

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.5721/MUM/2019 (A.Y: 2009-10)

ACIT – 27(3) Room No. 423, 4th Floor, 6 th Tower Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703	v.	M/s. Supertech construction Co. 8/A-4, Basant Park CHS Limited R.C. Marg, Chembur Mumbai – 400071 PAN: ABIFS4977R
(Appellant)		(Respondent)

Assessee by	:	Shri Subodh Ratnaparkhi
Department by	:	Shri Vijay Kumar Menon
Date of Hearing	:	10.03.2021
Date of Pronouncement	:	10.03.2021

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)–25, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.06.2019 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 business material supplier" filed return of income on 29.09.2009 for the A.Y.2009-10 declaring income of ₹.20,14,090/- 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.Pooja Enterprises 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. Pooja Enterprises. In response, Assessee vide letter dated 26.12.2014 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 has not submitted any documentary evidences like delivery challans, transport bills, etc., and only copy of bills of the parties have been submitted. Assessing Officer observed that the notices issued u/s.133(6) of the Act to the party was returned unserved and the assessee has not produced the party before the Assessing Officer. Therefore, Assessing Officer treated entire purchases of ₹.10,02,379/- 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. Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A) and prayed to upheld the order of the Ld.CIT(A).

5. Ld.DR vehemently supported the orders of the Assessing Officer.

6. We have heard the rival submissions, perused the orders of the authorities below. 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 various judicial pronouncements restricted the disallowance to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"6.4 Conclusion on case laws:

The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the assessee. It is also seen that putting an onus on the AO to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A Sanghavi (supra). If the bogus purchases are unproved and are declared consumed by assessee itself in its trading, manufacturing or non-trading activities, the entire addition can be made as it only goes to inflate the expenses of the assessee. (refer M/s. Shoreline Hotel Pvt. Ltd).

In the instant case, the assessee is a trader and the AO has not disturbed the sales of the assessee and its declared book profits are consistent over the couple of years. Therefore, it has to be the impugned purchases were done by it from unknown parties in the grey market and only fictitious invoice had been taken from the hawala trader. In such cases, the assessee actually earns higher margins while making purchases from the grey market and this extra profit requires to be computed. It has been held by decisions of ITAT Mumbai and High Courts, that a rate of 12.5% of the declared invoice is reasonable in such cases. It is also noted that the case law of Nikunj Eximp (supra) is not applicable since the supplier have not given any confirmations and the respective buyer/seller are not Government bodies/organisations. The AO has not disturbed the sales of the assessee and since the assessee has sold the goods the extra profit earned by the assessee from making purchases from the grey market requires to be brought to tax. In view of the above discussion, the AO is directed to compute this profit at 12.5% of the bogus hawala purchase only. As a result, the addition in this case would get restricted to Rs. 1,25,297/-- only instead of Rs. 10,02,379/-. The assessee gets a relief of Rs. 8,77,082/-. The grounds of appeal of the assessee are treated as partly allowed."

7. 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.

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

Order pronounced on 10.03.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 10/03/2021
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