

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

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

**ITA NOs. 1686 & 1687/MUM/2019
(A.Ys: 2010-11 & 2011-12)**

Income Tax Officer – 6(1)(1) Room No. 503, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Aeroflex Fittings Pvt. Ltd., 40-E, Municipal compound K.K. Marg, Jacob circle Mumbai – 400011 PAN: AAECA9448F
(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. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.12.2018 in restricting the disallowance to 5% of purchases of ₹.1,18,18,239/- and ₹.2,19,53,198/- for the A.Ys. 2010-10 & A.Y. 2011-12 respectively, as against the entire

purchases disallowed as non-genuine/bogus by the Assessing Officer being peak of credits.

2. Briefly stated the facts are that, the assessee a firm engaged in the business of trading in pneumatic fittings, filed return of income on 15.10.2010 and 26.09.2011 declaring income of ₹.8,19,335/- and ₹.11,37,284/- for A.Y. 2010-11 and A.Y. 2011-12 respectively and the returns were 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 assessments were 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 furnished purchase invoices, ledger accounts of the parties in assessee's accounts and bank statement showing the payments to the parties for the said purchases and submitted that the purchases made are genuine. Assessee further submitted that

the payments are made through account payee cheques as 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. Assessing Officer observed that assessee failed to prove the genuineness of the purchases, produce the suppliers, transportation details or receipts and also failed to furnish any third party evidence. Therefore, Assessing Officer treated purchases of ₹.1,18,18,239/- and ₹.2,19,53,198/- for the A.Ys. 2010-10 & A.Y.2011-12 respectively, as non-genuine. Accordingly, Assessing Officer worked out peak credit at ₹.19,39,566/- and ₹.24,08,111/- for A.Y. 2010-11 and A.Y. 2011-12 respectively, 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 5% of the non-genuine purchases.

4. In spite of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, I proceed to dispose off these appeals on hearing the Ld. DR on merits.

5. 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 5% of the non-genuine purchases, while holding so, the Ld.CIT(A) for A.Y. 2010-11 observed as under: -

"4.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the assessment order that the appellant produced the details with regard to purchases made from the parties like invoices and ledgers and copy of bank statement indicating the payment made to the seller parties. On account of non-availability of the suppliers at the given address and non-production of transportation bills, the AO disbelieved the purchases added peak credit. AO in the order cited the following cases in his order to state that in such situation the courts have held that addition of certain percentage of the said purchases is justified.

*Sanjay Oilcake Industries vs CIT 316 ITR 274 (Guj)
CIT vs Bholanath Polyfab Pvt Ltd 355ITR290
CIT vs Simit P Sheth Tax Appeal 553 of 2012 Gujarat High Court*

4.3 In spite of relying all the above cases and mentioning that in the cases the courts have held certain percentage of the said purchases as profit to be assessed, the AO worked out peak credit of purchases assuming the payments for the said purchases was made in cash. It is on record and the AO also accepted that the payments for the purchases was made by cheque which are reflected in the bank account. AO after taking into consideration that the hawala dealers stated that they, gave entries and also the fact that the assessee sold the goods and sale invoices are available, presumed that the assessee purchased the said goods in grey

market in cash and worked out the peak cash. There is a folly in the peak credit worked out by the AO. It is not a onetime purchase by the assessee as the assessee purchased goods and also sold and sale receipts received also have to be factored in? If the assumption of the AO is to be accepted that the hawala parties are entry providers, the payments made to such parties will also come back in cash. The AO while assuming the cash purchases, has not considered the cash received from the hawala parties and sale receipts, which is available in the hands of the assessee. Therefore the peak credit worked out is not correct method and therefore deleted. As correctly mentioned by the AO 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 and certain percentage has to be taxed as profit. Reliance is placed on Nikunj Eximp Enterprises (P.) Ltd. v. CIT 216 Taxman 171 (Bom.), CIT v. Nangalia Fabrics (P.)Ltd. 220 Taxmann 17 (Guj.), CIT v, M.K. Bros. 163 ITR 249 (Guj.), Asstt. CIT v. Akruiti Dyeing & Printing Mills (P.)Ltd. Dy. CIT v. Adinath Industries [2001] 252 ITR 476 (Guj.), CIT v. Precious Jewels Corpn.17 taxmann.com 264 (Raj.), CIT v. Rajesh P. Soni [Tax Appeal No.1107 of 2006, dated 27-2-2012.].

4.4 Non compliance of some of the parties may be due to the time gap and possible change in address. However, fact remains that the appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without Corresponding purchases being affected, the appellant could not have made the sales. Merely relying upon, the information from the Sales Tax Department the Assessing Officer could not have treated the purchases as bogus. The, appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted and the addition of peak credit /bogus purchases is not sustainable in law and facts. The appellant could have obtained the accommodation bills for the material purchased locally as noted by the AO. In other words the entities may not be the actual supplier but may have provided the bills for the material purchased locally. This is not case in which the signed blank cheque books etc. found with the buyer to hold that the purchases of material were not at all made but entered in the stock to inflate the raw material and to suppress the profits and therefore, the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. 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.

4.5 *It is seen from the details filed by the assessee's AR during the proceedings that the assessee has declared substantial Gross profit year after year and the GP declared for the year is 14.40% percent. In the circumstances fastening with high gross profit on the alleged bogus purchases would increase the the Gross profit of the assessee to abnormal percentage, which is not possible in trading, particularly in small engineering items in which the assessee is engaged in a competitive market. Therefore keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 5% of such disputed purchases. Therefore the AO is directed to estimate the 5% of Rs.1,18,18,239 which works out to Rs.5,90,912 and modify the addition accordingly. Appellant gets part relief. This ground is partly allowed."*

6. 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 5% of the purchases. Grounds raised by the revenue are dismissed.
7. In the result, appeals of the Revenue are 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
Giridhar, 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