

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 3401/MUM/2019 (A.Y: 2009-10)

Income Tax Officer – 33(1)(1) Room No. 945, 9 th Floor Kautilya Bhuvan C-41 to C-43, G-Block Bandra (E), Mumbai – 400 051	v.	Shri Akshay Pramodrai Ghandhi 73-B Wing, 7 th Floor Krishna, Behind Bhatia Sch. S.V. Road, Kandivli (W) Mumbai – 400 067 PAN: ADMPG6689G
(Appellant)		(Respondent)

Assessee by : None

Department by : Ms. Arju Garodia

Date of Hearing : 21.09.2020

Date of Pronouncement : 29.09.2020

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) – 45, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 21.02.2019 for the A.Y. 2009-10 in restricting the disallowance to 12.5% of purchases of ₹.11,67,812/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee engaged in the business of traders, suppliers and commission agents in chemicals. 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 neither made any submissions nor produced the parties before the Assessing Officer and no explanation was offered. Accordingly, 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 that assessee failed to bring on record the relevant and corroborative evidences or material to prove the genuineness of the purchases. Therefore, Assessing

Officer completed the best judgement assessment u/s. 144 r.w.s 147 of the Act on 27.03.2014 assessing total income at ₹.15,78,550/- and making addition of ₹.11,67,812/- being 100% of bogus purchases as non-genuine. 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.

3. In spite 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.

4. Heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), I 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 ₹.11,67,812/-, while holding so, the Ld.CIT(A) observed as under: -

"4.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The appellant produced the details with regard to purchases made from the parties and copy of bank statement indicating the payment made to the seller parties. However, the AO added 100% as bogus purchases. AO based his assessment on the lone statement given by the vendor before the Sales tax department that too without giving cross examination opportunity to the appellant. Hon. Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central

Excise (2015) 281 CTR 241 (SC) has reaffirmed the principles of natural justice and held that the opportunity of cross examination of witness is must in a case where some adverse inference is to be drawn against the assessee.

4.3 It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO, one cannot conclude that the purchases were not made by the assessee. In the case of Nangalia Fabrics 40 taxmann.com 206, Gujarat High Court has held that where purchases were supported by the bills, entries were made in the books of accounts and payment was made by cheque, the said purchases could to be held as bogus. Hon'ble ITAT, Mumbai, has upheld estimation out of alleged bogus purchases instead of addition of total purchases in number of cases.

4.4 The assessee is not a manufacturer but he is a trader. In case of NK Proteins 250 taxman 22(SC), signed blank cheque books of the suppliers were found with the buyer and the material were entered in the stock without actually receiving the same to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K Proteins Ltd. would not apply in this case. Further NK Proteins was a manufacturer. No business gives entire purchases as profits particularly in the trading business the margins are very low in a competitive market. In all probability in such cases the assessee obtains the material through the brokers in the market. The buyer (the assessee here) does not know the actual supplier but the material is received. The broker arranges the bills again from the market which may be a dummy entity. In this process the assessee may have made some additional profit. Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. In the case of CIT vs. Simit P Sheth, 356 ITR 451, Hon'ble Gujarat High Court has upheld estimation @ 12.5% of alleged bogus purchases. Keeping in view the totality of facts and circumstances of the case, the addition made by AO is restricted to 12.5% of such purchases of Rs. 11,67,812, which comes to Rs.1,45,976. The AO is directed to modify the addition accordingly and the appellant gets part relief. These grounds are partly allowed."

5. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, I 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.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 29.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 29/09/2020
Girdhar, Sr.PS

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