

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

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

ITA NO. 2765/MUM/2019 (A.Y. 2009-10)

Income Tax Officer - 2(5) 2 nd Floor, Mohan Plaza Bldg., Wayle Nagar, Khadakpada Kalyan (W), Kalyan Mumbai - 421301	v.	M/s. Bharat Food Products Plot No. 02, Waco Compound Industrial Area Ulhasnagar - 421004 PAN: AABFB1403H
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Amrita Singh**

Date of Hearing : **21.10.2020**
Date of Pronouncement : **13.11.2020**

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) – 3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 22.02.2019 for the A.Y. 2009-10 in restricting the disallowance to 12.5% of purchases 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 “manufacturer of Biscuits” filed return of income on 17.09.2009 for the A.Y.2009-10 declaring income of ₹.11,31,400/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department, 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 Sales Tax Department, Mumbai, that the assessee has availed accommodation entries from M/s. Mayank Enterprises/Supreme Enterprises who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from M/s. Mayank Enterprises/Supreme Enterprises as referred in Assessment Order. Assessee vide letter dated 06.02.2015 furnished copies of bills, vouchers, payment details and reconciliation, statement of sales corresponding to 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. It is the finding of the Assessing Officer that the purchases claimed by the assessee from the party are bogus and the assessee brought his own unaccounted stock in the guise of purchases from outsiders. Therefore, Assessing Officer treated entire purchases of ₹.3,18,840/- as non-genuine 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 an extent of 12.5% of the non-genuine purchases.

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

5. Ld. DR vehemently supported the orders of the Assessing Officer.

6. 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 and following various judicial pronouncements restricted the disallowance to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"8.0 Ground No. 2 & 3 are directed against addition of Rs.3,18,840/- as bogus purchases; therefore, these grounds are taken together for the sake of convenience. I have carefully considered the submissions of the appellant, the observations of the AO in the assessment order; case laws relied upon by the appellant and the facts of the case. In this case, as far as the addition is concerned, the AO has discussed from Para 4.1 in the assessment order.

(1) On the other hand, the AR of the appellant has argued that, no purchases were made from M/s. Mayank Enterprises or M/s. Supreme Enterprises. The appellant's duly audited cash-book, ledger, purchase ledger and other books of accounts and documents, P&L a/c, bank account also do not reflect any purchases from these two concerns and the AR has further elaborated in his letter dated 14.12.2018. The AR of the appellant has further stated that, the appellant had not claimed bogus purchases from M/s Mayank Enterprises / M/s Supreme Enterprises, when the facts enumerated as above clearly reveal that (1) the appellant had not made any purchases whatsoever from both of these sellers, (2) had not made any payment whatsoever in cash or cheque to the said sellers, (3) had not debited this amount to Profit & Loss account, (4) had not added this amount to its purchases thereby inflating the purchases, and (5) had not reduced its profits. The AR of the appellant has placed reliance on the following judicial pronouncements

(i) In the case of DCIT v. Shri Rajeev G. Kalathil, (Mum) (Trib) (ITA No.6727/M/2012 dt20/8/2014, Bench 'D' A.Y. 2009-10), Honourable Mumbai Tribunal has held: "that suspicion of highest degree cannot take place of evidence."

(ii) In the case of: Dakeshwari Cotton Mills Ltd, 26 ITR 775 (SC) and R. Y. Duriabji (211 ITR 178, Rajasthan) it was held that any assessment made on pure guess work de hors material on record is a bad assessment.

(iii) In the case of Jagdamba Trading Company vs. Income Tax Officer IT AT, JODHPUR 'SMC' Bench (2007) 107 TTJ 0398 it was

held that merely on the basis of the deposition made by the said seller in his affidavit filed during safes-tax proceedings stating that he has not made any safes during the relevant year, particularly when no opportunity of cross-examination was given to the assessee, the addition was deleted.

(iv) In the case of ITO v. Permanand (2007) 107 TTJ 395 (Jd) (Trib): AO received information from the Sales Tax Department that the purchases made by the assessee from two parties were bogus. Solely relying on the same, AO made addition under s. 69. Tribunal held that no addition can be made in the hands of the assessee merely on the basis of observations made by a third party. While making the assessment, it is the satisfaction of the AO which is of prime importance. It cannot be substituted by the satisfaction of someone else.

(2) From the above discussion, it can be concluded that, it is a case where the goods were received from the parties other than the persons who had issued the bills of such goods. Though the purchases were shown to have been made by making payment to hawala dealers but goods must have come from gray market therefore, under such circumstances, the chances of purchase cost being inflated couldn't not be ruled out.

After considering the above facts of the case, I am of the view that, the AO is not justified in making addition of the entire purchases made from the aforesaid supplier. The AO has not denied the consumption of the materials of materials purchased for manufacturing biscuits and has also not found any lacunae in the books of accounts. After manufacturing, there were corresponding sales and the payments were made by account payees cheques, therefore, the disallowance of entire purchases made from the aforesaid supplier is not justified.

Considering the totality of the facts of the case, I am of the considered opinion to disallow 12.5% as inflated cost on the total purchases made from unverifiable supplier, which is fair and just. Therefore, the book result of the appellant is rejected u/s. 145(3) of the Act. The disallowance @12.5% of purchases from unverifiable/Hawala dealer had been upheld by the jurisdictional ITAT in the following cases:-

i. Deepak Chunilal Bajaj in ITA No.287/Mum/2017 & ITA No.284/Mum/2017 - A.Ys.2009-10 & 2011-12 order dtd. 04.05.2017

ii. Raju Amarlai Vaswani in ITA No.288/Mum/2017 order dtd .10.04.2017 A.Y. 2010-11.

iii. *Reliance Enterprises in ITA No.950/Mum/2017
A.Y.2011-12 order dtd. 07.06.2017.*

iv. *Sai Sarnam Engineers ITA No.285/Mum/2017 &
ITA No,286/Mum/2017 A.Y.2010-11 & 2011-12 order
dtd. 02.05.2017.*

v. *Krishna Appliances in ITA No.6821/Mum/2016
A.Y.2011-12 order dtd.01.05.2017.*

In view of the above stated facts, the disallowance @12.5% of Rs.3,18,840/- works out to Rs 39,855/-and the same is added to total income of the appellant. The appellant gets a relief of Rs.2,78,985/- i.e. (Rs.3,18,840 -Rs.39,855). As a result, the appeal of appellant is partly allowed."

7. 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.

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

Order pronounced on 13.11.2020 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 13/11/2020
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