

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

[Coram: Pramod Kumar (Vice President)]

ITA No. 1872/Mum/2019
Assessment year: 2010-11

Income Tax Officer 27 (1)(4)**Appellant**
Mumbai

Vs

M/s. Dawal& Company**Respondent**
*353/B-12, 2nd Floor, Jay Bandhu Society,
90 Feet Road, Ghatkopar (E),
Mumbai – 400 077
[PAN: AAAFD1095L]*

Appearances by

SamathaMullamudi*for the appellant*
Rajesh Shah*for the respondent*

Date of concluding the hearing : June 10th, 2020
Date of pronouncement : July 13th, 2020

ORDER

Per Pramod Kumar, VP:

By way of this appeal, the Assessing Officer has challenged correctness of the order dated 17th January 2019, passed by the learned CIT(A)-25, Mumbai for the assessment year 2010-11.

2. Grievances raised by the Assessing Officer are as follows:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to restrict the addition to 5% of Rs. 20,05,036/- as against 12.5% addition of Rs. 20,05,036/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidences in support of the claim.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs. 1,00,251/- being 5% of the bogus purchases as even the public onus of producing the documentary evidences were not fulfilled by the assessee.

3. The appellant prays that the order of the CIT(A) on the above ground be reversed and that of the Assessing Officer be restored.

3. Even though the issues raised in this appeal are admittedly covered by the decision of coordinate bench dated 17th January 2020, in assessee own case for the assessment year 2009-10. We however see no reasons to take any view of the matter then the view taken by the coordinate bench in the aforesaid decision wherein the coordinate bench has inter alia observed as follows:-

6. We have heard the learned Departmental Representative and perused the material on record. It is evident, in the course of assessment proceedings the assessee had furnished various documentary evidences such as purchase bills, ledger account copies, bank statement, stock statement with quantitative details of purchase and corresponding sales, sales bills, etc. The Assessing Officer treated the purchases as non-genuine primarily for the reason that the assessee could not furnish any delivery challan and transport receipt. Further, notice issued under section 133(6) of the Act returned back un-served. However, the Assessing Officer has accepted that the disputed purchases have been made by the assessee, though, not from the declared source. For this reason alone, the Assessing Officer has only added the profit element embedded in such purchases. Whereas, learned Commissioner (Appeals) has directed the Assessing Officer to set-off the gross profit already declared against the profit element estimated at 12.5%. Since, the assessee has already included the purchases in its account and offered the profit derived there from in normal course, it has to be given set-off of such profit declared against the profit estimated on the alleged non-genuine purchases. In our view, the aforesaid decision of learned Commissioner (Appeals) is just and proper, hence, does not require any interference. Accordingly, we uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.

4. Learned representative has also fairly agreed that the issues raised on this appeal are squarely covered by the aforesaid decision. We see no reasons to take any other view of the matter then the view so taken by the coordinate bench.

5. In the result, the appeal filed by the Revenue stands dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 13th day of July, 2020

Nishant Verma Sr.PS

Copies to:

<i>(1)</i>	<i>The Applicant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai