

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"SMC" BENCH, MUMBAI**

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

**ITA NO.4492/MUM/2019 (A.Y: 2009-10)**

Income Tax Officer – 17(3)(5) Room No. 137, 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road, Mumbai-400020	v.	M/s. United Plastics 174, Shiva Kunj Samuel Street Masjid Bunder, Mumbai - 400009  <b>PAN: AADFU1749H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>	<b>:</b>	<b>Ms. Smita Verma</b>
<b>Date of Hearing</b>	<b>:</b>	<b>19.01.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>19.01.2021</b>

**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)-28, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.04.2019 for the Assessment Year 2009-10. The only grievance of the Revenue in its appeal is Ld.CIT(A) erred in restricting the disallowance of purchases to 12.5% 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 trading in plastic bags and has not filed return of income for the A.Y: 2009-10. 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 assessment was 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 dealers as referred in the Assessment Order. In response, assessee 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.

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 assessee did not produce the parties along with their necessary documents to establish the genuineness of the transactions and the parties were not found at their address. Therefore, Assessing Officer treated entire purchases of ₹.7,47,697/- 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 12.5% 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 the decision of Hon'ble Gujarat High Court in the case of CIT v. Simit P.

Sheth [356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

*"5.2. I have given anxious thought to the entire dispute at hand which is regarding 100% addition made by the AO in relation to the total amount of bogus purchase as described above. Further, I have also duly perused the impugned Assessment Order, the arguments and submissions of the Ld. AR as indeed the factual matrix of the appeal.*

*5.3. It is pertinent to note and appreciate that it cannot be denied that this particular case is one of such case wherein, the appellant cannot establish and demonstrate that the bogus purchases to the tune of Rs.7,47,697/- that are being attributable to it are not really so and that the purchases are all fully genuine whose veracity can be established wholly and totally. I say so because, there are enough evidences that have been brought on record by the AO which casts a substantial shadow of doubt about the real nature of the so-called purchases.*

*5.4. Further, it is pertinent to note that the burden of proof in proving the veracity and the genuineness of the purchases would rest fairly and squarely and incumbent upon the appellant. Moreover, in the facts of the matter, an onerous obligation is cast upon the appellant to produce the parties to prove the genuineness of the transactions. Moreover, simply because the payments are made by cheque, that itself would not certify automatically that the transaction in question is aboveboard whose veracity has been totally established.*

*5.5. In view of the above, the claim of the appellant that the payments have been made by the a/c payee cheque also does not make the claim as bonafide in view of the judicial pronouncement made by Hon'ble Calcutta High Court in the case of CIT vs. Precision Finance Pvt. Ltd. 208 ITR 465 Cal. (1994). It was held that transaction through bank is not sufficient to prove a transaction as bonafide. Merely because the money is transferred through the bank account does not prove that the money is explained. It is essential to prove the creditworthiness of the persons or genuineness of the transactions. Merely furnishing of particulars is not enough. It was held that mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. The ratio laid down in the case of Precision Finance is squarely applicable to the facts and circumstances in the present case of the appellant as well which is commensurate with the information received by the AO from the Investigation Wing.*

5.6. It is further pertinent to note that the veracity of the transactions through banking channels is not a *Sine-qua-non* to prove that the transaction must indeed be beyond the shadow of doubt and also that there cannot be any infirmity with the same. Judicial decisions have also taken note of this aspect and started recognizing that modern instruments of tax evasion are ingenious enough to shape them in such a manner that on the surface, they appear genuine enough. The above is supported by the following case laws i.e.:-

1. **CIT Vs. Jansampark Advt. Del. High Court/ITA No.525/2014.**

**Ratio**

"The fact that transactions are through banking channel, it does not necessarily follow that satisfaction as to the creditworthiness of parties or genuineness of transaction has been established."

2. **CIT Vs. Vir Bhan & Sons, 273 ITR, 206(P&H)-High Court.**

"Mere fact that amount was received by cheque, by itself does not conclusively prove the genuineness of the transaction."

5.7. Therefore, there is room for doubt that the veracity of the transactions of the bogus purchase is not established. At the same time it is also pertinent to note that it is also a fact that the AO has not been able to disprove or interfere with the sales of the appellant therefore relevant question would arrive as to how the sales have been effected if the entire purchase is to be taken as bogus in respect of the parties in question referred to above. Therefore, it is observed that only the embedded profit element in the transaction could be justifiably taxed and not the cent percent amount taken by the Ld.AO.

5.8. In this context, therefore, it is pertinent to note that the High Court of Gujarat in the case of **Commissioner of Income-tax v. Simit P.Sheth [2013] 356 ITR 451 (Gujarat)** has held that **where purchases were not bogus but were made from parties other than those mentioned in books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of assessee.** In that case the Assessing Officer noticed that some of the alleged suppliers of steel to the assessee had made their statements on oath to the effect that they had not supplied the steel to the assessee but had only provided sale bills. The CIT(A) noted that the appellant-assessee may have had made the purchases from other parties in

*the open market. Thereupon, he retained 30 per cent of the purchase cost as the probable profit of the assessee. The ITAT was of the opinion that twelve and half per cent of the disputed purchases should be retained in the hands of the assessee as business profit. In the result, the Tribunal partially allowed the assessee's appeal.*

*The High Court held that once the assessee's sale of "x" quantity of steel is accepted, the purchases of the same quantity had to be believed. It was held that it may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales but the vital question remains i.e. whether the entire amount of purchases should be added back to the income of the assessee or only the profit element embedded therein was to be ascertained; and whether the purchases themselves were completely bogus and non-existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation. The High Court held that in the present case when the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. 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.*

*5.9. I, therefore, find that in the case of the appellant as well, the ratio of the above said decision would largely apply, in as much as the fact that here also it would be a question of a reasoned estimate of the profit element embedded in the transaction. This is also based on sound logic that the embedded profit element of the transaction would be a correct approach to take, since, the rival contentions are resolved in the fine balance of convenience. This is more so because the stand of the AO in taxing the entire amount of transaction would be a classic case of executive overreach.*

*5.10. I have also duly considered the arguments of the AR and whereas, I find that the Ld.AR may be justified in opposing the 100% addition yet there is no plausible case that even the embedded profit element should not be taken for taxation. I have also duly noted the case laws cited by the appellant. However, on a careful perusal of the same, it is seen that rather than pin-point as to how and in what mode or manner, do these precedents, apply to the instant case, the submissions seem to be a rambling exposition on the various aspects of different case laws. Further, it is neither judicially expedient, nor prudent to superimpose the facts of the case cited by the AR to the facts of the present case. In this sense, each case is undisputedly unique and stands on different pedestal.*

5.11. Further, it would be very much germane to note that in various decisions, the Hon'ble ITAT, Mumbai has held that in such cases which are essentially of trading, estimation of 12.5% profit as having been embedded in the bogus purchase transaction was held to be a fair and just outcome. Some of these decisions are quoted below:-

- a) Meru Impex Ex in ITA No.2660/Mum./2017.
- b) MP Recycling Co. in ITA No.6358/Mum./2016.
- c) Y.A.Mamaji Furnishing & Co. in ITA's 4756,4757 & 4758/Mum./2014
- d) Manish M Shah in ITA 2975/ Mum./2015.

5.12. In view of the above detailed discussion, I restrict the addition on account of bogus purchase to 12.5% of Rs.7,47,697/-, thus, indicating that the addition confirmed shall be Rs.93,462/-. The remaining addition of Rs.6,54,235/- is deleted. The impugned issue is accordingly decided and the appeal is 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 12.5% of the purchases. Grounds raised by the revenue are dismissed.
8. In the result, appeal of the Revenue is dismissed.

Order pronounced in virtual court on 19.01.2021.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 19/01/2021  
Giridhar, Sr.PS

**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, Mum**