

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

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

**ITA NO. 2644 & 2645/MUM/2019
(A.Y. 2009-10 & A.Y. 2010-11)**

Income Tax Officer – 22(1)(1) 319, 3 rd Floor Piramal Chambers, Lalbaug Mumbai – 400 012	v.	Shri Anand Prakash Diwan 501, Anupama Heights 14 th Road, Khar (W) Mumbai – 400 053 PAN: AEOPD7312L
(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. These appeals are filed by the revenue against common order of the Learned Commissioner of Income Tax (Appeals)–34, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 22.01.2019 for the A.Ys. 2009-10 & 2010-11 in restricting the addition to 12.5% of purchases as against the disallowance of 25% of purchases as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, assessee engaged in the business of Trading and Manufacturing of Dyes and Chemicals, filed return of income on 30.09.2009 and 30.09.2010 declaring income of ₹.3,59,480/- and ₹.4,36,614/- for the A.Ys., 2009-10 and A.Y. 2010-11 respectively. Assessee filed revised return on 30.09.2009 and 25.01.2011 declaring income of ₹.3,59,480/- and ₹.4,48,261/- for the A.Ys., 2009-10 and A.Y.2010-11 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 reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from various parties referred in Assessment Order. Assessee furnished party wise purchase details along with ledger account 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 assessee failed to discharge his prima facie onus of proving the identity of the parties, genuineness of the purchases and purchase from the parties to prove claim of the assessee. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "Left" or "Not Known"" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated 25% of the alleged bogus purchases of ₹.22,34,917/- and ₹.18,32,734/- for the A.Y. 2009-10 and A.Y. 2010-11 respectively 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 these appeals on hearing the 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 including the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth [356 ITR 461] restricted the disallowance to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"5.5. Conclusion on case laws:

*The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or "agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the appellant. It is also seen that putting an onus on the AO to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A.Sanghavi (supra). **If the bogus purchases are unproved and are declared consumed by appellant itself in its trading, manufacturing or non-trading activities, the entire addition can be made as it only goes to***

inflate the expenses of the appellant (refer M/s. Shoreline Hotel Pvt. Ltd vs. CIT Central-1 in ITA No. 964/M/2015 dated 19.06.2015).

5.6. *In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from two of the hawala operators totaling to Rs.22,34,917/-. The A.O. attempted to verify such parties by making independent enquiries u/s. 133(6) of the I.T.Act, 1961. All these verification letters came back "Left" or "not known". The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc., could not be submitted before the A.O. Nor the Principle Officer of these concerns was produced before the A.O. for examination. However, it is also a fact that the A.O. has not questioned the total sale component and if there is a sale, there should be purchase. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The A.O. has rightly disallowed part of the purchases claimed such hawala dealers. However, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified. Thus the disallowance made by the A.O. is upheld in principle. However, the percentage is restricted from 25% to 12.5%. The ground of appeal filed by the appellant on this issue is therefore, partly allowed.*

6. *Thus, as a result, the appeal filed by the appellant for the A.Y: 2009-10 is partly allowed u/s. 250 read with section 251 of the Act.*

B. A.Y.2010-11 (I.T.No.11582):

1.1. The facts and circumstances of this case are absolutely identical to that of A Y 2009-10 except that the bills for bogus purchases in this year are as under: -

Sr. No	Name of the entity	Amount (Rs.)
1.	Nirmala Corporation	11,20,724/-
	Total	11,20,724/-

1.2. On the basis of arguments, discussion and reliance of case laws, disallowance of purchases made by the A.O. is upheld in principle but restricted to 12.5%. The ground; of appeal filed by the appellant on this issue is therefore, 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, appeals of the Revenue are 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