

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

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No.723 & 724/Mum/2019  
(Assessment Year: 2009-10 & 2011-12)**

M/s Rosana Tools, A-1, Kesarban, 3 <sup>rd</sup> Road, Santacruz (E), Mumbai- 400055.	Vs.	I.T.O. 22(3)(2) Room No. 306, Piramal Chamber, Lalbaug, Mumbai- 400012.
<b>PAN/GIR No.AAAFR 5719 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri R.K. Gubgotra (JCIT-DR)
<b>Date of Hearing</b>	<b>04/02/2020</b>
<b>Date of Pronouncement</b>	<b>13/02/2020</b>

**आदेश / ORDER**

**PER: R.C. SHARMA, A.M.**

These appeals by the assessee are directed against the common order dated 29/06/2018 of Id. CIT(A)-34, Mumbai for the A.Y. 2009-10 and 2011-12 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 both these appeals, the assessee has raised common grounds, therefore, for the sake of convenience, grounds taken for the A.Y. 2009-10 is reproduced as under:

- "1. The Learned Income Tax Officer erred in adding to the Income of the assessee an amount of Rs.2,16,9137- being 12.50% of the alleged non genuine purchase of Rs.17,35,301/- on account of unexplained purchases u/s. 69C and the CIT Appeals erred in confirming the addition.*

- 2) *Your Petitioner humbly submits that all documents and evidences (with in the control of your petitioner) such as copies of the purchase bills, copies of ledger accounts of the various parties in the books of your petitioner, copies of bank statements confirming the payments made were furnished to the Learned Income Tax Officer during the scrutiny assessment.*
- 3) *Your petitioner humbly submits that on the basis of information received (which cannot be confirmed/authenticated) from the Investigation wing of the Sales Tax department the Learned Income Tax Officer unfairly and unjustly added to the Income of your petitioner u/s. 69C the amount of Rs.2,16,913/- and the CIT Appeals confirmed the same.*
- 4) *Your Petitioner Prays that the disallowance of Rs 2,16,913/- be deleted and/or set aside.*
- 5) *Your petitioner prays that the delay in filing the Appeal due to demise of one of the partners (mother of managing partner) and the ill health (due to cancer) of the managing partner's wife be condoned and the Appeal be admitted.*
- 6) *Your Petitioner craves leave to add, alter, amend and/ or withdraw any/ or all the above grounds of appeal."*

2. No body appeared on behalf of the assessee in spite of issue and service of notice, even no adjournment petition was filed. Accordingly, the Bench decided to dispose off the appeals after considering the material placed on record.

3. I have gone through the orders of the authorities below and found that the A.O. has reopened the assessment on getting information from Sales Tax Department regarding assessee taking accommodation bills with regard to the purchases without taking delivery of goods. After reopening, the A.O. made detailed enquiry and after issuance of notice

U/s 133(6) of the Act to all the suppliers, the A.O. observed that these parties from whom the purchases were made were not found at the existing address given by the assessee. Notice issued U/s 133(6) of the Act was returned unserved. Thereafter considering the nature of assessee's business, which was not simply trader but engineer and contractor and applying the judicial pronouncement in the case of Vijay Proteins Vs CIT, the A.O. estimated the profit @ 12.5% on such bogus purchases. By the impugned order, the Id. CIT(A) has confirmed the addition after having the following observation.

*“6.8. In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from 5 of the hawala operators totaling to Rs. 17,35,301/-. The A.O. attempted to verify such parties by making independent enquiries u/s. 133(6) of the I.T. Act, 1961. All these verification letters came with the remark 'Not known/left'. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase 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 could not be submitted before the A.O.. Nor the Principle Officer of these concerns were produced before the A.O. for examination. However, it is also a fact that the*

*A.O. has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such accommodation entry. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The A.O. has rightly disallowed part of the purchases claimed such hawala dealers. In the present case, the ratio of Vijay Protein, a manufacturing concern cannot be applied since the appellant is a business concern doing trading. In my opinion, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. In view of the above the disallowance of Rs. 2,16,913/- being 12.5% of bogus purchases made by the A.O. is justified and upheld. Hence, this ground is dismissed."*

4. It is clear from the orders of the lower authorities that after making detailed enquiry, the A.O. has just added profit element of the said bogus purchases at 12.5%. The Id. CIT(A) has dealt with the issue threadbare from page 3 to 24 of his appellate order. The Id. CIT(A) has recorded a finding that all the verification letters sent by the A.O. U/s 133(6) of the Act were returned back with the remark "Not Known/left" . The Id. CIT(A) has decided the issue after considering the detailed written submissions dated 13/06/2018 so filed by the assessee. The

detailed finding so recorded by the Id. CIT(A) after considering judicial pronouncements in the case of Simit P Seth 356 ITR 461 (Guj), are as per material on record which do not require any interference on our part, hence, we uphold the same.

5. In the result both the appeals of the assessee are dismissed.

Order pronounced in the open court on 13<sup>th</sup> February, 2020.

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

Mumbai; Dated 13/02/2020  
\*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**