

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.5901 & 5902/M/2018
Assessment Years: 2009-10 & 2011-12**

Income Tax Officer- 21(2)(5), 1 st Floor, Room No.107, Piramal Chambers, Lalbaug, Mumbai – 400 012	Vs.	M/s. Prasad Engineering Works, Shed No.4, Gala No.6/7, Musa Killedar Compound, Keshavrao Khade Marg, Jacob Circle, Mumbai – 400 011 PAN: AAAFP4762G
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Ram Tiwari, D.R.

Date of Hearing : 17.09.2019
Date of Pronouncement : 22.10.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled two appeals have been preferred by the Revenue against the order dated 16.07.2018 the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10 & 2011-12.

ITA No.5901/M/2018

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) restricting the addition to 25% of the bogus purchases as against the 100% disallowance made by the AO.

3. The facts in brief are that the assessee filed the return of income on 29.09.2009 declaring nil income after setting off

brought forward losses to the extent of profit which was processed under section 143(3). Thereafter, AO received information from DGIT (Inv.) vide letter dated 01.01.2013 that the assessee is beneficiary of hawala accommodation entries which came to earth following investigation by the Sales Tax investigation, Government of Maharashtra and assessee's name was found to be appeared in the list of beneficiaries. Accordingly, the case of the assessee was reopened under section 147 of the Act after recording reasons to believe u/s 148(2) of the Act. During the course of assessment proceedings a detailed questionnaire was issued which was responded by the assessee and the reply of the assessee is reproduced in page 2 & 3 of the assessment order. The AO found that the assessee received accommodation entries from four parties as listed in page No.1 of the assessment order from whom the aggregate purchase of Rs.4,21,304/- were made. In order to verify the genuineness of the purchases, the AO issued notices under section 133(6) of the Act to the suppliers. However, only one party appearing at sl. no.1 responded and the notices were received back unserved in the case of remaining parties. Accordingly, the AO came to the conclusion that all these purchases were bogus as the same could not be verified and added the same under section 69C to the income of the assessee by framing assessment under section 143(3) read with section 147 vide order dated 28.02.2014.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of Rs.1,05,326/- and giving a relief of Rs.3,15,978/- by applying a ratio of 25% to assess the profit element in the bogus

purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 38 taxman 385 (Guj) and M/S Vijay Proteins Ltd Vs CIT [2015] 58 taxmann.com 44 (Gujarat) by observing that the entire purchases can not be added to the income of the assessee as the corresponding sales have not been disputes.

5. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case undoubtedly the assessee has indulged in bogus purchases from four parties aggregating to Rs.4,21,304/-. Though the assessee filed various evidences in support of the said purchases, however, the AO could not carry out the verification despite issuing notices under section 133(6) of the Act as in the case of 3 parties, the said notices were returned unserved and finally the AO added the entire purchases to the income of the assessee without doubting the corresponding sales. The Ld. CIT(A) allowed the relief by following the decision of CIT vs. M/s. Vijay Protein (supra) and CIT vs. Simit P. Sheth (supra) and thus partly sustained the addition to the extent of 25% of the bogus purchases. After considering the facts of the case, we do not find any infirmity in the order of Ld. CIT(A) who has rightly sustained the addition to the extent of 25% of the alleged purchases. The order of Ld. CIT(A) is held and the AO is directed accordingly.

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

ITA No.5902/M/2018

7. The issue involved in the present appeal is identical to the one as stated above in ITA No.5901/M/2018 for A.Y. 2009-10.

Therefore, our finding in ITA No.5901/M/2018 for A.Y. 2009-10, would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the Revenue is dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 22.10.2019.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.10.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.