

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.583/Mum/2019
(Assessment Years: 2010-11)**

Asstt. Commissioner of Income
Tax, Circle 17(2),
Room No. 123A, 1st Floor,
Aayakar Bhavan, Churchgate,
Mumbai – 400 020

M/s Palette International
508, Nainkrupa,
Vs. 118/122, Kazi Sayed Street,
Mumbai – 400 003

PAN – AAJFP1784H

(Appellant)

(Respondent)

Appellant by: Ms. Shreekala Pardeshi, D.R
Respondent by: None

Date of Hearing: 08.12.2020
Date of Pronouncement: 09.12.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-58, Mumbai, dated 29.11.2018 which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 28.08.2015 for A.Y. 2010-11. The revenue has assailed the impugned order on the following grounds of appeal before us:

- "1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified in restricting the addition made by the A.O. to 12.% of Rs.1,96,875/- against the addition made at 100% of the bogus purchases, ignoring that the assessee was unable to prove the genuineness of the purchases either by producing the supplier for examination or by furnishing other substantiating documents which were required by the Assessing Officer?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the A.O. was based on the details of the scam unearthed by the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries/bogus bills from the suppliers without actually making purchase from them?

(This case falls under the exception 10(e) of the Circular No.03/2018 dated 11.07.2018 as amended on 20.08.2018)

3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

2. Briefly stated, the assessee firm which is engaged in the business of trading of dyes & chemicals had filed its return of income for A.Y. 2010-11 on 14.10.2010, declaring its total income at Rs.1,08,91,790/-. Assessment under Sec. 143(3) was earlier completed in its case at an income of Rs.1,10,08,710/- . Subsequently, on the basis of information received in the office of DGIT (Inv.), Mumbai, that the assessee had booked bogus purchases by obtaining accommodation entry from a hawala party, its case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made impugned purchases aggregating to Rs.1,96,875/-, as under:

Sr. No.	Hawala TIN	Name	Amount (Rs.)
1.	27810672925V	Hermitage Trading Company Pvt. Ltd.	1,96,875/-

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions, the A.O, therefore, concluded that the assessee merely on the basis of an accommodation entry procured from the aforementioned party had booked bogus purchases with an intent to suppress its profits. Accordingly, the A.O made an addition /disallowance of the aforesaid impugned purchases amounting to Rs.1,96,875/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). Observing, that the various benches of the Tribunal in similarly placed cases of bogus purchases had restricted the addition to the extent of 12.5% of

the value of impugned purchases, the CIT(A) after consideration of the facts involved in the case before him adopted a similar view and restricted the addition to the extent of 12.5% of the impugned purchases under consideration.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the assessee respondent despite having been put to notice had failed to put up an appearance before us, therefore, we herein proceed with as per Rule 25 of the appellate Tribunal Rules, 1963, and dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities. The Id. Departmental Representative (for short 'D.R') relied on the order of the A.O. It was submitted by the Id. D.R that the CIT(A) without any justifiable reason had confined the disallowance of the entire impugned purchases made by the A.O to 12.5%. It was thus submitted by the Id. D.R that the order of the CIT(A) may be set aside and that of the A.O be restored.

6. We have heard the Id. D.R and perused the orders of the lower authorities. Admittedly, as is discernible from the orders of the lower authorities the assessee had failed to substantiate the genuineness and veracity of the impugned purchase transaction under consideration. At the same time, we may herein observe that though the assessee on the basis of irrefutable documentary evidence could not substantiate the authenticity of the impugned purchase transactions to the satisfaction of the A.O, but then, it is a matter of fact borne from the records that certain documents supporting the factum of purchase of the goods under consideration was placed on record by the assessee before the lower authorities. Be that as it may, we find that the A.O had at no stage doubted or dislodged the correlating sales of the impugned purchases under consideration. In the backdrop of the aforesaid facts, we concur with the view taken by the CIT(A) that the addition in respect of the impugned purchases booked by the assessee was liable to be restricted only to the extent of the profit which it would have made by procuring the

goods from the open/grey market. Accordingly, finding no infirmity in the estimation of the profit by the CIT(A) at 12.5% of the value of the impugned purchases, we uphold his order.

7. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 09.12.2020

Sd/-
M.Balaganesh
(ACCOUNTANT MEMBER)

Mumbai, Date: 09.12.2020
PS: Rohit

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "K" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai