

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4465/MUM/2019
Assessment Year: 2010-11**

ITO-21(3)(1),
Room No. 207, 2nd floor,
Piramal Chambers, Lalbaug,
Mumbai-400012.

Appellant

Revenue by
Assessee by

Date of Hearing
Date of pronouncement

Vs. Ramesh B Musale,
Room No.-382, Ground Floor,
Adarsh Nagar, Building No. 23,
Prabhadevi,
Mumbai-400025.

**PAN No. AJTPM 0744 R
Respondent**

: Ms. Smita Verma, DR
: None

: 11/01/2021
: 18/01/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-33, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 11.01.2021, neither the assessee nor his authorized representative appeared before the Tribunal on the above date. Therefore, considering the non-compliance by the assessee, we

are proceeding to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the revenue read as under :

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding only 30% addition of Rs.2,66,147/- on the bogus purchases in the case of purchase from Goodluck Impex and Suraj Steel as against the AO's stand of disallowing 100% of the bogus purchases, ignoring the fact that the action of the Assessing Officer was only based on credible information received from the Maharashtra Sales Tax Department, the assessee, during the course of assessment proceedings, failed to prove the genuineness of the purchase transactions.
2. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 09.10.2010 declaring total income of Rs.3,57,692/-. The assessment was completed u/s 143(3) on 31.12.2012 determining the total income at Rs.10,02,120/-. Subsequently, on receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from two parties i.e. Goodluck Impex (Rs.15,733/-) and Suraj Steel (Rs.2,50,414/-), the Assessing Officer (AO) reopened the assessment by issuing notice u/s 148 of the Act. In response to the notice u/s 148, the assessee filed a letter dated 19.08.2013 before the AO, requesting the original return to be treated as returned in response to the notice u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the above two

parties. However, those notices were returned un-served by the postal authorities. The AO asked the assessee to produce the above two parties before him for examination of their books of accounts. Since there was no compliance by the assessee, the AO having considered the findings of the Sales Tax Department made an addition of Rs.2,66,147/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that vide order dated 05.04.2019, the Ld. CIT(A) held that :

“10.2 On the addition of Rs.2,92,829/- in case of Suraj Steel and Goodluck Impex where there was information from Sales Tax and notices u/s 133(6) were also returned back, it has been submitted by the appellant that all relevant details like copies of bills, bank statement and delivery challans were filed. Regarding Shree Sai Wirenetting where notices u/s 133(6) returned back, it was submitted that this was a genuine party not appearing in the list of Sales Tax Department.

In my considered view, once the AO is unable to verify the transactions due to non-availability of the parties and the assessee does not produce the parties for verification, the treatment regarding the transactions with those parties should be the same irrespective of the fact as to whether they appear in the list of the Sales Tax Department or not. I am also of the view that 100% addition cannot be made unless it is proved beyond doubt that the assessee has received back the cash in lieu of Cheques and no purchase was made even from the grey market. Otherwise, profit element embedded in such transactions can only be added. In the facts and circumstances of the case, additional profit of 30% is estimated in obtaining accommodation entries from the parties who are not traceable and where purchase could not be verified. Therefore, the addition of 30% of Rs.2,66,147/- = Rs.79,844/- is sustained in case of purchase from Goodluck Impex and Suraj Steel and balance addition of Rs.1,86,303/- is hereby deleted.”

5. The Ld. DR submits that the order passed by the AO be confirmed because (i) as per the information received after inquiry from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from the above two concerns, (ii) the notices issued u/s 133(6) by the AO were returned un-served by the postal authorities and (iii) the assessee failed to produce the above two parties before the AO for examination.

6. We have heard the Ld. DR and perused the relevant materials on record. As recorded by the Ld. CIT(A), the assessee had filed all relevant details like copies of bills, bank statements and delivery challans. Having considered the above, we are of the considered view that the Ld. CIT(A) has rightly brought to tax the profit element embedded in such disputed purchases by estimating @ 30% on Rs.2,66,147/- which comes to Rs.79,844/-.

In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

In view of the above factual scenario and position of law, we affirm the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 18.01.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 18.01.2021
Alindra, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai