

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

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

ITA NO. 2646/MUM/2019 (A.Y. 2009-10)

Income Tax Officer – 22(2)(1) 312, 3 rd Floor Piramal Chambers, Lalbaug Mumbai – 400 012	v.	Shri Karimullah Khan C/o Habib Metal Works Gala No. 17, Khuraiya Estate CST Road, Kalina Santacruz (E) Mumbai - 400098 PAN: AADPK9301P
(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) – 34, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.01.2019 for the A.Y. 2009-10 in restricting the disallowance to 25% 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 "Manufacturing of Washer", filed return of income on 29.09.2009 for the A.Y.2009-10 declaring income of ₹.3,75,630/- 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 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 26.05.2014 furnished purchase bills, Bank statement entry and goods selling confirmation of the parties 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 did not produce the parties to establish the claim of the assessee that the purchases are genuine. Therefore, Assessing Officer treated entire purchases of ₹.22,73,181/- 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 25% 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 25% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"4.7. 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).*

4.8. 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 four of the hawala operators totaling to Rs. 22,73,181/-. 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 without any response. 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 and 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 manufacturing 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 hawala dealers. However, the ratio of the judgement of Hon'ble Gujarat High Court in the case of M/s. Vijay Proteins Ltd. (1996 58 ITD Ahd) is applicable to the facts and circumstances of the appellant's case since the appellant is a manufacturing concern. Here, the Hon'ble Court has held that disallowance of 25% 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 100% to 25%. 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 25% 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