

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7293/Mum/2017 & 7294/Mum/2017
(Assessment Years: 2009-10 & 2010-11)**

M/s Timex Art Décor Private Limited #102, Opp: Great Sant Janabai Road, Vile Parle(E), Mumbai-400057	Vs.	ACIT-11(3)(1) Mumbai
PAN/GIR No.AACCT2857K		
Appellant	..	Respondent

**ITA No.880/Mum/2018
(Assessment Year: 2010-11)**

ACIT-11(3)(1) Mumbai	Vs.	M/s Timex Art Décor Private Limited #102, Opp: Great Sant Janabai Road, Vile Parle(E), Mumbai-400057
		PAN/GIR No.AACCT2857K
Appellant	..	Respondent

Assessee by	Shri. Prateesh Jain/ Shri. Mani Jain
Revenue by	Shri. Vijay Kumar Soni-DR
Date of Hearing	07/08/2019
Date of Pronouncement	18 /10/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeals by the assessee and one appeal by the Reveune are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals) -18, Mumbai, both dated 25/09/2017 and they pertain to Assessment Years (AY) 2009-10 and

2010-11. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years. The revenue has also challenged order of the CIT(A) for asst. year 2010-11. The only issue that came up for our consideration from assessee as well as revenue appeal for both assessment years is addition towards alleged bogus purchases. Therefore, we are of the considered view that there is no need to reproduce grounds of appeals filed by the assessee as well as the revenue.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing and trading in plywood, decorative laminates and other wood products, has filed its return of income for AY 2009-10 and 2010-11 on 9-9-2009 and 9-9-2010, declaring total income of Rs. 14,88,250/- and Rs. 58,18,450/- respectively. Thereafter, the cases have been reopened u/s 147, on the basis of information received from DGIT, investigation, Mumbai, as per which Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from five parties as listed by the AO in para 2 of his assessment order for Rs. 6,84,18,540/- for A.Y. 2009-10 and two parties as listed by the AO in para 5 of his assessment order for A.Y. 2010-11 for Rs. for Rs. 8,62,71,335/-. The cases have been

selected for scrutiny and the assessment for both assessment years have been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 27/03/2015 and 30/12/2015 and determined total income of Rs. 1,09,89,930/- and Rs. 1,66,02,370/- respectively, after making additions of 12.50% profit on alleged bogus purchases from above parties and made additions of Rs. 85,52,317 for A.Y. 2009-10 and Rs. 1,07,83,917 for A.Y. 2010-11/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions, on the issue. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above parties is genuine, which are supported by necessary evidences, including purchase bills, bank statements, ledger confirmation and VAT audit report of the parties specifying the VAT amount in respect of the purchases and quantitative details of goods traded. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, on analysis of information collected during the course of search and also by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down profit estimated by the AO from 12.50% to 8.80% on alleged bogus purchases for both assessment years.

5. We have heard rival contentions of both parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by both sides. We find that the Ld. AO has made addition towards 12.50% profit on alleged

bogus purchases, on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Govt. of Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said parties is bogus in nature. It is contentions of the assessee before the lower authorities that purchase from the above parties are supported by necessary evidences. It has furnished all possible evidences, including books of accounts, stock details and bank statement to prove payment against said purchases have been made through proper banking channels.

6 Having considered arguments of both sides and also, material available on record, we find that both the sides has failed to prove the case in their favour with necessary evidences. Although, assessee had filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides.

Further, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, had directed the Ld.AO to estimate profit of 2% to 12.50% on alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has estimated 12.50% profit, whereas the Ld.CIT(A) has scaled down addition to 8.80% profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. In this case, the assessee is in the business of manufacturing and trading in playwood and other wood products. The assessee had declared 3.70% gross profit in regular books of accounts including on alleged bogus purchases. Further, the assessee claims that the ITAT, Mumbai Bench in case of Vaishali Prakash Muni vs. ITO, in ITA No. 379/Mum/2018 had considered an identical issue and considering facts has directed the AO to estimate 2% profit on alleged bogus purchases. The assessee further claims that fact of its case is identical to facts of case considered by the Tribunal in case of Vaishali Prakash Muni vs. ITO(Supra) and hence requested to estimate 2% profit on alleged

bogus purchases. We, therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, including in the case of Vaishali Prakash Muni vs. ITO (Supar) direct the Ld.AO to estimate 2% profit on alleged bogus purchases. Accordingly, we direct the AO to reduce additions to 2% profit on alleged bogus purchases.

7. In the result, appeal filed by the assessee for Asst. Years 2009-10 and 2010-11 are partly allowed and appeal filed by the reveune for A.Y. 2010-11 is dismissed.

Order pronounced in the open court on this 18/10/2019

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER**

Mumbai; Dated 18/10/2019
Thirumalesh 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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai