

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 5035/Mum/2019
(A.Y: 2011-12)**

M/s Rashmi Bearing Co., Room No. 7, 2 nd Floor, 115, Nagdevi Street, Mumbai - 400003	बनाम/ Vs.	The ACIT, Circle 17 (3), 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFR2683Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by :	Shri Nishit Gandhi, AR
Respondent by :	Shri Sanjay Sethi, DR

सुनवाई की तारीख / Date of Hearing	15/02/2021
घोषणा की तारीख / Date of Pronouncement	10/03/2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 28, Mumbai, passed u/s. 143 (3) r.w.s 147 and u/sec250 of the Income Tax Act, 1961.

2. At the time of hearing, the Ld. AR of the assessee submitted that the grounds of appeal on jurisdiction of reassessment are not pressed. Accordingly, the grounds of appeal no 2.1 & 2.2 are treated as withdrawn and dismissed. The effective grounds of appeal are as under:

"1.1 In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 28, Mumbai [the CIT (A)] for short] erred in confirming the order of the learned Assistant Commissioner of Income Tax - 17 (3), Mumbai, [the AO" for short I which in itself was passed in gross violation of the principles of natural justice and could therefore not be upheld.

ON MERITS:

3.1 *In the facts and circumstances of the case and in law, the order passed by the AO and as affirmed by the CIT(A) is also bad in law since the same is based on material gathered at the back of the Appellant which was never furnished to the Appellant despite being specifically asked for and more particularly even cross examination of those parties on whose statements reliance was placed was never provided to the Appellant though specifically asked for at the time of assessment.*

3.2 *In the facts and circumstances of the case and in law, the Id. CIT (A) erred in partly confirming the action of the AO and sustaining an addition of Rs.2,12,210/- as alleged gross profit at 12.5% out of an addition of Rs.2,89,285/- at a gross profit of 17.04% on account of the*

alleged tainted purchases made by the Appellant during the year.

3.3 *While doing so the CIT(A) failed to appreciate that:*

(i) *The addition at 12.5% of the alleged tainted purchases of Rs.16,97,681/- amounted to double taxation of the same amount since the Appellant has already offered profit on sale of these purchases to tax in its return of income:*

(ii) *In any case, the entire purchases of the Appellant stood explained both quantity-wise and value-wise, based on various details I evidences submitted at the time of assessment as well as the Appeal proceedings before the CIT(A); and;*

(iii) *The AO has accepted the sales of the Appellant and therefore there is no question of doubting the purchases particularly when according to the AO himself and as admitted by him in his order, the Appellant had actually made purchases which were sold during the year.*

3.4 *In the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Appellant had in its return already declared a profit of 13.12% on the amount of Its. 16,97,681/- alleged as tainted purchases by. the AO and as such after granting credit I set off of such profit already declared by the Appellant no further addition could have been made and such an order passed by him without granting credit for the G.P. already declared is, contrary to the Judgement of the Hon'ble Tribunal in the Appellant's own case forAY 2009-10 in ITA No.2435 / M / 18.*

3.5 *Without prejudice to the above and in the alternative, the estimation of gross profit rate of 12.5% on the alleged*

tainted purchases by the Ld. CIT(A) is excessive and unfair and deserves to be substantially reduced.

The Appellant craves leave to add, amend, alter, delete or modify all or any the above grounds at the time of hearing.”

3. The Brief facts of the case are that, the assessee firm is engaged in the business as dealer and supplier of ball bearings. The assessee filed the return of income for the AY 2011-12 on 23.02.2016 with the total income of Rs. 34,29,300/-.The return of income was processed u/s 143 (1) of the Act. Subsequently, the assessment was reopened, as the assessee has obtained the bogus purchases bills from hawala dealers as per the information received from the Sales Tax Department and DGIT (Inv.).Therefore the AO has reason to belief that the income has escaped assessment and issued notice u/s 148 of the Act. Further the notice u/s 143 (2) and 142 (1) of the Act were issued. In compliance, the Ld. AR of the assessee appeared from time to time and the case was discussed. The AO found that the assessee has obtained bogus purchases bills from 14 parties and called for the detailed explanations to prove the genuineness of the purchases. The assessee has filed the explanations, but the A.O. was not satisfied with the information and has issued notice u/sec 133 (6) of the Act

and there was no response to notice from parties. Therefore, the A.O. considering the fact of failure on the part of the assessee to prove the genuineness of the purchases and has relied on the judicial decisions and made an addition @17.04% of the gross purchases as income and assessed the total income at Rs. 37,80,590/- and passed the order u/s 143 (3) r.w.s. 147 of the Act dated 20.12.2016.

4. Aggrieved by the order, the assessee has filed the appeal with the Ld. CIT (A). The Ld. CIT (A) considered the grounds of appeal, submissions of the assessee, findings of the AO and relied on the judicial decisions and finally restricted the addition @12.5% of the bogus purchases and partly allowed the appeal of the assessee. Aggrieved by the CIT(A) order, the assessee has filed the appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee has argued only on the facts that the Ld. CIT (A) has erred in restricting the addition @ 12.5%.The CIT(A) has not considered the vital calculations and further the Ld.AR has mentioned that the assessee has declared the profit @13.12% on the alleged bogus purchases in the financial

statements, which is higher than 12.5% and prayed for the deletion .Contra, the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld. AR emphasized that since the assessee has disclosed profit @13.12% on the alleged bogus purchases and the Ld. CIT (A) has restricted the addition percentage from 17.04% to 12.5%. Therefore, the assessee should be granted setoff of profit which is disclosed and the remaining only should be considered as income, otherwise the assessee is subject to the double taxation on the same income. We find the submissions of the Ld.AR are realistic but the assessee has to prove with material evidences and calculations with respect to the profit declared @13.12% Therefore, to meet the ends of the justice, we provide one more opportunity to the assessee to substantiate its claim. Accordingly, for the limited purpose, the disputed issue is remitted to the file of AO for verification of facts and the assessee should be provided adequate opportunity of hearing and we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 10.03.2021.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 10.03.2021

AK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	17.02.2021		PS
2.	Draft placed before author	18.02.2021		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	yes		