

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

**BEFORE SHRI SAKTIJIT DEY (JM)**

**ITA No. 2219/MUM/2019  
Assessment Year: 2009-10**

The Income Tax Officer 6(3)(1), 5 <sup>th</sup> Floor, Room No. 510, Aayakar Bhavan, M.K. Road, Mumbai - 400020	<b>Vs.</b>	M/s Falcon Infotech Pvt. Ltd., 6, Sugra House, 2 <sup>nd</sup> Floor, Abdul Rehman Street, Pydhoni, Mumbai - 400003  PAN: AAACF4131A
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Udaya Bhaskar Jakke (DR)  
Assessee by : None

Date of Hearing: 08/10/2020  
Date of Pronouncement: 15/10/2020

**ORDER**

**PER SAKTIJIT DEY, JM**

1. This is an appeal by the revenue against the order dated 10.01.2019 of learned Commissioner of Income Tax (Appeals)- 12, Mumbai pertaining to the assessment year 2009-10.
2. When the appeal was called for hearing, no one appeared on behalf of the assessee to represent the case. Considering the nature of dispute, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.
3. The dispute in the present appeal is confined to partial relief granted by learned Commissioner (Appeals) in the matter of addition made by the Assessing Officer on account of non- genuine purchases.
4. Briefly the facts are, the assessee, a resident company, is engaged in the business of trading in computer spare parts. For the assessment year

under dispute the assessee filed its return of income on 30.07.2009 declaring income of Rs. 1,35,058/-. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, based on information received from Sales Tax Department, Govt. of Maharashtra and DGIT (Inv.), Mumbai that the assessee is a beneficiary of accommodation bills provided by certain entities identified by Sales Tax Department as hawala operators, the Assessing Officer reopened the assessment u/s 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth Rs. 14,89,624/- claimed to have been made during the year from three parties. Though, the assessee furnished some documentary evidence to prove the genuineness of purchases, however, the Assessing Officer was not satisfied with them. Further, the Assessing Officer alleged that the notices issued by him u/s 133 (6) of the Act to the selling dealers for ascertaining the genuineness of purchases also returned back unserved. Based on the aforesaid facts, the Assessing Officer ultimately treated the purchases of Rs. 14,89,624/- as non-genuine and added back to the income of the assessee. The assessee challenged the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) reduced the addition to 12.5% of the alleged non genuine purchases.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. It is evident, relying upon the information received from Sales Tax Department, the Assessing Officer has treated the purchase as bogus. It may also be a fact that the assessee failed to furnish certain evidences called for by the assessee to conclusively prove the genuineness of purchases. However, it is a fact on record that the Assessing Officer has not disputed the sales effected by the assessee. Therefore, in absence of purchases of the disputed goods the assessee could not have effected the corresponding sales. Therefore, in

such circumstances the logical conclusion would be, the assessee might have purchased the goods from un-verified sources to suppress the profit element. In such circumstances, the entire purchases cannot be disallowed but only the profit element embedded in such purchases can be considered per addition. In view of the aforesaid, in my considered opinion, learned Commissioner (Appeals) was justified in restricting the addition to 12.5% of the alleged non genuine purchases. Accordingly, I uphold the order of learned Commissioner (Appeals) by dismissing the grounds raised by the revenue.

6. In the result appeal filed by the revenue is dismissed.

Order pronounced in the open court on 15<sup>th</sup> October, 2020.

Sd/-  
SAKTIJIT DEY  
(JUDICIAL MEMBER)

मुंबई Mumbai; दिनांक Dated: 15/10/2020

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy/

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT,**  
**Mumbai**