

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

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

**ITA NO. 2647 & 2648/MUM/2019
(A.Y. 2009-10 & A.Y. 2010-11)**

Income Tax Officer – 23(3)(4) Room No. 119, 1 st Floor Matru Mandir, Tardev Road Mumbai – 400 007	v.	Supriya S. Gandhi 67/2900 Jalkiran CHS Ltd., MHB Colony, Gandhi Nagar Bandra (E), Mumbai – 400 051 PAN: AAMPG8789L
(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 disallowance 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 an individual filed return of income on 28.09.2009 and 28.09.2010 declaring income of ₹.5,53,000/- and ₹.4,53,830/- 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 vide letter dated 30.10.2014 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 sales invoices claimed to have been issued by the parties are fictitious ones. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "unserved/unclaimed" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated 25% of the alleged bogus purchases of ₹.23,51,362/- and ₹.18,37,612/- 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: -

"4.5. 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).***

4.6. *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 one of the hawala operator totaling to Rs.23,51,362/-. The A.O. attempted to verify such party by making independent enquiries u/s. 133(6) of the I.T.Act, 1961 who had not confirmed the transaction. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. 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. The appellant being a trading concern, has indulged in using such accommodation entry. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be 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 as hawala dealers. However, the judgment of *Vijay Protein*; (supra) is a judgment related to manufacturing concern where all the documents were threadbare analyzed and 25% disallowance on purchase was upheld/ In the present case, the ratio of *Vijay Protein*, a manufacturing concern cannot be applied since the appellant is a business concern doing trading. In my opinion, 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 based on the premise that the appellant has derived benefit to this extent based on his nature of business. Thus the disallowance of purchase is upheld in principle but restricted to the extent of 12.5% of purchase from suspicious dealers.

4.7. In the result, the appeal for the AY.2009-10 is **partly allowed**.

B. A.Y.2010-11 (I.T.No.292):

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.	<i>Padmavati Enterprises</i>	8,54,486/-
2.	<i>Dev Enterprises</i>	9,83,126/-
	Total	18,37,612/-

1.2. *On the basis of arguments, discussion and reliance of case laws, 25% 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**.*

1.3. *In the result, the appeal for the AY.2010-11 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, 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