

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 133/Mum/2019
(Assessment Year: 2010-11)**

I.T.O.-19(3)(3), 2 nd Floor, Room No. 201, Matru Mandir, Tardeo Road, Mumbai-07	Vs.	Shri Shyamsundar P. Chauhan, Prop of Pratap Steel, Shop No. 4, Tulsi Building, 178, Khetwadi Back Road, Mumbai-400004.
PAN/GIR No. AEFPC 1885 A		
(Appellant)	..	(Respondent)

Revenue by	Shri Akhtar H Ansari (DR)
Assessee by	Shri Raj Kumar Singh (AR)
Date of Hearing	14/01/2020
Date of Pronouncement	20/01/2020

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)-54, Mumbai dated 10/10/2018 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 only grievance of the revenue relates to Id. CIT(A)'s order giving further relief of G.P. declared by the assessee in respect of alleged bogus purchases.

3. Rival contentions have been heard and record perused. In this case, the A.O. reopened the assessment on obtaining information from the Sales Tax department with regard to assessee having taken bogus bills with regard to purchases. After making detailed enquiry and verifying the facts, the A.O. made addition by estimating profit at 12.5% of alleged bogus purchases. By the impugned order, the Id. CIT(A) after considering various judicial pronouncements and the facts of the case, directed the A.O. to give further relief of gross profit already declared by the assessee. Thus, the G.P. of 12.5% added by the A.O. was further reduced by the G.P. rate declared by the assessee. The precise observation of the Id. CIT(A) was as under:

“6.4 The submissions of the Id. Counsel are carefully considered. According to the appellant all the five parties from whom alleged bogus purchases were made were registered under the local sales tax law having VAT numbers allotted by the Sales Tax Department. The purchases affected from these parties are duly recorded in the books of the appellant and are evidenced by the invoices issued .by them. The stock register is also maintained by the appellant, which reflects the purchases and the sales. The goods purchased from these five parties have been sold to various customers and payment to the purchases parties have been made through proper banking channels. The appellant relied upon various case laws cited supra the facts of which can be distinguished from those of the present case.”

- 6.5 *The Ld.AO tried to verify the genuineness of the purchases by issuing notices u/s. 133(6) to the parties. However, the notices were returned back. The assessee could not file vital documents like delivery challans, transport receipts etc. Mere filing of the evidence in support of purchases and payment made through account payee cheques cannot be conclusive in a case where genuineness of the transaction is in doubt, as the purchases from the alleged Parties which are recorded in the books of accounts could not be proved to be genuine, the Ld.AO estimated a profit of 12.5% of the alleged bogus purchases as additional income of the assessee.*
- 6.6 *As the parties could not be produced and no confirmations were filed from the parties, the genuineness of the purchases remained to be established beyond doubt. Therefore, it can be presumed that the assessee had made purchases because the corresponding sales have been disclosed and accepted by the AO. But the purchases may have not been made from the alleged hawala parties but from grey market, thereby resulting in additional profit to the assessee. Therefore, a reasonable profit element has to be added to the income of the 'assessee which has been estimated at 12.5% by the Ld.AO.*
- 6.7 *Coming to the addition made, the Hon'ble ITAT, Ahmedabad 'C' Bench in the case of Vijay Proteins Ltd. Vs ACIT 58 ITD 0428 held that in similar circumstances, 25% of the purchase price accounted through fictitious invoices has to be disallowed. The goods must have been received from other parties. The likelihood of the purchase price of these alleged purchases being inflated could not be*

ruled out and therefore the Hon'ble High Court has upheld the decision of CIT (A) and the ITAT disallowing 25% of the payments made to such parties. The Hon'ble High Court of Ahamedabad in the case of CIT vs Simit P. Sheth 365 ITR 0451 held that once the sale is accepted by the AO, the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. The estimation varies with the nature of business and no uniform yardstick could be adopted.

6.8 *The Ld.AO has estimated this profit at 12.5%. As the purchases could not be established as genuine, the estimation made by the Ld.AO of 12.5% of the alleged bogus purchases is confirmed. The action of the Ld.AO in estimating the GP at 12.5% of the alleged bogus purchase is upheld. However, the Ld.AO is directed to reduce the GP already declared by the assessee on these alleged bogus purchases. These grounds of appeal are partly allowed."*

4. I have gone through the orders of the authorities below and found that the A.O. has estimated profit at 12.5% of alleged bogus purchases in view of the fact that corresponding sales were not doubted. The Id. CIT(A) after following the decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P Sheth 365 ITR 0451 wherein it has been held that once the sale is accepted by the A.O., the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the

assessee. Accordingly, further given relief of G.P. already declared by the assessee from 12.5% so estimated by the A.O. The detailed findings so recorded by the Id. CIT(A) has not been controverted, accordingly, I do not find any reason to interfere in the order of the Id. CIT(A), hence, uphold the same.

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

Order pronounced in the open court on 20th January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/01/2020
*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