

**IN THE INCOME TAX APPELLATE TRIBUNAL VIRTUAL COURT
'G' BENCH MUMBAI**

BEFORE SHRI JUSTICE P P BHATT, PRESIDENT

&

SHRI M.BALAGANESH, AM

**ITA No.1920/Mum/2019
(Assessment Year :2011-12)**

ITO-11(2)(4), Mumbai Room No.349, 3 rd Floor Aayakar Bhavan M.K.Road, Marine Lines Mumbai – 400 020	Vs.	M/s. Superflo Filters Pvt. Ltd., B-5/103-104, Greenland Co-op Society, Shrinivas Bagarka Road, J.B.Nagar, Andheri-East Mumbai – 400 059
PAN/GIR No. AADCS4955N		
(Appellant)	..	(Respondent)

Revenue by	Shri V. Vinodkumar
Assessee by	None
Date of Hearing	15/09/2020
Date of Pronouncement	28/10/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1920/Mum/2019 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-10141/ITO-11(2)(4)/17-18 dated 11/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2017 by the Id. Id. Income Tax Officer 11(2)(4), Mumbai (hereinafter referred to as Id. AO).

2. Though the revenue has raised several grounds, we find that the only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the addition made on account of bogus purchases to the extent of 12.5% as against 100% made by the Id. AO in the facts and circumstances of the instant case.

2.1. None appeared on behalf of the assessee.

3. We have heard the Id. DR and perused the materials available on record. At the outset, we find that it is not in dispute that assessee made purchases from seven parties as tabulated below to the tune of Rs.1,36,19,291/-, whose names appeared in the tainted list of hawala dealers in the website of Sales Tax department, Government of Maharashtra, which information was subsequently passed on to the DGIT (Investigation), Mumbai based on which the assessment for A.Y.2011-12 in the hands of the assessee had been reopened for the purpose of disallowing the purchases made by the assessee from those suppliers:-

Sr No	Name of Hawala dealer	PAN No of the Hawala dealer	TIN No	Amount
1	NIDDHISH IMPEX	AACCN6984H	27600648257V	675000
2	KOTSONS IMPEX PVT LTD	AACCK9104C	27940584729V	4473578
3	TISHA ENTERPRISES	AGVPP0871D	27950739002V	559713
4	DHARAM TRADERS	AADCD5447J	27020798732V	1582875
5	MAHAVIR SALES CORP.	AMMPM3778R	27090707756V	2246625
6	TULSIANI TRADING	AADCT0405G	27440688212V	2529000
7	MOKSHA IMPEX	ANFPD5613C	27630793110V	1552500
	TOTAL :			13619291

3.1. In re-assessment proceedings, we find that the Id. AO sought to examine the veracity of the purchases. We find that the aforesaid tainted suppliers had deposed before the Maharashtra Sales Tax department that they are engaged in providing accommodation sale bills to various parties including the assessee and that they had not actually supply the goods. We find that before the Id. AO, the assessee did not furnish the purchase bills, delivery challans, proof of transportation of goods and copies of the relevant bank statements, where payments to alleged hawala dealers were reflected. However, the assessee produced stock register, books of accounts before the Id. AO which the Id. AO observed that they were not maintained properly and accordingly, proceeded to reject the same. Since, the veracity of the purchases were not proved by the assessee beyond doubt, the Id. AO proceeded to disallow the entire purchases, being 100% value of Rs.1,36,19,491/- in the assessment, despite the fact that the corresponding sales made by the assessee out of such purchases had been accepted. We find that the Id. CIT(A) thought it fit to bring to tax only the profit element embedded in the value of such purchases and restricted the addition to the extent of 12.5% by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth reported in 356 ITR 451 (Guj). Against the said direction of the Id. CIT(A), the assessee had not preferred any appeal before us and only the revenue had preferred this impugned appeal. We find that even though the assessee could not prove the genuineness of purchases made from the aforesaid suppliers, the corresponding sales made out of such purchases has not been disputed by the revenue before us. Hence, it could be safely concluded that assessee could have made purchases from the grey market in order to have some saving in indirect taxes and the incidental profit element thereon by way of making purchases in cash. We

also find that this Tribunal in series of decisions had held that adoption of 12.5% as profit element embedded in non-genuine purchases would be reasonable. Hence, the adoption of profit percentage by the Id. CIT(A) @12.5% in the facts and circumstances of the instant case is very reasonable, which in our considered opinion, does not warrant any interference. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, the appeal of the revenue is dismissed.

Order pronounced on 28/10/2020 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/10/2020

KARUNA, *sr.ps*

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai