

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

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

ITA NO. 2714/MUM/2019 (A.Y. 2009-10)

Income Tax Officer – 21(2)(4) Room No. 109, 1 st Floor Piramal Chambers, Lalbaug Mumbai – 400 012	v.	Shri Nilesh Jagdish Satam A-28, Shivam Sadan Prabhadevi, Veer Sarvarkar Marg Mumbai - 400025 PAN: AOWPS2361G
(Appellant)		(Respondent)

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

Date of Hearing : **22.10.2020**
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) – 33, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.02.2019 for the A.Y. 2009-10 in restricting the disallowance to 30% of purchases as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, assessee engaged in the business of trading in computer peripherals, filed return of income on 25.09.2009 for the A.Y.2009-10 declaring income of ₹.1,88,694/- and the return was processed u/s. 143(1) of the Act. Subsequently, case was reopened for escapement of income on account of accommodation bills/fictitious bills by issue of notice u/s. 148 of the Act dated 17/01/2014, that the assessee has availed accommodation entries from M/s. Keligare who is 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. Keligare. Assessee vide letter dated 15.01.2015 furnished ledger copies 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, party was 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 except ledger the assessee could not produce any supporting evidences and could not prove the genuineness of the purchases made from the said party. Assessing Officer observed that the notice issued u/s. 133(6) of the Act to the party was returned unserved with a remark "left" and the assessee did not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated entire purchases of ₹.5,14,220/- 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 30% 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 restricted the disallowance to 30% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"5. I have carefully considered the submissions of the appellant and the impugned assessment order of the AO, on this issue. There is a single party i.e M/s. Keligare from whom purchase of Rs. 5,14,220/- was claimed by the assessee. The said party was declared as hawala traders/bogus by the Maharashtra Sales Tax Department. However, the AO has found that the payments for purchases were made by account payee cheques and copy of ledger account of the supplier was also filed with the AO. The purchase bills and corresponding sales bills as well as evidence of delivery could not be filed by the above, the purchase could not be verified and therefore, disallowance barring the issue as to 100% or a part thereof, is upheld.

5.1 The appellant has claimed to have purchased RAM and other computer related items from the said party. Ledger and computer generated purchase bills submitted in the appellate proceedings does not inspire confidence as the same are unsigned. Delivery challans do not have relevance in case items can be delivered by hands. Considering the totality of factors, I am of the view that in absence of the availability of the said party or even invoices issued by the said party, the disallowance of purchase to the extent of 30% is justified. The disallowance of 100% made by the AO is not justified because it has not been proved conclusively that the appellant has not purchased any material from any other party. Neither, there is a proof that the assessee has received back cash out of the payments made by cheques. To conclude, disallowance of 30% of Rs. 5,14,220/- = Rs. 1,54,266/- is sustained and balance disallowance being 70% of Rs. 5,14,220/- = Rs. 3,59,954/- is hereby deleted. The grounds are 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 30% 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