

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI C. N. PRASAD, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1194/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2010-11)

Royal Global Trade, 411, Kewal Indl. Estate, Senapati Bapat Marg, Lower Parel, Mumbai-400 013	बनाम/ Vs.	ITO Ward -18(3)(2), 607, 6 th floor, Earnest House, Nariman Point, Mumbai-400 002.
स्थायीलेखासं./जीआइआरसं./PAN No. AADFR6925J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vishwas Mchandale, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Kiran Unavekar, DR
सुनवाईकीतारीख/ Date of Hearing	:	27.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	20.05.2020

आदेश / O R D E R

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 53 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 20.12.18 for Assessment Year (in short AY) 2010-11.

2. The brief facts of the case are that assessee filed its return of income on 14.10.2010 declaring total income of Rs. 2,65,911/-. The return was processed u/s 143(1) of the Act. Subsequently, information was received from the sales tax Department that assessee has indulged in bogus purchases. The Assessment was accordingly reopened. The assessing officer in this case has made addition @ 12.5% on account of bogus purchase amounting to Rs.14,99,597/-.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) confirmed the addition made by AO and dismissed the appeal of the assessee.

4. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

1. On the facts and circumstances of the case and in law, Hon. CIT-A has erred in confirming Id. AO's action of re-opening appellants' assessment u/s 147 of the Act by ignoring the fact that, Id. AO did not provide the copies of the information and the recorded statements and also did not provide any opportunity to appellants to cross examine the alleged Bogus Parties.

2. Without Prejudice to the above Ground of Appeal, on the facts and circumstances of the case and in law, Hon. CIT-A has erred in confirming AO's Action of rejecting appellants' books of accounts on arbitrary grounds that the purchases made by the appellants were bogus.

3. Without Prejudice to the above Grounds of Appeal, on the facts and circumstances of the case and in law, Hon. CIT-A has erred in estimating the Profit at 12.50% of the alleged Bogus Purchases, without taking into consideration, the actual Gross Profit earned by appellants from the alleged Bogus Purchases and thereby erred in confirming the addition of Rs.1,87,449/- as estimated profit on the alleged Bogus Purchases.

4. Appellants crave leave to add, alter, amend or withdraw the aforesaid ground/s of appeal.

5. Ld. AR submitted that Ld. CIT(A) has sustained the addition made by the AO on estimating @ 12.5% of the alleged bogus purchases overlooking that assessee has already declared GP ratio. Accordingly, he submitted that 12.5% estimated by Ld. CIT(A) is too high and he relied upon the various judgments

passed by the Coordinate Bench of ITAT, wherein the bench has estimated @ 3% of the alleged bogus purchases.

6. On the other hand, Ld. DR relied upon the orders passed by revenue authorities and submitted that estimation made by Ld. CIT(A) should be sustained.

7. Considering the rival contentions and material placed on record, we notice that ITAT Mumbai Bench in the case of **Heeramanek & Son Vrs. ACIT** passed in ITA No. 1862/Mum/2017, wherein it was held as under:-

5. So far as the quantum of additions are concerned, we are of the considered opinion that the assessee was engaged in trading activities, which could not be carried out without actual purchase of material. The turnover achieved by the assessee has not been disputed or disturbed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchase documents and was able to reconcile the quantitative details. However, at the same time, the stated purchases were under grave doubt since the assessee could not produce any of the party to confirm the transactions and the information received from investigation wing revealed that all the suppliers were engaged in carrying out only paper transactions without

actual delivery of material. The complete onus to prove the purchases conclusively was on assessee, which has remained un-discharged. In such a scenario, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against alleged bogus purchases, which lower authorities have rightly done. However, considering GP rate of 10.59% already reflected by the assessee as well as VAT rate applicable to the goods being dealt with by the assessee, we find the estimation to be on the higher side and therefore, we restrict the same to 3% of alleged bogus purchases of Rs.1,87,08,961/-. The same comes to Rs.5,61,269/-. The order of Ld. AO stands modified to that extent. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

8. Therefore, respectfully following the aforesaid decision, we notice that assessee has already declared GP ratio of 9.68% and 14.63% from the purchases made from Pravesh Enterprises and Rajat Trading Company respectively and on an average, assessee has already declared 9.5% of GP. Therefore, we are inclined to direct the AO to estimate the income @ 3% of the

alleged purchases. Accordingly, we direct the AO to estimate the income of the assessee @ 3% of the alleged purchases.

9. In the net result, the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 20th May 2020.

<i>Sd/-</i> (C. N. Prasad) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 20.05.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai