

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 6318/Mum/2018
(Assessment Year: 2010-11)**

I.T.O.-19(1)(1), Room No. 223,2 nd Floor, Matru Mandir, Mumbai- 400007.	Vs.	Shri Ankit M. Doshi, Shop No. 3, N.S. Deshmukh Bldg. 9, Dr. Desmukh Lane, Mumbai-400004.
PAN/GIR No.AJRPD 5582 G		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Assessee by	Shri Manish Ranka
Date of Hearing	05/12/2019
Date of Pronouncement	06/12/2019

आदेश / O R D E R

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

This is the appeal filed by the revenue against the order of the Id. CIT(A)-30, Mumbai dated 13/08/2018 for the A.Y. 2010-11 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the revenue is aggrieved by the action of the Id. CIT(A) for deleting the addition on account of bogus purchases made by the A.O.

3. I have heard the rival contentions of both the parties and perused the material available on record as well as the orders of the

authorities below and found from the record that the assessment was reopened as per information received from the Sales Tax Department regarding bogus purchase bill taking by the assessee. The A.O. made detailed enquiry with regard to genuineness of the purchases and concluded the same as per para 8 page 5 of his order. The A.O. observed that the independent enquiries/investigations were carried out by this office u/s 133(6) of the Act but in all the cases, the notices sent to the suppliers were returned unserved with the remark either "left", "not traceable", "not known" etc. The A.O. further observed that the assessee was asked to produce the said parties from whom such purchases claimed to have been made for examination but the assessee failed to do so. However, the addition so made by the A.O. by estimating profit at 12.5% from alleged bogus purchases were deleted by the Id. CIT(A) after observing as under:

"7.2 On going through the annexures attached to the VAT Audit Report (Form 704), it is seen that Annexure J relates to customer wise VAT sales. Sr. No. 96 of Annexure J reflects that an amount of Rs. 66,450/- has been paid by the seller viz M/s Ananddeep Metal towards VAT for the sales made to M/s Ryan Impex of Rs. 17,27,700/-. It is also mentioned in the proprietor of M/s Ryan Impex expired on 02/07/2010, copy of the death certificate dated 12/11/2010 was furnished. Therefore, the appellant could not have produced the supplier before the A.O. during the assessment proceedings. After weighing the evidence of pros and cons, I am of the opinion that the appellant has mitigated the shadow of doubt

cast on him and proved the genuineness of the transaction from the said party by producing the copy of VAT audit report. Therefore, the transaction is to be considered as genuine and cannot be termed as a bogus transaction. In view of the same the addition made by the A.O. @ 12.5% of the purchases of Rs. 17,27,700/- made from M/s Anand Deep Metals is deleted. The appeal is treated as 'Allowed'.

4. Against the above order of the Id. CIT(A), the revenue is in further appeal before the ITAT. It was vehemently argued by Shri Kumar Padmapani Bora, Sr.DR that the assessee could not produce any evidence during the course of assessment proceedings so as to prove the genuineness of the purchases. The Id. Sr.DR Shri Kumar Padmapani Bora also invited our attention to the fact that even the notices issued U/s 133(6) to the respective suppliers were returned unserved with the remark either "left", "not traceable", "not known" etc. As per the Id Sr.DR even the A.O. asked the assessee to produce the suppliers for examination but the assessee grossly failed to produce them. As per the Id. Sr. DR even the assessee could not file valid documents to prove the genuineness of purchases, like delivery challans, transport receipts, goods inward register maintained at godown. Under these facts and circumstances, as per the Id. Sr. DR, the A.O. has very reasonably estimated only 12.5% on such bogus purchases rather than making 100% addition. He further argued that without controverting the detailed findings of the A.O. recorded at page 3, para 8, the Id. CIT(A) has deleted the addition just by stating

that the assessee has mitigated the shadow of doubts cast on him and proved the genuineness of the transactions from the said party. He has also contended that the order passed by the Id. CIT(A) is perverse, therefore, not legally tenable.

5. On the other hand, the Id AR of the assessee has contended that the proprietor of supplier firm was expired, therefore, he could not be produced before the A.O. and his death certificate was also filed before the A.O. but the A.O. did not mention the same in his order. He further contended that as per Annexure-J, the customer wise VAT sales and the VAT paid thereon was duly filed before the lower authorities to prove the genuineness of the sales made by M/s Ananddeep Metal for the sales made to the assessee. The Id AR further defended the order passed by the Id. CIT(A) for deleting the entire addition made by the A.O. by estimating the profit at 12.5% on such alleged bogus purchases.

6. I have gone through the orders of the authorities below and considered the contention of Id. Sr.DR and Id. AR. I found that the Id. CIT(A) has deleted the entire addition without controverting detailed findings so recorded by the A.O. to the effect that the notice issued to the alleged party was returned unserved and even the assessee could not produce the party for examination. These findings of A.O. are at

page 3 para 8 of his order. Under these facts and circumstances, the Id. CIT(A) was not justified in deleting the entire addition just by observing that the assessee has mitigated the shadow of doubt cast upon him and proved the genuineness of the transaction from the said party by producing copy of VAT audit report. Accordingly, I am in agreement with the Id. Sr.DR Shri Kumar Padmapani Bora that without controverting the specific findings of the A.O., the Id. CIT(A) was not justified in deleting entire addition made on account of bogus purchases. Accordingly, I modify the order of the lower authorities and keeping in view the totality of facts and circumstances of the case, I uphold addition to the extent of 5% of the alleged bogus purchases.

7. In the result, appeal of the revenue is allowed in part.

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