

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

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

**ITA NOs. 4508 & 4509/MUM/2019  
(A.Y. 2011-12 & A.Y. 2010-11)**

Income Tax Officer – 25(1)(3) Room No. 205, 2 <sup>nd</sup> Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E) Mumbai - 400051	v.	M/s. Supriya Graphics A/102 Vasant Prakash Society Seven Bungloes, Andheri (W) Mumbai - 400061  <b>PAN: AAZFS2032D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>		<b>Shri Sanjay J. Sethi</b>
<b>Date of Hearing</b>	:	<b>21.01.2021</b>
<b>Date of Pronouncement</b>	:	<b>21.01.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. These appeals are filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)–53, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 05.04.2019 for the A.Y. 2010-11 and A.Y. 2011-12 in deleting the disallowance of the depreciation of ₹.2,17,500/- and ₹.4,02,375/- for the A.Y. 2010-11 and 2011-12 respectively claimed on the bogus purchase of machinery from M/s. Galaxy Corporation.

2. Briefly stated the facts are that, assessee engaged in the business of printing and designing, filed return of income on 29.09.2010 and 30.09.2011 declaring NIL income for the A.Ys. 2010-11 and 2011-12. The returns were 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 assessments were reopened U/s. 147 of the Act based on the information received from DGIT (Inv.), 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 parties as referred in the Assessment Order. In response assessee vide letter dated 10.02.2016 furnished copies of ledger account, copies of invoices and bank statements and 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.

**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 failed to produce the party to prove the genuineness of existence of the party. Assessing Officer observed that the notices issued u/s. 133(6) of the Act through to the parties are returned unserved and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated ₹.81,988/- and ₹.89,166/- being 25% of non-genuine purchases of ₹.3,27,821/- and ₹.3,56,664/- for the A.Y.2010-11 and A.Y. 2011-12 respectively as non-genuine. Assessing Officer further disallowed depreciation @15% on the machine purchased from M/s. Galaxy Corporation to an extent of ₹.2,17,500/- and ₹.4,02,375/- for the A.Y. 2010-11 and A.Y.2011-12 respectively. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee sustained the action of the Assessing Officer in adding 25% of the alleged bogus purchases and deleted the disallowance of depreciation of ₹.2,17,500/- and ₹.4,02,375/- claimed for the A.Y.2010-11 and A.Y. 2011-12 respectively on the purchase of machinery

from M/s.Galaxy Corporation. Against deletion of depreciation on bogus purchase of machinery from M/s. Galaxy Corporation, revenue is in appeal.

**4.** In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, I proceed to dispose off these appeals on merit on hearing Ld.DR.

**5.** Ld.DR vehemently supported the orders of the Assessing Officer. 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 Ld.CIT(A) deleted the disallowance of the depreciation of ₹.2,17,500/- and ₹.4,02,375/- claimed for the A.Y. 2010-11 and A.Y.2011-12 respectively on the bogus purchases of machinery from M/s.Galaxy Corporation. While holding so, the Ld.CIT(A) for A.Y.2010-11 observed as under: -

*"5.6. I have considered the submissions carefully. As regards Ground of Appeal No. 2, the appellant as claimed that it has purchased a printing machine from M/s Galaxy Corporation on 03.11.2009, with help of term loan from Bank of Maharashtra. Balance sheet shows secured loan from Bank of Maharashtra including LNP 60034603967 of which an amount of Rs.30,19,437/ was outstanding as on 31.03.2010. It stands to reason that an equipment financed by Bank of Maharashtra cannot be summarily treated as bogus. The AO has not made any inquiry from the bank in this*

*regard. The disallowance of depreciation of Rs. 2,17,500/-, in respect of equipment purchased in during the year is not warranted. In this background, disallowance of deprecation of Rs. 2,17,500/- is deleted. **Therefore, Ground of Appeal No. 2 is allowed.**"*

## **A.Y. 2011-12**

**"5.1. Ground of Appeal No. 2** *is in respect of disallowance of depreciation of Rs. 4,02,375/-. The AO noted that the appellant has claimed to have purchased a machine from a hawala party in AY 2010-11 and the depreciation of such purchase was not allowable. He therefore disallowed depreciation to the extent of Rs. 4,02,375/- computed on the WDV of Rs. 26,82,500/- @ 15% was disallowed. This is a continuation of the issue and decision for AY 2010-11. The assessee had claimed purchase from Galaxy Corporation claimed as capital expenditure of Rs. 32,62,500/- on which depreciation of Rs.2,17,500 was claimed in AY 2010-11. In the appellate proceedings, it was submitted that the appellant had purchased and imported Komari (Japan) made printing machine from M/s Galaxy Corporation on 03.11.2009, costing Rs. 29,00,000/- in AY 2010-11. This was purchased with the help of term loan from Bank of Maharashtra for which a loan of Rs. 27,84,000/- was taken. This was capitalized as fixed assets and that levy of Rs. 3,62,500/- was excluded from cost of machinery and claimed as input VAT credit. AY 2010-11 was the first year when equipment was put to use. The AO has disallowed the depreciation of Rs.2,17,500/-, in respect of the machinery in AY 2010-11. AY 2011-12 is the second year and depreciation of Rs. 4,02,375/- has been disallowed. It was contended that machinery was purchased with the help of loan and, therefore, cannot be denied depreciation on the same. This disallowance of Rs. 4,02,375/- was not warranted.*

*5.2. In AY 2010-11, in my appellate order of even date, it was held that it stands to reason that an equipment financed by Bank of Maharashtra cannot be summarily treated as bogus. The AO has not made any inquiry from the bank in this regard. The disallowance of depreciation in respect of equipment purchased financed by Bank of Maharashtra is not warranted. The disallowance of depreciation was deleted. Facts remaining same, the disallowance of deprecation of Rs. 4,02,375/- is deleted. **Therefore, Ground of Appeal No. 2 is allowed.**"*

- 6.** 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 deleting the disallowance of the depreciation of ₹.2,17,500/-

and ₹.4,02,375/- claimed for the A.Y. 2010-11 and A.Y. 2011-12 respectively, on the purchase of machinery from M/s. Galaxy Corporation. Grounds raised by the revenue are dismissed for both Assessment Years.

**7.** In the result, both appeals of the revenue are dismissed.

Order pronounced in the virtual court on 21.01.2020.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 21/01/2021  
Giridhar, Sr.PS

**Copy of the Order forwarded to:**

1. The Assessee
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**