

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5177/MUM/2019
Assessment Year: 2009-10**

Assistant Commissioner of
Income Tax, Circle-20(3),
Room No. 615, 6th floor,
Piramal Chambers, Parel,
Mumbai-400012.

Vs. M/s Smita Electrical Industries,
C-14 Shri Ram Indl. Estate, 13,
G.D. Ambedkar Road, Wadala,
Mumbai-400031.

Appellant

**PAN No. AACFS 2921 C
Respondent**

Revenue by : Mr. Sanjay J. Sethi, DR
Assessee by : Mr. Dinesh Diwale, AR

Date of Hearing : 03/03/2021
Date of pronouncement : 19/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, 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').

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

1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in by deleting the addition of Rs.2,36,717/- made against alleged bogus purchases from M/s Hiten Enterprises.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the onus is on the assessee to explain and substantiate the genuineness and true nature of the purchase transaction.
 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that the hawala dealers admitted on oath before sales tax authorities that they have not sold any material to anybody and assessee failed to produce such parties at the assessment stage though specifically asked by the AO.
 4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that purchases were made from some other parties which were not recorded in the books of accounts and only accommodation bills were obtained from hawala parties and thereby attracting provisions of section 40A(3).
 5. Though the tax effect is below the monetary limit prescribed in the CBDT Instruction No 3/2018 dated 11.07.2018 as amendment on 20.06.2018 as the case falls in the exception provided in Para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely Sales Tax Authorities.
3. Briefly stated, the facts of the case are that the assessee-firm filed its return of income for the assessment year (AY) 2009-10 on 25.09.2009 declaring total income of Rs.27,55,591/-. On receipt of information from the Director General of Income Tax (Inv), Mumbai that the assessee had obtained bogus purchase bills of Rs.19,20,456/- from two parties i.e. Raj Traders of Rs.26,719/- and Hiten Enterprises of Rs.18,93,737/-, the Assessing Officer (AO) issued notice u/s 148 for reopening the assessment. During the course of reassessment proceedings, the assessee appeared before the AO on 05.03.2015 along with Shri Hiten Parekh, Proprietor of M/s Hiten Enterprises from whom he claimed to have made the purchases. The AO recorded the statement of Shri

Parekh and has produced the relevant portion in his assessment order, which reads as under :

“Q. No. 5 As per the information given by the Sales Tax Department, your name is appearing as one of the bogus suppliers. Please state whether your statement was recorded by the Sales tax Officers and you have given statement to that effect?

Ans. Yes, the Sales Tax Department has recorded my statement in approximately June, 2010 and I had given a statement that I was indulging in bogus purchases.

Q. No. 6 I am showing you your copy of affidavit dated 17.04.2012 wherein you have stated that you have made sales for Rs.19,14,737/- to M/s. Smita Electrical Industries. Please state why this affidavit has been given by you in the backdrop of the statement to Sales tax Authorities.

Ans. I say that I had given the business to run to Shri Hitesh Shah and Shri Jatin Shah who were running the business in my name. They had opened the bank account in Axis bank, Kandivali (West) Branch- Mahavir Nagar and might have done some wrong transactions. However, I have done genuine business with M/s. Smita Electrical Industries and the entries were through Jain Sahakar bank ltd, Mandvi Branch, Mumbai-400 003.

Having considered the above statement along with the facts and circumstances of the case, the AO estimated the profit @ 12.5% of the disputed purchases of Rs.19,20,456/- and accordingly, made an addition of Rs.2,40,057/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld .CIT(A). We find that vide order dated 10.05.2019, the Ld. CIT(A) held that :

“5.2 I find that the AO has not been able to bring any evidence to the contrary to show that, the above said details and evidence furnished were not correct except the information received from the Sales Tax Department through DGIT(Inv.), Mumbai that M/s. Hiten Enterprise was indulging in issue of bogus hawala entries, I find that in the said statement the Shri Hiten Parekh has accepted that some wrong

transactions may have been done through his account in Axis Bank by Shri Hitesh and Shri Jatin Shah but this does not show that, the transactions with the appellant company were also bogus considering the details filed and confirmation made by the seller. The A.O has also noted in the assessment order that the appellant was able to correlate the purchases of material with the allocation of raw material and sales of finished goods. In view of the above discussion, I am of the considered opinion that the appellant has led sufficient evidence to establish the genuineness of the purchase transactions made with Hiten Enterprise. Further, the appellant has not contested the addition made in respect of purchases from Raj Traders amounting to Rs.26,719/-. Therefore, the addition of Rs.236,717/- made @ 12% of the purchases from Hiten Enterprises, on the basis of presumptions, is found to be without merit and the same is deleted. Accordingly, the addition made by the A.O of Rs.2,40,057/- is restricted to Rs.3340/-."

5. Before us, the Ld. Departmental Representative (DR) supports the order passed by the AO. On the other hand, the Ld. counsel for the assessee submits that the order passed by the Ld. CIT(A) be affirmed.

We have heard the rival submissions and perused the relevant materials on record. In the instant case, the AO has recorded the statement of Shri Hiten Parekh, proprietor of M/s Hiten Enterprises, from whom the assessee claimed to have made the purchases. In that statement, Shri Parekh has stated before the AO categorically that he had done genuine business with M/s Smita Electrical Industries (the assessee) and the entries were through Jain Sahakar Bank Ltd., Mandvi Branch, Mumbai-400003. The AO could have made further inquiries/investigations to dislodge the above statement of Shri Parekh. However, the AO has not done even preliminary inquiry to verify the contentions of Shri Parekh.

The AO has also noted in the assessment order at page 6 that the assessee was able to correlate the purchases of materials with the allocation of raw materials and sale of finished goods.

In view of the above factual scenario, the Ld. CIT(A) has rightly deleted the estimated profit @ 12.5% on purchases of Rs.18,93,737/- from Hiten Enterprises. He has rightly restricted the disallowance to 12.5% of purchases of Rs.26,719/- from Raj Traders which comes to Rs.3,340/-.

As the above order passed by the Ld. CIT(A) is based on the facts and circumstances of the present case, we affirm it.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 19/03/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

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

Mumbai;

Dated: 19/03/2021

Rahul Sharma, Sr. 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