

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6116/MUM/2018
Assessment Year: 2010-11**

M/s Yunicorn Synthetics Mills
Pvt. Ltd.,
Block No. 2A, Jai Hind Bldg No.
1, Dr. A.M. Road, Bheleshwar,
Mumbai-400002.

ITO-4(3)(3),
Vs. Mumbai.

PAN No. AAACY03406A
Appellant

Respondent

Assessee by : Ms. Ritika Agarwal, AR
Revenue by : Mr. V. Vinod Kumar, DR

Date of Hearing : 20/02/2020
Date of Pronouncement : 24/02/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-9, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. The CIT(A) has erred in law and on facts in upholding reopening of assessment as the requisite conditions of reopening have not been fulfilled.
2. The CIT(A) has erred in law and on facts by upholding the validity of reassessment order based on the third party information received by Respondent
3. The CIT(A) has erred in law and on facts in holding that the plant and machinery has been purchased from grey market at a low cost although accepting the veracity of the voluminous material filed in support of the transaction, including bank certificate.
4. The CIT(A) has erred in law and on facts in upholding the validity of the reassessment order which is based solely on the information provided by the Investigation wing and without any independent enquiry by the Respondent.
5. The CIT(A) has erred in law and on facts by upholding the charging of interest u/s 234B and 234C of the Income Tax Act, 1961.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 27.09.2010 declaring total income of Rs.26,61,770/-. The assessee imports and trades in spectacle frames. During the course of assessment proceedings, the Assessing Officer(AO) observed that the assessee had purchased plant & machinery of Rs.1,66,39,941/- from M/s Madhuvan Corporation. Against the said purchases, Punjab National Bank, Bombay Samachar Marg Branch had directly made RTGS/Account payee payment to said party from the term loan sanctioned of Rs.42,04,818/- (18.01.2010), Rs.78,50,102/- (22.01.2010) and Rs.39,45,080/- (25.01.2010) and the balance payment has been made from

the cash credit account in the same bank of the assessee of Rs.6,39,941/- (25.01.2010). However, the AO observed that though the assessee had produced the bills and payments made by cheque, details of finance by Punjab National Bank, the assessee failed to prove the genuineness of the purchase made from the abovementioned party. Thus observing that the assessee failed to discharge the onus cast upon him, the AO disallowed the claim of depreciation of Rs.25,88,435/- made by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 29.08.2018, the Ld. CIT(A) by following the principles laid down in CIT v. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj) restricted the disallowance to 50% thereof i.e. upto Rs.12,94,217/-.

5. Before us, the Ld. counsel for the assessee relies on the order of the Tribunal in assessee's own case for AY 2011-12. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. As mentioned earlier, it has been clearly stated by the Ld. CIT(A) that the assessee had purchased plant & machinery of Rs.1,66,39,941/- from M/s Madhuvan Corporation. Against the said purchases, Punjab National Bank, Bombay Samachar Marg Branch had directly made RTGS/Account payee payment to said party from the term loan sanctioned of Rs.42,04,818/- (18.01.2010), Rs.78,50,102/- (22.01.2010) and Rs.39,45,080/- (25.01.2010) and the balance payment has been made from the cash credit account in the same bank of the assessee of Rs.6,39,941/- (25.01.2010). Further it is mentioned by the Ld. CIT(A) that the assessee filed a copy of the term loan

statement from Punjab National Bank, copy of purchase invoice of plant & machinery, copy of delivery challan, ledger account in the books of the assessee and the assessee's affidavit confirming that the transaction of purchases are genuine and not bogus accommodation bills and paid by cross account payee cheque/RTGS and that the said machinery was installed and put to use etc.

We are of the considered view that the assessee has discharged its onus on the above. The AO, without making even any preliminary inquiry has made disallowance of depreciation of Rs.25,88,435/-. Further, the Ld. CIT(A), on presumptions, has sustained 50% of the disallowance which comes to Rs.12,94,218/-.

It is relevant to mention here that similar issue arose before the ITAT 'SMC' Bench, Mumbai in assessee's own case for 2011-12. The Tribunal *vide* order dated 06.11.2019 in ITA No. 6117/Mum/2018 allowed the appeal filed by the assessee on the ground that :

"9.3 We also note that the assessee before the authorities below has furnished the necessary details of the party in the form of purchase invoice and delivery challan which are placed on pages 58 to 70 of the paper book and the authorities below has not pointed out any defect therein. To our mind, the assessee has discharged his onus by furnishing the details of the party and he cannot be penalized for not producing the party before the authorities below. As such, the authorities below were empowered under the provisions of the Act i.e. under section 133(6)/131 of the Act to take confirmation/ enforce the attendance of such party but they failed to do so.

In view of the above, we are not in agreement with the orders of the authorities below. Accordingly, we set aside the order of the learned CIT (A) and direct the AO

to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.”

Facts being identical, we follow the order of the Co-ordinate Bench and delete the disallowance of Rs.12,94,217/- confirmed by the Ld. CIT(A).

7. In the result, the appeal is allowed.

Order pronounced in the open Court on 24/02/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/02/2020

Rahul Sharma, Sr. P.S.

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai