

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1189/MUM/2019 (A.Y: 2010-11)

Income Tax Officer Ward – 17(1)(1) Room No. 115, 1 st Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	Shri Arvind Ramswaroop Modi M-7, Gokul Building 90-A, Baroda Street Masjid Bunder Mumbai – 400 009 PAN: AHRPM1154B
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Kiran Unavekar**

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) – 55, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.12.2018 for the Assessment Year 2010-11.

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

1. *"Whether on the facts and circumstances of the case and in law, the Ld. C.I.T. (A) was justified in restricting the addition made by the AO to 8% of bogus purchases as against the addition made at 12.5% of the bogus purchases, ignoring that the notices u/s 133(6) issued by the*

Assessing Officer to the alleged suppliers were returned unserved with the observation "left / returned / not known" and the assessee was also unable to prove the genuineness of the purchases either by producing the suppliers for examination or by furnishing other substantiating documents which were required by the Assessing Officer?

2. Whether on the facts and circumstances of the case and in law, the Learned CIT (A) erred in overlooking the fact that the addition made by the AO was based on credible information received from the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchases from them

(The case falls under exception 10(e) of the Circular NO. 03/2018 dated 11.07.2018 as amended on 20.08.2018)

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

3. Briefly stated the facts are that the assessee is engaged in the business of Trading in Iron and Steel filed his return of income for the A.Y.2010-11 on 07.10.2010 declaring income of ₹.9,25,750/- 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. Om Enterprises which is 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 M/s. Om Enterprises. In

reply assessee furnished copies of bank statements, copy of ledger account of all the parties, copies of purchase invoices from the party and copies of sales invoices as issued by the assessee against the purchases made and submitted that the purchases made from the parties are genuine.

4. Not convinced with the submissions of the assessee 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 "left/refused/not known" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated purchases of ₹.1,09,72,937/- made from M/s. Om Enterprises as non-genuine. The Assessing Officer estimated the profit element from such purchases at 12.5% and disallowed ₹.13,71,617 while computing the income. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 8% 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 restricted the disallowance to 8% of the non-genuine purchases. While holding so the Ld.CIT(A) observed as under: -

“6.2. I have considered the facts of the case, AO's order and submissions of the appellant. On perusal of the AO's order, it is found that an information was received by the AO from the DGIT(Inv.), Mumbai that a new hawala provider is identified during the year i.e. M/s. Om Enterprises who has given accommodation entries to the assessee and the assessee is a beneficiary of bogus purchases to the tune of Rs.1,09,72,937/- from the party. Based on this information, the AO reopened the case by issuing notice u/s.148 to the appellant. The appellant did not object to the reopening of the case during the assessment proceedings. Subsequently, statutory notices were issued to the appellant for furnishing of certain details. The AO also conducted independent enquiries by issuing notice u/s.133(6) to the party but the notice came back unserved. The appellant has failed in discharging his onus to present the parties before the AO for cross verification and examination. The appellant has submitted that payments to supplier was made through banking channel. In this regard, the AO relied on the decision of Hon'ble ITAT Jaipur in case of M/s.Kachwala Gems vs, JCIT (2006) CR (Supreme Court) 585; 288 ITR 10 (SC), wherein it is held that even payment by banking channel is not sufficient to establish the genuineness of the

transactions. Also, the assessee showed sales against the purchases. The appellant has failed to corroborative evidence to prove the genuineness of the transactions. No contemporaneous record establishing the receipt of goods purported to have been purchased from the party have been furnished by the appellant.

In view of the above, I am in complete agreement with the views of the AO that since sales cannot be doubted, it can be held that appellant has been benefitted by inflating the purchases. I am also in agreement with the case laws relied on by the AO in this regard. Thus, the AO has rightly treated purchases from M/s. Om Enterprises as non-genuine. However, I agree with the appellant that addition of 12.5% on account of bogus purchases is excessive and considering the same, I reduce the above addition to 8% on the total purchases of Rs. 1,09,72,93/- which comes to Rs.8,77,835/-. Thus, the appellant gets relief of Rs.4,93,782/- (Rs.13,71,617-Rs.8.77.835/-).”

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) in restricting the addition/disallowance to the extent of 8% 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/-
(S. RIFAUR RAHMAN)
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