Pronouncement	04/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1380/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-42, Mumbai in appeal No.CIT(A)-42/IT-23/15-16 dated 04/09/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10/03/2015 by the Id. Income Tax Officer – 31 (2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in restricting the disallowance made on account of alleged bogus purchases to 25% as against 100% disallowed by the Id AO in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is a registered partnership firm engaged in manufacturing of data cables of personal computers. During the year under consideration, the assessee had shown income from profits and gains of business or profession through trading in Gift items and income from other sources. The Id AO observed that the assessee had made purchases amounting to Rs 49,16,814/- from certain suppliers as under:-

G R Tradelink	- Rs 12,02,681/-
Sun Enterprises	- Rs 2,30,625/-
M R Corporation	- Rs 10,62,788/-
Jay Industries	- Rs 24,20,720/-

	Rs 49,16,814/-

These suppliers figured in the list of hawala dealers as prepared by the Maharashtra Sales Tax department based on which information, the assessment for the year under consideration was reopened by the Id AO. The Id AO based on the information obtained from Maharashtra Sales Tax department and based on his independent enquires, concluded that the aforesaid parties were involved only in providing bogus bills without making actual delivery of goods to various parties and since the assessee had made purchases from those tainted suppliers, the purchases figure shown in the sum of Rs 49,16,814/- was treated as non-genuine and accordingly the Id AO proceeded to make 100% disallowance of the said purchases in the assessment.

4. The assessee submitted that the purchases were genuinely made for the purpose of its business and payments to aforesaid suppliers were made by account payee cheques and all those purchases were from trading in Gift items and subsequently those goods were actually sold by the assessee and no dispute has been raised on the sales declared by the assessee. The assessee also submitted a product wise statement giving all the relevant details including tally of purchases and corresponding sales before the Id AO. The Id CITA however observed that the assessee had not proved with cogent evidences the actual delivery of goods made by those suppliers. The Id CITA observed that since sale of gift items declared by the assessee has not been disputed by the Id AO, it would not be proper to disallow the entire purchases as without making any purchases, there cannot be any sales. He placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs Bholanath Poly Fab Pvt Ltd reported in 355 ITR 290 (Guj) to support his observation. He observed that purchases were made by the assessee in the grey market and accordingly concluded that only the profit element thereon could be brought to tax. He ultimately gave a finding that disallowance of 25% towards the profit element on the disputed purchases would have to be made in the instant case. Aggrieved, both the assessee as well as the revenue preferred appeals before us. The revenue appeal was dismissed vide ITA No. 1133/Mum/2018 dated 10.8.2018 by relying the CBDT Circular No. 3/2018 dated 11.7.2018 due to low tax effect. Hence only the assessee appeal survives at present.

5. We have heard the rival submissions and perused the materials available on record. We find on hearing both the sides and from the materials available on record, both the parties had not proved their

respective stand beyond doubt. The Id AO had disallowed the entire disputed purchases at 100% completely ignoring the sales made out of such disputed purchases. It is not in dispute that the sales declared by the assessee in its returns had been duly accepted by the revenue. Hence only the profit element need to be added. We find that this tribunal has been consistently holding in various decisions that addition of 12.5% profit on disputed purchases would meet the ends of justice. Accordingly, the grounds raised by the assessee are partly allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 04/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/10/2019
KARUNA, *sr.ps*

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, Mumbai