

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

**BEFORE SHRI R.C. SHARMA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA NO. 1175/MUM/2019 (A.Y: 2011-12)

Income Tax Officer Ward – 31(3)(2) Room No. 403D, 4 th Floor Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E), Mumbai - 400 051	v.	M/s. Award Gallery 201, NIGOS Building CAMA Industrial Area Goregaon(E) Mumbai – 400 063 PAN: AAEFT7326A
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Satish Chandra Rajore**

Date of Hearing : **27.02.2020**
Date of Pronouncement : **13.03.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 42, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 20.11.2018 for the Assessment Year 2011-12.

2. Revenue has raised the following grounds in its appeal: -

i. "On the facts and in the circumstances of the case the Ld.CIT(A) erred in restricting the 15% addition of Rs. 2,19,800/- made by the AO on account of bogus purchase to 12.5%, without

considering the decision of Supreme Court in the case of N. K. Proteins Ltd., wherein the Hon'ble Apex Court has confirmed the Hon'ble High Court decision of upholding the 100% addition made by the AO on account of Bogus Purchase."

ii. "The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the A.O. be restored."

iii. "The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. Briefly stated the facts are that, the assessee engaged in the business of manufacturing of Trophis filed its return of income for the A.Y.2011-12 on 29.09.2011 declaring income of ₹.17,59,136/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from DGIT(Inv.), Mumbai, that the assessee has availed accommodation entries from M/s. Unique Enterprises and M/s. Parikh Traders who are said to be providing accommodation entries without there being transportation of any goods. In the re-assessment proceedings, the assessee was required to prove the genuineness of the purchases made from the above parties which are referred to in the Assessment Order. In reply assessee produced copy of tax invoice, ledger extract of the parties,

and details of cheque payments made to these parties and submitted that the purchases are genuine.

4. The Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "unserved" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated purchases of ₹.14,65,332/- made as non-genuine from these parties. However, the Assessing Officer referring to the decision of the Hon'ble Gujarat High Court in the case of CIT v. Bholanath Poly Fab (P) Ltd in ITA.No. 63 of 2012 dated 23.10.2012 estimated the profit element @15% and added ₹.2,19,800/- to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 12.5% of the non-genuine purchases.

5. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off this appeal on hearing the Ld. DR on merits.

6. Ld. DR vehemently supported the order of the Assessing Officer.

7. Heard Ld. DR on merits and perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the decision of Hon'ble Gujarat High Court in the case of the CIT v. Simit P. Sheth [356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

“8.13. In the present case, the adverse evidence and material, relied upon in the order, to reach the finality, were disclosed to the assessee. However, the appellant could not establish the genuineness of the transaction either on the basis evidence in support of delivery of goods, or by producing the parties from whom the purchase were made. Hence the purchase transaction cannot be considered as genuine.

8.14. Nonetheless, from the facts recorded above in this case, it has emerged that the material in question was really received because without receiving such material the corresponding sales would not have been possible. However, the material was not received from the parties from whom it is shown to have been purchased as there is no independent third party evidence on record which can support the transaction. Thus, an inference can be drawn that such material were purchased from different sources which were exclusively within the knowledge of appellant and none else. It is well known that if purchases are made from open market without insisting from the genuine bills, the suppliers may be willing to sell those products at a much lower rate as compared to the rate at which they may charge in case the dealer has to give a genuine sale invoice in respect of that sale and supply the goods. There may be various factors due to which there is bound to be a substantial difference between the purchase price of unaccounted material and rate of purchase of accounted for goods. There may be a saving on account of sales-tax and other taxes and duties which may be leviable in respect of manufacture of sale of goods in question. The suppliers or the manufacturers make a substantial saving in the income-tax in respect of income from sale of unaccounted goods produced and sold by them. This may also be one of the factors due to which the

seller may be willing to charge lower rates for unaccounted goods as compared to accounted for goods.

8.15 Apparently, the motive behind obtaining bogus bills is inflation of purchase price so as to suppress the profits and the profit from such transactions varies with nature of business and no uniform yardstick can be adopted for estimation of such profit.

8.16. The estimations of profit embedded in accommodation entries of bogus purchases transactions @ 12.5% out of purchase price accounted through bogus invoices have been upheld as the fair profit rate out of the bogus purchases by the Hon'ble Courts and Tribunals.

8.17 In the case of CIT v. Simit P Sheth (2013) 356 ITR 451 (Guj)(HC), the Hon'ble High Court has upheld disallowance @12.5% of such purchases.

8.18 The appellant is a dealer and under identical facts, the Hon'ble ITAT, Bombay Tribunal (H) has upheld disallowance @12.5% of such purchases in the decision date 4th April, 2017 in the case of Ratnagiri Stainless Pvt. Ltd. vs. Income Tax Officer in ITA No. 4463/Mum/2016 as well as in Income Tax Officer 5 (3) (1) vs. M/s RBS Copper Products Pvt. Ltd. in ITA Nos. 1057 & 1058 dated 04/07/2017. Further, in the decision in ITA No. 6555/Mum/2017 for AY 2009-10 in the case of M/s Muhta Markfin (P) Limited Vs. ITO-5(2)(3), the Hon'ble ITAT, Mumbai Bench has held as under:

"We are of the considered view that as the profit element accounted for by the assessee in its regular books of accounts pertains to the profit which it would have made from selling the goods under consideration, therefore, the same would have no bearing on the qualification of the monetary benefit involved in making of purchases by the assessee at a lower price from the open/grey market, as in comparison to purchases made from registered dealer".

8.19. In view of the above, it would be reasonable to estimate the profit embedded in the accommodation entries of bogus purchases amounting to Rs. 14,65,332/- @ 12.5 % on sue' purchases. Hence, an addition to the extent of Rs. 1,83,167/- is sustained. The appellant gets relief of Rs. 36,633/-(Rs. 2,19,800/-minus 1,83,167/-).

8.20. Accordingly, all the the grounds of appeal are part allowed."

8. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A). None of the findings and observations of the Ld.CIT(A) have

been rebutted with evidences by the revenue and thus we do not see any infirmity in the order passed by the Ld.CIT(A) in restricting the addition/disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

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

Order pronounced in the open court on the 13th March, 2020

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

Mumbai / Dated 13/03/2020
Giridhar, Sr.PS

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

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum