

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT
&
HON' BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1217/Mum/2019
(Assessment Year: 2010-11)**

DCIT-6(2)(1) Room No.504 Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	M/s Della Technica Interior Design Pvt.Ltd Rati Villa, Ground Floor Motibal Street Opp. Bhatia Hospital Tardeo, Sion(W) Mumbai-400 007
		PAN/GIR No.AABCD2765K
(Appellant)	..	Respondent)

Assessee by	Shri Forum Mehta, AR
Revenue by	Ms. Samatha Mullamudi, CIT-DR
Date of Hearing	22/06/2020
Date of Pronouncement	22 /06/2020

आदेश / O R D E R

PER G. MANJUNATHA (A.M.):

This appeal filed by the Revenue is directed against order of the Ld. Commissioner of Income tax (Appeals)- 12, Mumbai, dated 31/12/2018 and it pertains to AY 2010-11.

2. The Revenue has raised the following grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the Assessing Officer to disallow 8% of the bogus purchases rather than the whole of such purchases amounting to Rs. 12,10,033/-".*
2. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in directing the Assessing Officer to disallow 8% of the bogus purchases rather than the whole of such purchases without appreciating that such allowance of 92% of expenditure imply allowance of purchases made in cash from the 'grey' market, thereby rendering the provisions of*

section 40(A)(3) of the Income Tax Act, 1961 totally redundant which could not have been the intention of the statute,"

3. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in failing to abide by the landmark decision of Hon'ble Supreme Court in the case of N.K.Proteins Ltd did 16/01/2017 wherein the Hon'ble Supreme Court has confirmed the addition of 100% of the bogus purchases".*

4. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the quantum addition to the extent of Rs.11,13,230/- made by the AO on account of bogus bill purchases from one party viz., Amar Enterprises by not appreciating that the assessee has not established the genuineness of transaction with the party as it failed to produce the party and to furnish the confirmation of transaction with said party/transportation details."*

5. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in restricting the quantum addition ignoring that the information on account of bogus purchases is received from the external agency that the assessee had received accommodation entry from such party."*

6. *Though the tax effect in this case is Rs.3,78,386/-, however this appeal has been filed because it is covered by exception mentioned in para 10(e) of the CBDT Circular No. 3/2018 dt 11-7-2018 as subsequently clarified by Board letter did 20/08/2018 vide no. 279/misc./142/2007-ITJ(Pt.).*

7. *The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.*

3. The brief facts of the case are that the assessee is engaged in the business of interior decorators and real estate developers, filed its return of income for AY 2010-11 on 14/11/2010, declaring total income at Rs. 2,95,68,020/-. The assessment has been completed u/s 143(3) of the Act, on 15/03/2013 and accepted returned income. The case has been, subsequently reopened u/s 147 of the Act, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases

from various parties as listed by the AO in para. 5.1 of his assessment order amounting to Rs. 12,10,033/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 08/03/2016 and determined total income of Rs. 3,07,78,053/-, after making 100% addition on alleged bogus purchase from those parties amounting to Rs. 12,10,033/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its submission made before the Id. AO. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) and ITAT, Mumbai order in case of assessee for AY 2009-10, has scaled down addition made by the Id. AO to 8% profit on alleged total bogus purchases from those parties.

5. We have heard both the parties and perused the material available on record and gone through orders of the authorities below along with case laws cited by both parties. As regards, addition made by the Id. AO towards alleged bogus purchases, we find that the Ld. AO has made 100% addition on alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala

dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6. Having considered arguments of both parties and also, considering material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. Further, mere payment by cheque does not prove the genuineness of purchase, more particularly when other circumstantial evidence says otherwise. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. The AO neither pointed out any discrepancies in books

of accounts nor made out a case of sales outside books of accounts. In fact, the AO did not disputed sales declared for the year. Under these circumstances, it is difficult for us to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% addition, whereas the Id. CIT(A) has scaled down addition to 8% profit on alleged bogus purchases. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering the facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, including in assessee own case for AY 2009-10, we are of the considered opinion that 8% rate of profit adopted by the Id. CIT(A) appears to be reasonable and accordingly, we are inclined to

uphold the findings of the Id. CIT(A) and dismiss appeal filed by the Revenue.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this: 22 /06/2020

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 22/06/2020

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai