

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

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

**ITA NO. 2649 & 2650/MUM/2019
(A.Y. 2010-11 & A.Y. 2011-12)**

ACIT – 31(2) Room No. 107, C-13, 1 st Floor Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E), Mumbai - 400 051	v.	M/s. Powerflex Industries Plot No. 500, Powerflex House Sonawala X Road No. 2 Goregaon (E) Mumbai - 400063 PAN: AAAFP0309B
(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)-42, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.01.2019 for the A.Ys. 2010-11 and 2011-12 in restricting the disallowance to 2% of purchases as against the 12.5% disallowed as non-genuine/bogus by the Assessing Officer.

2. 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 Ld. DR on merits.

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

4. 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 the order of the Tribunal in assessee's own case for the A.Y. 2009-10 in ITA.No. 7380/Mum/2016 dated 02.07.2018 directed the Assessing Officer to restrict the disallowance to 2% observing as under: -

"7.3.2 It is observed that Hon'ble ITAT has recently passed an order dated 02.17.2018 in the case of the appellant case in ITA. No. 7380/MUM/2016 for AY 2009-10 wherein the addition on account of alleged bogus purchase has been restricted to 2 % with following observations:

11. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. From the record we found that the assessee is a partnership firm engaged in the business of Manufacturing & assembling of Plastic or Rubber Hoses used in the manufacturing industry and agricultural applications with MS, SS and Brass Fittings. These Hoses are basically used in connecting various pipes meant for supply of water, chemicals, Liquid gases and other flowing commodities. Hose tubes are directly bought from leading

manufacturers such as Parker, Dixon, Gates. The hoses are cut into various lengths and designs as per the requirement of customers. Further, steel and brass fittings like nipples, nuts, bolts, shafts, chains, clamps, etc are manufactured from the various kinds of steel and brass plates, rods, etc. and affixed to both the ends of the Hoses. The assembly activity is partly carried out in the factory of assessee and partly out-sourced on labour job basis. The alleged purchases includes various type of steels used in the manufacture of numerous fittings for the Hoses. The Hoses cannot be sold to their clients without steel and brass fittings. These Hoses are of different diameter and lengths. Based on the shapes and diameter, the fittings are manufactured from MS, SS and/or brass metal sheets and rods. The goods so purchased were delivered by the respective vendor parties at the business premises. The alleged parties had been paid by an account payee crossed cheques. The goods so purchased had been utilised in the process of manufacturing & assembling of finished goods and unused material remained in the stock. The sales of finished goods namely Industrial Hoses are already included in the sales figures and are considered in calculating taxable income of the respective year in which the sale has taken place. The manufacturing flow chart describing the manufacturing activity was also submitted in the course of hearing.

Further, the following documents in support of the above facts were submitted to the learned AO.

- a. Copy of Invoices raised by the said vendor parties.*
- b. Copy of the ledger account reflecting the purchase entries and payment against the same made to them.*
- c. Copy of Bank Statements reflecting the cheque payments made to the said vendor parties.*

12. The learned AO did not accept the above evidences and affirmations of the assessee while deciding the assessment and disallowed the entire purchases of Rs.1,31,07,620/- from all the alleged 12 parties treating it as bogus / non-genuine. Merely because a dealer does not pay VAT after collecting tax that does not mean that it was not in existence or it has not affected the sale or was not carrying on the business activities. From the record we also observed that the alleged parties were granted registration by VAT Authorities who grant the same after visiting the dealer and after verifying his address, credentials, etc. Hence under no circumstances, merely because the parties defaulted in the

payment of VAT, it cannot be said that the assessee has accommodation bills of purchase.

13. From the record we also found that the goods so purchased were used for manufacturing fittings for the Rubber hoses sold to the customers. Part of the fittings manufactured was lying in the stock and hence the entire purchase from the suspected dealers is not debited to the expense account in trading account for the year ended 31-3-09.

14. The break up of purchases during the year and in previous two years is as under:

Product description	FY 08-09 (Rs)	FY 07-08 (Rs)	FY 06-07 (Rs)
Hose Purchase	4,52,64,657	3,53,80,210	3,32,96,324
Steel Purchase	2,60,64,383	1,71,30,210	1,08,22,235
Fittings	47,23,179	58,91,934	79,74,910
Packing Material	3,95,060	4,11,118	1,73,385
Miscellaneous items Dies Tubes, Nut, Bolt	3,97,847	2,38,257	1,91,137
Labour cost included in purchases	25,98,895	53,60,492	28,84,039
Total	7,94,44,021	6,44,12,221	5,53,42,030

15. Normally, the value composition between the Hoses and Steel fittings is in the Ratio 2: 1 (ie. Hose consists of 2/3rd value and fittings consists 1/3rd in value. However, since the hoses are tailor made for customers based on the capacity and size of their machines, the proportion of steel and rubber hoses vary per production batch.

16. We also observe that the Month wise quantitative details of principal item of Rubber Hoses of various sizes for the period April 2008 to March 2009 produced from the Hoses and the steel purchased in the normal course of business and the corresponding sales invoices for goods sold was filed before AO. It is not in dispute that during the year under consideration, assessee was shown GP at 13.10%. It is not the case of Revenue that gross profit declared in respect of alleged bogus purchases used in manufacturing / sales was lower than the GP declared in respect of normal purchases. Furthermore, GP during the year under consideration was better than the GP declared in earlier years. Keeping in view the totality of facts and circumstances of the case, we direct

the AO to restrict the addition to the extent of 2% of alleged bogus purchases. We direct accordingly."

7.3.3 Evidently the facts of the case for the year under consideration are identical to facts of the cases for Assessment Years 2009-10 before the Hon'ble Tribunal, in appellant's own case. Therefore, respectfully following the decision of the Hon'ble Tribunal, the Assessing Officer to estimate the profit element from the purchases treated as non-genuine at the rate of 2%."

5. Since, Ld.CIT(A) followed the order of the Tribunal in assessee's own case for the earlier assessment year i.e. A.Y: 2009-10 on identical issue and restricted the disallowance of purchases to 2%, I do not find any infirmity in the order passed by the Ld.CIT(A) in restricting the disallowance to 2% of alleged bogus purchases. Grounds raised by the revenue are dismissed.

6. 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