

**IN THE INCOME TAX APPELLATE TRIBUNAL), 'D' BENCH
MUMBAI**

BEFORE SHRI RAJESH KUMAR, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.11/Mum/2019
(Assessment Year :2011-12)**

Deputy Commissioner of Income Tax, CC 3(2) Central Range-3, Room No.1913, Air India Building, Nariman Point Mumbai	Vs.	M/s.Doshi Medical Services 19, 5 th Khetwadi Lane, Lehri Building SVP Road, Khetwadi Mumbai – 400 004
PAN/GIR No. AAAFD0236F		
(Appellant)	..	(Respondent)

Revenue by	Ms. Ashima Gupta
Assessee by	None
Date of Hearing	06/01/2021
Date of Pronouncement	19/01/2021

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The aforesaid appeal has been filed by the assessee against the impugned order dated 09/10/2018, passed by the CIT(A)- 51, Mumbai, for the assessment year 2011-12.

2. The only issue raised by the Revenue is against the order of Id. CIT(A) restricting the addition to the extent of 12.5% of bogus purchases as against 100% added by the AO.

3. The facts in brief are that the search action u/s.132 of the Act was carried out at the premises of the M/s. Shrigun Pharmachem Pvt. Ltd., on 26/11/2015 and consequent to search and seizure action, a notice u/s.153C of the Act was issued and duly served on the assessee which was complied with vide letter dated 21/12/2017 stating therein that return filed originally u/s.139 may kindly be treated as return in response to this notice.

4. During the course of search, it was found that the assessee has made purchases from Arch Marketing and M/s. Overseas Impex which were non-existent hawala entities. The AO held that the assessee has taken only entries of bogus bills without making actual purchases. Accordingly, the AO during the course of assessment proceedings called upon the assessee to prove the genuineness of the purchases. Assessee replied to the notice of the AO by filing the necessary documents. However, AO was not convinced with the genuineness of the purchases and added the entire amount of purchases to the income of the assessee aggregating to of Rs.78,24,815/-.

4. In the appellate proceedings, Id CIT(A) deleted the addition partly to the extent of 87.5% and sustained to the extent of 12.5% of the said bogus purchases by following the decisions of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth reported in ITA No.3238 & 3293/Ahd/2009 wherein it has been held that only the profit embedded in

the bogus purchase could be brought to tax and not the entire amount of purchases.

5. At the outset, we would like to state that at the time of hearing neither assessee nor authorized representative appeared before the Bench when the case was called for hearing nor any adjournment petition was filed before the bench, therefore, we are disposing the appeal after hearing the Id. DR and perusing the material on record.

6. After hearing the Id. DR and perusing the materials on record, we observe that in this case, the assessee undisputedly was beneficiary of hawala purchase entries to the tune of Rs.78,24,815/-. The AO added the entire amount of purchases on the ground that genuineness of the purchases was not proved whereas Id. CIT(A) reduced the addition of 12.5% by following the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth referred to supra. After perusing the order of Id. CIT(A) and the facts on record, we are of the considered view that the Id. CIT(A) has passed a balanced and reasoned order by following the decision of the Gujarat High Court and therefore we are inclined to uphold the order of the Id. CIT(A) and consequently appeal of the Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced on 19/01/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 19/01/2021
KARUNA, *sr.ps*

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai