

**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. 1311/MUM/2019 (A.Y: 2009-10)

Income Tax Officer – 28(3)(3) Room No. 319, 3 rd Floor 6 th Tower, Vashi Railway Station Complex, Vashi Navi Mumbai – 400 703	v.	M/s. Sterling Equipment 31-48, Shiv Centre, Sector – 17 Vashi, Navi Mumbai – 400 705 PAN: AAZFS3448R
(Appellant)		(Respondent)

Assessee by : None

Department by : Shri Beharam

Date of Hearing : 04.03.2020

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) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 19.12.2018 for the A.Y. 2009-10 in restricting the disallowance to 12.5% of purchases of ₹.15,41,678/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.
2. Briefly stated the facts are that, the assessee a firm engaged in the business of "Service Contract" filed return of income for the A.Y.2009-10

on 29.09.2009 declaring income of ₹.5,78,2009/- 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 various dealers 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 parties which are referred in the Assessment Order. In response, assessee vide letter dated 03.02.2015 furnished ledger account, copy of bank statements, copy of purchase bills and copy of delivery challans and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques s such contended that all the purchases are genuine. However, parties were not produced before the Assessing Officer and no explanation was offered.

3. 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 without there

being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer since the purchases made by the assessee and claimed as expenses in his Profit and Loss Account are not genuine, the purchases to that extent remained unverifiable and rejected the Books of Accounts. Assessing Officer observed that the notice issued u/s. 133(6) of the Act to the parties were returned unserved with a remark "left/Not Known" and the assessee did not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated purchases of ₹.15,41,678/- as non-genuine and added 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.

4. 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 these appeals on hearing the Ld. DR on merits.

5. Ld.DR vehemently supported the orders of the Assessing Officer.

6. Heard Ld. DR, 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 restricted the disallowance to 12.5% of the non-genuine purchases of ₹.15,41,678/-, while holding so, the Ld.CIT(A) observed as under: -

“6.3. Ground No 2 relates to addition of 100% of bogus purchases. As per the investigations carried out by the Sales Tax Authorities, the aforementioned party was found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had made enquiries by issuing notices u/s 133(6) which were returned unserved by the postal authorities. These parties were found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of the party. However, the appellant could not produce the party before the AO in spite of opportunity being given. The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. The documentary evidences such as purchase bills, payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed and accordingly held that 12.5% of the purchases will be reasonable as profit on margin against the bogus purchases. In view, the addition of bogus purchases at Rs. 15,41,678/- made by the AO is restricted to 12.5% of the same which should sufficiently cover the profit element embedded in the impugned purchases. The appellant's Ground No 2 of appeal is "Partly Allowed".”

7. 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 12.5% of the purchases. Grounds raised by the revenue are dismissed.

8. 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 Assessee
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