

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND SHRI RAJESH
KUMAR, ACCOUNTANT MEMBER**

**ITA No.37/MUM/2019
Assessment Year: 2010-11**

ITO-15(3)(1), Mumbai	Vs.	M/s. Techedge Air Engineering Pvt. Ltd. 5 th Floor, Siddeshwar Arcade, Opp. Suraj Waterpark, Ghodbunder Road, Thane, Mumbai, Pin-400615. PAN: AACCT1710F
(Appellant)		(Respondent)

Present for:

Appellant by : R. Bhoopati, CIT-DR
Respondent by : None

Date of Hearing : 09.01.2020

Date of Pronouncement : 29.01.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 17.09.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The only issue raised by the Revenue in the grounds of appeal is against the order of CIT(A) restricting the bogus purchase addition to 25% as against 100% addition by the AO of Rs.26,43,839/-.

3. At the time of hearing neither the assessee nor his authorized representative appeared to attend the hearing nor any adjournment

application was received despite of serving of notice through RPAD. Therefore, we are proceeding to decide this appeal on merits after hearing the ld. DR.

3. The facts in brief are that the assessee filed his return of income on 08.12.2017 declaring total income of Rs.17,15,655/- which was processed u/s 143(1) of the Act. Thereafter the AO received information from DGIT (Inv.), Mumbai that the assessee is beneficiary of hawala purchase entries to the tune of Rs.26,43,839/- and accordingly reasons were recorded for issuing a notice u/s 148 of the Act. The AO issued show-cause notice to the assessee to prove the genuineness of the purchase by furnishing details of purchases, bills, vouchers and payment details failing which why the same should not be added to the total income of the assessee. Accordingly the assessee filed a copy of bills, vouchers and other evidences to prove the genuineness of the purchases. However the reply of the assessee did not find favour with the AO. The AO observed that the assessee has made sales corresponding to the bogus purchases and therefore presumed that the assessee has made purchases from the grey market at lower rates and after relying the decision of Hon'ble jurisdictional High Court in the case of Export Credit Guarantee Corporation of India Ltd. 350 ITR 651(Bombay) and Ram Bahadur Thakur Ltd., 261 ITR 390 treated the purchases as non genuine and added the same to the income of the assessee by making an addition of Rs.26,43,839/- by framing assessment u/s 143(3) r.w.s. 147.

4. In the appellate proceedings, the ld. CIT(A) partly allowed the appeal of the assessee by restricting the addition to 25% of the alleged bogus purchases and thus partly allowed the appeal of the assessee after taking into account the contentions and submissions made by the assessee during the course of appellate proceedings and

by following the decisions of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth reported in 356 ITR 451.

5. After hearing the ld. DR and perusing the material on record, we observe that in this case the undisputed facts are that the assessee was beneficiary of hawala purchases entries to the tune of Rs.26,43,839/-. Though the assessee has tried to substantiate and prove the genuineness of the purchases by filing the details of purchases , bills ,vouchers and bank statement etc however the AO was not satisfied qua the genuineness as these were made from hawala dealers as brought out by the Sales Tax Department Govt. of Maharashtra thereby making an addition of Rs.26,43,839/- . We note that the AO has not doubted the genuineness of the sales. The ld. CIT(A) reduced the said addition by applying 25% on bogus purchases bogus purchases by following the decision of CIT vs. Simit P. Sheth(supra). The ld CIT(A) has sustained the addition equal to 25% which is on the higher side however the assessee is not in appeal against the order of appellate authority. We are therefore inclined to uphold the order of the ld. CIT(A) on this issue by dismissing the appeal of the Revenue.

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

Order pronounced in the open court on 29.01.2020.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

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

Mumbai, Dated: 29.01.2020.

RS, 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.

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
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6.	Date of pronouncement			Sr.PS
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9.	Date of dispatch of Order			