

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5357/Mum/2018
(Assessment Year : 2012-13)**

ACIT-22(2) Room No.315, 3 rd Floor Piramal Chambers, Lalbaug, Parel Mumbai – 400 012	Vs.	M/s. Mehta Jaising Builders 398, Kirti Kunj, 14 th Road, Khar (W) Mumbai – 400 052
PAN/GIR No. AABTM7681C		
(Appellant)	..	(Respondent)

Revenue by	Ms. Kavita P Kaushik
Assessee by	None
Date of Hearing	06/01/2020
Date of Pronouncement	08/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5357/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-34, Mumbai in appeal No.CIT(A)-34/ACIT-22(2)/IT-32/2015-16 dated 28/06/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 20/03/2015 by the Id. Asst. Commissioner of Income Tax – 22(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue involved in the revenue appeal is that whether the Id. CIT(A) was justified in restricting the disallowance @25% on account

of bogus purchases as against 100% made by the Id. AO in the facts and circumstances of the case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. It is not in dispute that assessee is a civil contractor and builder and had derived income from business during the year under consideration. We find that the Id. AO observed that assessee had made purchases from M/s. Sudha Corporation for Rs.7,71,987/- whose name appeared in the list of hawala dealers in the records of Maharashtra Sales Tax department and based on that information, the Id. AO sought to treat the entire purchases made from such alleged hawala dealer to be bogus. Accordingly, the Id. AO added the entire purchases made from such party in the sum of Rs.7,71,987/- as bogus in the assessment. We find that the Id. CIT(A) had categorically observed that assessee had filed only certain details such as purchase bills, ledger account, bank statements etc, and no specific details that were required to establish the genuineness of purchases such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc. were filed. However, we find that the Id. CIT(A) had also observed that the construction activity had indeed taken place which goes to prove the fact of consumption of raw materials which were purchased from the alleged hawala dealer. Hence, it could be safely concluded that consumption of raw material has not been disputed by the Id. AO. We find that the Id. CIT(A) had relied on the judgment of Hon'ble Gujarat High Court in the case of Vijay Proteins Ltd., vs. CIT reported in 58 taxmann.com 44 (Guj HC) whose case was also the case of a manufacturer, wherein, disallowance of purchases was upheld at 25% of the value of the alleged purchases from bogus suppliers. We find that the Id. CIT(A) had placed reliance on this judgment and reduced the

disallowance of 25% on the value of purchases. The Id. DR was not able to point out whether assessee has preferred any appeal before this Tribunal against the said action of Id. CIT(A). In these circumstances, we have no other option to conclude that assessee had not preferred any appeal before this Tribunal against the action of the Id. CIT(A). Since the Id CITA had placed reliance on the decision of Hon'ble Gujarat High Court to justify his action, in these peculiar facts and circumstances, we do not deem it fit to interfere with the findings of the Id. CIT(A) and accordingly, the appeal of the revenue is dismissed.

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

Order pronounced in the open court on this 08/01/2020

**Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER**

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

Mumbai; Dated 08/01/2020
KARUNA, *sr.ps*

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai