

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 6748/Mum/2018 (Assessment Year 2009-10)

ITO-33(2)(1) Room No. 613 6 th Floor, C-12 Pratyakshakar Bhavan BKC, Mumbai-400051.	Vs.	M/s. Jitendra Paper Industries 04, Radha Dalvi Nagar C.P.Road, Kandivali-E Mumbai-400 101. PAN : AAAFJ0144J
(Appellant)		(Respondent)

Assessee by	Shri Parakash Jhunjunwala
Department by	Shri P. Bhoopathi
Date of Hearing	11.12.2019
Date of Pronouncement	04.02.2020

ORDER

This appeal by the Revenue is directed against the order of learned CIT(A) dated 27.4.2015 pertains to A.Y. 2009-10.

2. The issue raised are :-

1. 'On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in randomly restricting the disallowance at 12.5% of the bogus purchase without any proper reason or logic.'
2. 'On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in giving the relief of 1 2.5% of the bogus purchase to the assessee without appreciating the fact that the Authorised Representative of the assessee voluntarily accepted the addition of 25% of the bogus purchase.'
3. "The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."

3. Briefly stated facts in this case are that the Assessing Officer has made 100% disallowance for bogus purchases amounting to Rs. 12,87,037/- with respect to information received from sales tax department for bogus purchases from two parties namely M/s. Samir Trading Corporation and M/s. Arihant Trading Company. In course of assessment, the assessee stated before the Assessing Officer that there was no dealing from the above mentioned parties during F.Y. 2008-09. In support the assessee supplied party-wise purchase details. The Assessing Officer did not consider this aspect of assessee's submission and in routine fashion noted that notice sent to the alleged bogus suppliers were returned and hence made impugned disallowance.

4. Upon assessee's appeal learned CIT(A) appreciated the fact that when there was no purchase, there was no question of making disallowance of bogus purchase. Learned CIT(A) observed that nobody can prove the negative that he has not done something. That the assessee has duly filed all the details of his business and all purchases and stated that he did not make any purchases, which the Assessing Officer brushed aside and simply based on the information of the sales tax department added entire purchases. Hence, on finding that there was no purchase from the said party which bogus purchases were disallowed by the Assessing Officer, learned CIT(A) deleted the addition.

5. Against this order assessee is in appeal before ITAT. I have heard both the counsel and perused the records. I find that in there is no infirmity in the order of learned CIT(A). When there is no purchase from concerned party there was no question of disallowance of bogus purchases from the said party. Hence, there is no infirmity in the order of learned CIT(A). Moreover, as rightly pointed out by learned Counsel of the assessee the ground raised by the Revenue itself has misplaced. It talks about the learned CIT(A) sustaining 12.5% of bogus purchase as against assessee accepting voluntarily 25% bogus purchase. Hence, ground itself is misconceived and not arising out of the order of learned CIT(A).

Hence, this appeal filed by the Revenue stands dismissed.

Order has been pronounced in the Court on 4.2.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/2/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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