

**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. 6542/MUM/2018 (A.Y: 2011-12)**

Income Tax Officer - 15(1)(3) Room No. 15-B, Aayakar Bhavan M.K. Road, Mumbai – 400 020	v.	M/s. BMT Industrial Machine Ltd., 15, Neelkanth Shopping Arcade 39 R.C. Marg, Chembur Mumbai – 400 071  <b>PAN: AACCB3166F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>	:	<b>Shri R. Bhoopathi</b>
	:	
<b>Date of Hearing</b>	:	<b>05.12.2019</b>
<b>Date of Pronouncement</b>	:	<b>05.12.2019</b>

**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) – 24, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.08.2018 for the A.Y. 2011-12 in restricting the disallowance to 12.5% of the purchases of ₹.1,23,750/- as against 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 manufacturing of Equipments for Dye-Chem Pharma and Allied Industries filed return of income on 20.09.2011 for the A.Y.2011-12 declaring income of ₹.1,97,718/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department, Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from Sales Tax Department, Mumbai, that the assessee has availed accommodation entries from M/s. Asian Steel who is providing accommodation entries without there being transportation of any goods. In the re-assessment proceedings, the assessee was required to prove the genuineness of the purchases of ₹.1,23,750/- made from M/s. Asian Steel by producing list of purchases with date, name and address of the purchase parties, amount of purchases. The assessee furnished only certain details regarding the purchases vide letter dated 06.09.2016. The Assessing Officer treated the purchases 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. It is the finding of the Assessing Officer that assessee

himself vide letter dated 25.08.2016 stated that M/s. Asian Steel has been accused as Hawala dealer by the Sales Tax Department. Therefore, Assessing Officer treated purchases of ₹.1,23,750/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the facts of the case and various submissions of the assessee restricted the disallowance to the extent 12.5% of the non-genuine purchases.

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off this appeal on hearing the Ld. DR on merits

4. Heard Ld. DR on merits and 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 of the assessee and the averments in the Assessment Order and following the decision of Hon'ble Gujarat High Court in the case of the CIT v. Simit P. Sheth [356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

*“2.4 I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.*

2.4.1 The only effective ground is in respect of the action of the Ld. AO in not accepting the purchases of Rs.1,23,750/- as genuine purchases based on the information received from Income Tax authorities. Briefly stated, the appellant is a company engaged in the business of trading. Ld. AO made the addition on the basis of information received from the investigation wing of Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who had confirmed to have given bogus bill to certain assessee including the appellant company. The bogus bill was in respect of 1 party. The appellant company was asked to submit the details of purported purchases made and to show cause why the same should not be disallowed as bogus purchases. The appellant filed their reply stating that purchases were made from regular parties supported by proper bills and the accounting entries and the payments were made by account payee cheques. The Ld.AO was not in agreement with the submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to establish that the purchase was actually made by them from these parties such as transportation documents, inward register etc. The investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing bills and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld.AO observed that these hawala operators were providing only accommodation entries and the appellant was also in the list beneficiaries. Accordingly, the Ld. AO treated the amount of Rs.1,23,750/- as bogus purchase and added the same to the total income of the appellant.

Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth, 2013 (356 ITR 451) had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. The head-note of the decision is reproduced as under-

*“Section 145 of the Income-Tax Act, 1961- Method of Accounting-Estimation of Profits [Bogus Purchases]- Assessment year 2006-17- assessee was engaged in business of trading in steel on wholesale basis- Assessing Officer having found that some alleged suppliers of steel to had not supplied steel to assessee but had only provided sale purchases made from said parties were bogus -He accordingly, added entire amount purchases to gross profit of assessee-Commissioner (Appeals) having found that assessee had indeed made om named parties but other parties from grey extent of 30% of purchase cost as probable*

*profit of assesses- Tribunal however, sustained addition to extent of 12.5%-Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income- Held, yes Whether hence, order of tribunal needed no interference- held, yes [Paras 6,7 &9 ] [ in favour of assesses]", [emphasis supplied]*

*Based on the evidence in hand in the form of a report from DIT (Inv), Mumbai the AO has asked the assessee to produce the parties along with evidence in order to verify the genuineness of purchase transactions. The assessee instead submitted the ledger accounts of the above parties and bank statements extracts evidencing the payments through bank cheque. In this case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers were genuinely existing. The assessee has not made any efforts to discharge the onus and failed to produce any of the parties, in spite of the opportunities given by the Ld.AO. The assessee could not satisfactorily substantiate and establish the fact that there were genuine purchases from these parties. There was a report from SIT(inv) stating that all the seller parties as per the list supplied by them are bogus including the parties appearing in the books of the appellant company and as stated above, the assessee has not made counter submission to show that those parties are really existing. The AO has brought to tax the bogus purchases by adopting the method @ 100% of such purchases keeping in view the gain made by the appellant due to purchases of material in grey market without bills and adjusting the purchases with the invoices taken from the hawala traders under discussions. Under These circumstances the AO cannot be found fault on this count. Even though the AO could not prove substantively that the amounts given to the sellers in cheque from have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of. Further, the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Further, as some of the names of the so-called bogus sellers out of the list supplied by the Sales Tax Department are appearing in the books of the appellant company, the link of involvement of appellant company getting bogus bills is established. Even though there are catena of cases decided by the jurisdictional ITAT which have decided the issue in favour of the assessee, they are not uniform in all the cases as they were decided as per facts and circumstances of that particular case before them.*

*I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (Supra). Therefore, thereby confirm*

*the disallowance to the extent ratio 12.5% amounting to Rs. 15,4687-  
The appellant succeeds partially and this, ground is partly allowed.*

2.5 *In the result, the appeal is partly allowed.”*

5. 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 infirmity in the order passed by the Ld.CIT(A) in sustaining the addition/disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

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

Order pronounced in the open court on the 05<sup>th</sup> December, 2019

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 05/12/2019  
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**