

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.1399/MUM/2019 (A.Y: 2010-11)

Income Tax Officer – 6(2)(1) Room No. 510, 5 th Floor Aayakar Bhavan M.K. Road, Mumbai-400020	v.	M/s. Choudhary Dredging Construction & Engineering Pvt. Ltd., 124, A1 Building Wadala Truck Terminal Wadala (W), Mumbai - 400031 PAN: AACCC5352L
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Ms. Smita Verma
Date of Hearing	:	11.01.2021
Date of Pronouncement	:	11.01.2021

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)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.12.2018 for the Assessment Year 2010-11. 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 "Civil construction & Developer" filed return of income on 25.09.2010 for the A.Y.2010-11 declaring income of ₹.20,49,070/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT (Inv.), 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 DGIT(Inv.) Mumbai, that the assessee has availed accommodation entries from M/s.V.M. Udyog 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.V.M. Udyog. In response, assessee submitted that the goods purchased are used in manufacturing of furnaces and thus become part of final product. Assessee vide letter dated 18.02.2016 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 has not submitted any documentary evidences with regard to the movement of goods of so called doubtful purchases. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the party was returned unserved with a remark "Left" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated entire purchases of ₹.4,38,284/- 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, we proceed to dispose off this appeal on hearing Ld. DR on merits.

5. Ld. DR vehemently supported the orders of the Assessing Officer. On a perusal of the order of the Ld.CIT(A), we 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: -

"4.2. I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the assessment order that the appellant produced the details with regard to purchases made from the parties and copy of bank statement indicating the payment made to the seller parties. It is noticed that on account of non-production of transportation bills, delivery challans etc. the AO added 100% bogus purchases u/s 69C of the Act. Section 69C reads..

"where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

As can be seen from the provision, for applying the section 69C, what is important is that there should be no explanation about the source of expenditure or that the explanation offered is not found

satisfactory. In other words, the source of expenditure incurred for the expenditure in question is the heart of section 69C. Here in this case, the appellant furnished an explanation of source from his bank account along with supporting evidence of purchase invoices and payment made for the said purchases by cheques. Therefore, in this case, the source of expenditure for purchases appearing in the books stands explained through the bank account. Therefore in invoking of section 69C in the present case is not proper.

4.3 However it is also a fact that the Sales tax department listed the supplier M/s V M Udyog as suspicious dealer and the assessee was not having the delivery challans but filed the copies of invoices, ledger account copy and bank statement for payments made for purchases. It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO, one cannot conclude that the purchases were not made by the assessee. In the case of Nangalia Fabrics 40 taxmann.com 206, Gujarat High Court has held that where purchases were supported by the bills, entries were made in the books of accounts and payment was made by cheque, the said purchases could to be held as bogus. Further, this is also not case in which the signed blank cheque books are found with the buyer to hold that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case.

4.4. Alternatively the assessee in ground 3 contended that the addition may be made on gross profit. The assessee has already declared 25% GP and 7.28% NP and paid tax thereon. There are many decisions wherein the ITAT, Mumbai, has upheld addition of a percentage of alleged bogus purchases under similar facts. In the following decisions also the ITAT, Mumbai, has upheld estimation out of alleged bogus purchases instead of addition of total purchases.

- 1. Salim Ebrahim Petiwala v/s. Ito 17(3)(2) ITA No 4772/Mum/2017*
- 2. Tubes India v/s. Asst CIT Circle 19(3) ITA No 2230 to 2232/Mum/2016*
- 3. The ACIT 19(2) v/s. M/s. Nocil Steels ITA No 4505/Mum/2015*
- 4. Satish R. Rathod v/s. ITO 15(3)(1) ITA No 567/Mum/2016*
- 5. Vinod H. Sanghvi v/s. DCIT 15(2)(Old) ITA No 125 to 127/Mum/2016*
- 6. M/s. Pentagon System and Services P. Ltd v/s. DCIT (OSD) Cir 2(3) ITA No 4804/Mum/2015*

7. *Turnkey Electrical Engineers P. Ltd v/s. DCIT 7(3) ITA No 1936,1937,1938 & 1939/Mum/ 2015*
8. *Montex Glass Fibre v/s. DCIT 2(2) ITA No 1520/Mum/2017*
9. *R.A. Industrial Metals v/s. ITO 14(1)(1) ITA No 1850/Mum/2015*
10. *Mehul K. Mehta v/s. ITO 15(1)(3) ITA No 3227/Mum/2016*

4.5 Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bops purchases can be brought to tax as additional profit. In the case of CIT vs. Simit P Sheth, 356 ITR 451, Hon'ble Gujarat High Court has upheld estimation @ 12.5% of alleged bogus purchases. Keeping in view the totality of facts and circumstances of the case and respectfully following the above decision, the addition is restrict to 12.5% of disputed purchases. Accordingly the addition to the extent of 12.5% of bogus purchases of Rs.4,38,284 which comes to Rs.54,786 is sustained. The AO is directed to modify the addition accordingly. The appellant gets part relief. This ground is partly allowed."

6. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we 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.

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

Order pronounced on 11.01.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 11/01/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL 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, Mum