

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

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos. 7185/Mum/2018
(Assessment Years: 2010-11)**

&

**C.O. No. 277/Mum/2019
(Arising out of ITA No. 7185/Mum/2018)**

ITO 14(2)(4) Rm No. 470, 4 th Floor, Aayakar Bhavan, MK Road Marine Lines, Mumbai	बनाम/ Vs.	Oriole Electronics Pvt Ltd., 4, Kurla Industrial Estate, Narayan Nagar, N.S.S Road, Ghatkopar (W), Mumbai – 400086
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO0819Q		
Appellant/Respondent	..	Respondent/Appellant

अपीलार्थी ओर से/ Appellant by :	Shri Amit Pratap Singh, DR
प्रत्यर्थी की ओर से/ Respondent by :	None

सुनवाई की तारीख / Date of Hearing	10/09/2020
घोषणा की तारीख/ Date of Pronouncement	18/09/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The revenue has filed the appeal against the order of CIT(A)-22, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Income Tax Act. The assessee has filed CO No. 277/Mum/2019 in revenue appeal. At

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the time of hearing none appeared on behalf of the assessee nor was any adjournment petition filed. We heard submissions of the Ld. DR and perused the material on record. We find there is a delay of 10 days in filing the C.O by the assessee and the assessee has filed affidavit and application for condonation of delay. Considering the facts and the reasons explained, we condone the delay in filing and admit the Cross Objections of the assessee.

First, we shall take up the Cross Objections C.O.No277/Mum/2019.The Assessee has raised the following grounds of Objections.

“1. A.O had made addition to the extent of 100% of the value of bogus purchases of Rs. 1,49,203/- and the CIT(A) has reduced addition to 28% of the value of alleged bogus purchase. However, considering the facts and circumstances of the case and submissions made by the assessee returned income be accepted.

2. Tax demand involved in this appeal is Rs. 85,476/-. In view of the circular No. 3/2018 dated 11.07.2018 modified by press release dated 08.08.2019, we are of the humble opinion that this appeal be dismissed because the tax effect in the said appeal is less than Rs. 50 lakhs. Otherwise also the income tax department ought to have

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considered the merits of the case and not ought to have filed an appeal before Hon'ble ITAT.

3. There is a slight delay in filling cross objections and an affidavit has been filed for the same. It is requested to condone the delay in filling cross objections and a fair chance be given to present the case.

4. The assessee craves leave to add, delete or modify grounds for cross objections.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of electronic components and development of embedded software solutions. The assessee has filed the return of income electronically on 29.09.2009 with total income of Rs. 2,12,162/-and the return of income was processed u/s 143(1) of the Act. In the Assessment proceedings, the A.O found that assessee has made purchasetransactions with M/s.Trishala Tradewings, which is engaged in business of providing accommodation entries without actually supplying the goods. The Ld. AO has reason to believe that there is income escaping assessment due to bogus bills transactions and issued notice u/s 148 of the Act. In response to the notice the assessee has filed

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the return of income on 31.02.2017 with the total income of Rs 2,12,162/-Further the A.O has provided the reasons recorded for reopening of assessment to the assessee vide office letter dated 13.02.2017 and also the notice u/s 142 of the Act was issued. In compliance the LdA.R of the assessee appeared from time to time and the case was discussed. The A.O found that the assessee has obtained bogus purchase bills amounting to Rs. 1.49.203/-The A.O to verify and examine the genuineness of the purchase transactions has issued notice u/s 133(6) of the Act to M/s. Trishala Tradewings referred at page - 2 of the assessment order. Whereas the notice u/s 133(6) of the Act was returned with remark as” not known”. The A.O is of the opinion that the onus lies on the assessee to prove the genuineness of the purchase transactions as the notice issued under 133(6) of the Act was returned undelivered and further showcase notice was issued for production of books of account and confirmation of alleged transactions. The Ld. AR of the assessee appeared from time to time and filed the written submissions. The A.O considered the facts

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and the bogus purchases and is of the view that the tainted party is referred in the website of the Maharashtra Sales Tax Department and made an addition of Rs. 1,49,203/- and with other additions u/sec 14A of the Act, and assessed the total income of Rs3,63,590/and passed the order u/s 143(3) r.w.s 147 dated 31.10.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The Ld. CIT(A) in appellate proceedings considered the grounds of appeal, submissions of the assessee and findings of the A.O and has observed that the A.O is of the opinion that the assessee has failed to prove the genuineness of the purchases. But the A.O has not doubted or disputed the sales. Hence, considering the GP ratio of the assessee in the financial year, CIT(A) has estimated the income @ 28% of the bogus purchases and partly allowed the appeal and observed at page - 4 para -6 of the order which is read as under:

“6. I have considered the facts of the case and submissions made by the appellant. As per the investigation carried out by the Sales Tax Authorities, the aforementioned party was found to be involved in giving

accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had issued notice u/s 133(6) to this party which was returned un-served by the postal authorities with the remark 'not known'. This was communicated to the appellant and the AO had required the appellant to produce these parties which the appellant could not do. I find that the appellant also did not produce transportation details nor confirmation from the party. Under the circumstances, the documentary evidences such as purchases bills payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from this party are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted or disputed by the A.O. The A.O, however, held the purchases were made from some other undisclosed parties and not from the said party. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth, 356 ITR 541 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The estimation would vary with the nature of business and no uniform yardstick could be adopted. The appellant's GP ratio during the year is stated to be 28%. Following the decision of the Hon'ble Gujart High Court in the case of CIT Vs. Simit P. Sheth, the addition of the entire purchase of Rs. 1,49,203/- is restricted to 28% of the same which should sufficiently over the profit element

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embedded in the impugned purchases. The appellant's grounds is partly allowed.

3. Aggrieved by the CIT(A) order, the revenue has filed an appeal and the assessee has filed C.O.in revenue appeal before the Tribunal.
4. At the time of hearing none appeared on behalf of the assessee.
5. We heard the LdDR and perused the material on record. In the CO of the assessee, the ground No. 1 is with respect to accepting of returned income which cannot be considered as the assessee has entered into accommodation bills for bogus purchases. The LdCIT(A) has estimated the income @ 28%of bogus purchases. We considered the facts and series of decisions of the Hon'ble ITAT in similar cases and precedents,where the income estimated @12.50% of value of bogus transactions was accepted. Accordingly, we restrict the addition to the extent of 12.50% of Bogus purchases and modify the CIT(A) order sustaining the addition to the extent of 12.50% and partly allow the ground of objection of the assessee.

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The ground No. 2 is with respect to low tax effect maintainability, we find, the revenue appeal is filed based on the bogus purchases which is considered as exception to the applicability of low tax effect circular, therefore, we do not find merits in the ground raised by the assessee and is dismissed.

The Cross Objections of the Assessee is Partly allowed.

We shall take up the revenue appeal in ITA No. 7185/Mum/2018. The Revenue has raised the following grounds of appeal:

“1. Whether on facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the addition to 28% of the amount of bogus purchases, i.e. the gross profit ratio declared by the assessee in the regular books of account, whereas the CIT(A) ought to have appreciated that the assessee failed to discharge the onus cast upon it to prove the genuineness of the claim of purchases made, when lawfully called upon by the AO to do so. In the result, the entire amount was liable to be added back to the total income.

2. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

3. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the A.O be restored

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7. We have dealt on the CO of the assessee, in particular ground No. 1 of the CO with respect to accepting of returned income filed by the assessee which was not considered, as the assessee has obtained accommodation bills for bogus purchases. Hence we restricted the income@12.5%of bogus purchases. Accordingly modified the CIT(A) order sustaining the addition to the extent of 12.50%. Therefore Revenue appeal is not maintainable and is dismissed.

8. In the result, appeal of the Revenue is dismissed and the C.O. of the Assessee is partly allowed.

This Order pronounced in Open Court on 18.09.2020

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 18/09/2020

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai