

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 6512/MUM/2018 (A.Y: 2012-13)

Dy. Commissioner of Income-tax – 19(1) Room No. 203, 2 nd Floor Matru Mandir, Tardev Road Mumbai – 400 007	v.	M/s. Excelsior Motor & Electric Mechanic Works Ground Floor, Purshottam Building J.S.S. Road, Opera House Mumbai – 400 007 PAN: AAAFE0614N
(Assessee)		(Respondent)

Assessee by	:	Shri Mandar Vaidya
Department by	:	Shri R. Bhoopathi
Date of Hearing	:	04.12.2019
Date of Pronouncement	:	04.12.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 29, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.08.2018 for the A.Y. 2012-13 in restricting the disallowance to 12.5% of the purchases of ₹.3,75,750/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee is engaged in the business of "Repairs, Maintenance & Erection of Lifts", filed return of income on 28.09.2012 for the A.Y.2012-13 declaring income of ₹.38,28,171/- and the return was processed u/s. 143(1) of the Act. The case was selected for scrutiny and in the course of the assessment proceedings the Assessing Officer noticed that assessee made purchases of ₹.3,75,750/- from M/s. Ridhi Associates and required the assessee to prove the genuineness of the purchases made from the above party. The assessee vide letter dated 20.02.2015 submitted as under: -

"The assessee has purchased from M/S. Ridhi Associates 2 piston unit and 1 Pump unit The said material was required for supply and erection of the car lift for Navdurga Construction and was delivered at Shree Sumukh Heights, Village Oshiwara, Andheri (W), Mumbai-400102.

However it now transpired that name of the supplier appears in the Hawala dealer list as published by Sales Tax Department, Maharashtra. The assessee did purchase the material without having knowledge that the purchase party has issued a bogus bill. This is a case of genuine purchase and purchase party being bogus. The assessee is offering the addition of 12.5% of the purchase price to buy the peace with the department."

3. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases from M/s. Ridhi Associates as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. Therefore, the Assessing Officer treated the purchases of ₹.3,75,750/-

made from M/s. Ridhi Associates as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the submissions of the assessee and the decisions of the Ld.CIT(A) in assessee's preceding A.Ys. 2009-10, A.Y.2010-11 & A.Y.2011-12, estimated the Gross Profit element from such purchases at 12.5% following the decision of the Hon'ble Gujarat High Court in the case of the CIT v. Simit P. Sheth [356 ITR 451], against which the Revenue is in appeal.

4. Ld. DR vehemently supported the order of the Assessing Officer.

5. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions and evidences produced by the assessee and the averments in the Assessment Order and considering the decision of the Hon'ble Gujarat High Court in the case of the CIT v. Simit P. Sheth (supra) restricted the disallowance to 12.5% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

“3.3.3. On consideration of the facts available on record it is seen that information uploaded by the State Sales Tax authorities wherein the said Department put up lists of parties found to be engaged in issuing false bills without actual sale of goods, was the point of genesis for enquiry related to possible bogus purchases in a number of cases. In' case of a manufacturer, if the purchases are bogus, it must be possible to produce the goods as shown, even without use of

materials, the purchase of which is suspicious. If it is not possible to produce the goods as shown without consumption of these materials, these suspicious purchases cannot be held bogus unless production is also held bogus. Where purchase is held as bogus then the corresponding sales must also be held bogus as the material being purchased, production/sales is not possible, Therefore, without the corresponding production/sales being held bogus, it cannot be a case of bogus purchases. In other words, in a case where the purchase is shown being bogus and it is not possible to complete the corresponding sale transaction without a genuine purchase of such material, the sale must also be bogus. However, if it is possible to complete the sales or the production as shown, even without the material involved in the suspicious purchases, it needs to be shown whether the sale transaction was effected or production was done even without using such material or whether such materials were also used. Unless it is shown that such materials were not used in corresponding sales or the production as shown, purchases cannot be held bogus and it will be a case of purchase from bogus parties. However, if the material has been used in the sales, or as the case may be in production, it cannot be a case of bogus purchases. Rather it will be a case of purchase from bogus parties. Statements of hawala providers recorded by Sales Tax Authorities; affidavits filed by such suppliers before Sales Tax Authorities; absence of evidence in support of transportation/delivery of material etc., have been held less relevant as mere indicators and not decisive factors, to draw a conclusion regarding genuineness of purchases.

3.3.4. The suppliers were found to be engaged in providing bogus bill-without actual dealing of goods. The appellant made payments for these purchases by account payee cheques duly cleared through normal banking channel; and are duly reflected in the appellant's bank statements. Since the sales receipts was not doubted or disputed by the AO and has accepted the sales receipts of the appellant as it is, therefore, the AO cannot deny that purchases were not made by the appellant. What is under dispute is the purchases from the parties from whom bills have been taken and cheques have been issued to them. Purchases are not in dispute. but the parties from whom purchase are shown to have been made are disputed and suspicious.

3.3.5. The A.O. had made the addition as some of the suppliers were declared hawala dealers by the VAT Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise

has been done or findings recorded. There was no detailed investigation made by the AO himself. It is also found that the payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash back from the suppliers. Merely because the suppliers did not file some confirmation and documents, one cannot conclude that the purchases were not made by the assessee. This view, is supported by the decision of Nikunj Eximp Enterprises vs. CIT 216 Taxman 171 (Bom). To this extent I am in view with the appellant, if appellant has fulfilled its onus making the payment by cheque and has supplied the addresses of the sellers then it cannot be presumed that supplier were bogus simply because the sellers were not found at the given address. There is a considerable time gap between the period of purchase transaction and period of scrutiny proceedings. The AO has not brought any material on record to show that there is suppression of sales. It is basic rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales. Estimation of profit ranging from 12.5% to 15% has been upheld by the, Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Guj.) depending upon the nature of business.

3.3.6 During the course of appellate proceedings, the appellant had filed copy of the order of the Ld CIT(A)-30, Mumbai, wherein the said similar addition for A.Ys 2009-10, 2010-11 & 2011-12 of the assessee had been restricted to 12.5% of the purchases from alleged Hawala dealers, vide order dated 10.02.2015 & 17.04.2015.

3.3.7. Following the decision of the my predecessor in the appellant's own case on the same issue for the preceding assessment years 2009-10, 2010-11 & 2011-12 and considering the totality of the facts before me, as well as the judicial opinion available, I am inclined to agree with the appellant's stand that the addition is excessive. The A.O. has disallowed the amount of Rs.3,75,750/- being 100% on account of bogus purchases. I am of the view that estimation of profit at 12.5% would meet the ends of justice. The AO is directed, to restrict the addition to 12.5% of the alleged bogus purchases. This ground of appeal is therefore partly allowed."

6. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A). None of the findings and observations of the Ld.CIT(A) have been rebutted with evidences by the revenue and thus we do not see any

infirmary in the order passed by the Ld.CIT(A) in restricting the disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

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

Order pronounced in the open court on the 4th December, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 04/12/2019
Giridhar, Sr.PS

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

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum