

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 528/Mum/2019
(Assessment Year: 2011-12)**

D.C.I.T.-10(2)(1), 5 th Floor, Room No. 509, Aaykar Bhawan, Churchgate, Mumbai- 400020.	Vs.	M/s Jayshree Powervolt Pvt. Ltd., Jayshree Sadan, Old Nagardas Road, Mumbai- 400069.
PAN/GIR No.AAACJ 1459 M		
(Appellant)	..	(Respondent)

Revenue by	Shri R.K. Gubgotra (DR)
Assessee by	None
Date of Hearing	03/02/2020
Date of Pronouncement	04/02/2020

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)-17, Mumbai dated 28/11/2018 for the A.Y. 2011-12 in the matter of order passed U/s 143(3)/154 of the Income Tax Act, 1961 (in short, the Act).

2. I have gone through the orders of the authorities below and found that the assessee is a private limited company and engaged in the manufacture of electrical transformers. The A.O. reopened the assessment on getting information from the Sales Tax Department. During the reassessment proceedings, the A.O. added 100% of such

purchases in assessee's income. By the impugned order, the Id. CIT(A) has restricted the addition to the extent of 25% after having the following observation:

“6.5 The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the assessee. It is also seen that putting an onus on the AO to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A. Sanghavi (supra). If the bogus purchases are unproved and are declared consumed by assessee itself in its trading, manufacturing or non-trading activities, the entire addition can be made as it only goes to inflate the expenses of the assessee. (refer M/s. Shoreline Hotel Pvt. Ltd vs. CIT Central-I in ITA No.964/M/2015 dated 19.06.2015).

6.6 In view of the above discussion, it is seen that the assessee is unable to substantiate its purchases from the Hawala Dealers and also unable to prove consumption of material. In this case, the books of accounts have not been rejected by the AO. Thus, it would be a case of purchases made from the bogus parties, rather than a case of bogus purchases. There is nothing to show without making purchases, it was possible for the assessee to quote the sales declared which have not been discussed by the AO. On the other hand, the appellant had failed to establish the genuineness of the purchases made from the parties claimed. This would indicate that the purchases were made from the open market without insisting for genuine bills and in such cases, the suppliers would be willing to sell at a much less rate that they would have charged otherwise. Resultantly, the gross profit declared by the appellant cannot be relied upon considering

the numerous defects owing to accounting of purchases from Hawala Dealers, related expenses, non production of primary documents before the AO or during the appellate proceedings the books of account of the assessee is not reliable and deems to be rejected and Gross Profit needs to be estimated.

Considering the ratio given in various cases laws discussed in earlier paragraph, the estimation of gross profit varies with the nature of business and no uniform yardstick could be adopted. Under the facts and circumstances of the instant case, it is reasonable to estimate the gross profit on alleged bogus purchases @ 25% as the nature of the business of the appellant is manufacturing. The ratio of Vijay Proteins (Supra) is applicable. Thus, disallowance of purchases on account of bogus purchase from suspicious dealer is confirmed in principle; however, it is reduced to 25% of Rs. 11,42,475/- of the alleged purchases from such suspicious dealers.”

The detailed finding so recorded by the Id. CIT(A) for restricting the addition to the extent of 25% has not been controverted by the Id. DR by bringing any positive material on record. In view of the above facts and circumstances, I do not find any reason to interfere in the order of the Id. CIT(A) and I uphold the same.

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

Order pronounced in the open court on 04th February, 2020.

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

Mumbai; Dated 04/02/2020
*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