

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 6524/Mum/2018
(Assessment Year: 2011-12)**

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| I.T.O.-33(1)(3), Mumbai. | Vs. | M/s Chandan Enterprises, Shop No. 17, Lalji complex, Dahanukar Wadi, Kandivali (West), Mumbai-400067. |
| PAN/GIR No.AACFC 0879 M | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|-----------------------------------|
| Revenue by | Shri Kumar Padmapani Bora (Sr.DR) |
| Assessee by | None |
| Date of Hearing | 05/12/2019 |
| Date of Pronouncement | 06/12/2019 |

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-45, Mumbai dated 09/07/2018 for the A.Y. 2011-12 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. No body appeared on behalf of the assessee in spite of service of notice, therefore, the Bench decided to dispose off the appeal after hearing the Id. DR and considering the material placed on record.

3. In this appeal, the revenue is aggrieved by the action of the Id. CIT(A) for restricting the addition on account of bogus purchases to the extent of 12.5% which was made by the A.O. at 100%.

4. I have gone through the orders of the authorities below and found that the addition was made by the A.O. on the finding that the assessee is taking accommodation bill in respect of purchases. By the impugned order, the Id. CIT(A) has restricted the addition to the extent of 12.5% after having the following observation:

“5. **Ground no.1** relates to the addition made by AO of Rs.4,37,774 as unexplained expenditure u/s 69C. Following are the details of parties from whom the assessee obtained bogus purchases:

| S. No. | Name of the Dealers | Amount |
|--------|---------------------|-----------------|
| 1 | Dhaval Enterprises | 1,22,456 |
| 2 | Maruti Traders | 2,888 |
| 3 | Darshan Enterprises | 3,12,430 |
| | Total | 4,37,774 |

During the assessment proceedings, the furnished Audit Report, copies of P&L a/c & Balance Sheet, Details of purchases & sales, details of expense etc. The AO issued notices u/s 133(6) to the parties and most of the notices were returned with a remark left/ not known. The assessee was given an opportunity to explain the above transactions and discharge his onus by way producing parties. In response, the AR of the assessee made submission dated 21.03.2014. After considering the submission of the assessee, the AO did not accept the submission of the assessee holding that the goods have come into the business though the alleged suppliers stated that they only issued bills. The onus was on the assessee to prove the genuineness of the claim. Assessee was not able to explain the expenditure incurred, therefore it is an issue of expenditure. AO stated that there were no replies from the suppliers when notices u/s 133(6) were issued at the address given by the assessee only. Therefore, the AO added the entire purchases

of Rs.4,37,774 as unexplained expenditure u/s 69C to the total income of the assessee.

- 5.1 *I have considered the assessment order and the submissions of the appellant during the assessment proceedings. It is noticed that on account of non-availability of the suppliers at the given address and non-production of delivery challans, bank account statement, lorry receipts, transportation details, the AO added the entire purchases as unexplained expenditure u/s 69C of the Act. Section 69C reads.*

“Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof or the explanation, if any, Offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

As can be seen from the provision, for applying the section 69C, what is important is that there should be no explanation about the source of expenditure or that the explanation offered is not found satisfactory. In other words, the source of expenditure incurred for the expenditure in question is the heart of section 69C. Here in this case, the appellant filed purchase bills, ledger copies and source of expenditure for the purchases from the bank account. Therefore, in this case, the source of expenditure for purchases stands explained. Therefore invoking of section 69C in the present case is not proper.

- 5.2 *Though, the appellant was not able to produce the concerned parties before the Assessing Officer, fact remains that the appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is also a fact on record that the assessing officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could not have made the sales. Merely relying upon the*

information from the Sales Tax Department the Assessing Officer could not have treated the entire purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and there is no evidence before the AO that the payments made were again routed back to the appellant, the addition of bogus purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills for the material purchased locally. In other words the entities may not be the actual supplier but may have provided the bills for the material purchased locally. Therefore the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12.5% of such purchases of Rs.4,37,774 which comes to Rs.54,722. The AO is directed to modify the addition accordingly and the appellant gets part relief. This ground is partly allowed."

5. It is clear from the orders of the lower authorities that Id. CIT(A) has observed that the corresponding sales made by the assessee has not been doubted and the entire payment was made through account payee cheque, therefore, considering the savings on account of VAT and other incidental charges, the Id. CIT(A) restricted the addition to the extent of 12.5% of such purchases. Nothing was brought on record by the Id DR so as to persuade me to deviate from the findings of the Id. CIT(A) for restricting the addition to the extent of 12.5%.

Accordingly, I do not find any infirmity in the order of the Id. CIT(A) in restricting the addition to the extent of 12.5%. I uphold the same.

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

Order pronounced in the open court on 06th December, 2019.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/12/2019

*Ranjan

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