

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

**ITA No. 7552/MUM/2019
Assessment Year: 2009-10**

Asst. Commissioner of Income Tax – 31 (1), Room No. 602, 6 th Floor, Kautilya Bhawan, B.K.C. Bandra (E), Mubmai - 400051	Vs.	M/s Hitech Writing Instruments, 17/18, Shakti Industrial Estate, Piramal Nagar, S. V. Road, Goregaon (West), Mumbai - 400062 PAN: AAAFH0518A
(Appellant)		(Respondent)

Revenue by : Shri Shiddaramappa (DR)

Assessee by : Hemant Sharma (AR)

Date of Hearing : 24/05/2021

Date of Pronouncement: 25/06/2021

ORDER

This is an appeal by the revenue against the order dated 30.09.2019 of learned Commissioner of Income Tax (Appeals) - 42, Mumbai for the assessment year 2009-10.

2. The dispute in the present appeal is confined to partial relief granted by the learned Commissioner (Appeals) in the matter of addition made because of alleged non-genuine purchases.

3. Briefly the facts are, the assessee is a partnership firm engaged in the manufacturing of writing pen and related items. For the assessment year under dispute, assessee filed its return of income on 29.07.2009 declaring total income of Rs. 7,39,520/-. Subsequently, based on information received from DGIT (Inv.), Mumbai that the assessee is beneficiary of accommodation entries by way of non-genuine purchases worth Rs. 9,03,570/-, the Assessing Officer (AO) reopened the assessment under section 147 of the Income Tax Act,

1961. In course of assessment proceedings, the AO called upon the assessee to furnish supporting evidence to prove the purchases. As alleged by the AO, the assessee could not furnish items wise day-to-day stock register and some other details called for. Further, he observed, notice issued under section 133(6) of the Act to the concerned selling dealer seeking information, returned back unserved. Based on the above, AO concluded that the purchases of Rs. 9,03,570/- are non-genuine and accordingly disallowed them. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). Partly accepting assessee's contention, learned Commissioner (Appeals) restricted the disallowance to 12.5% of alleged non-genuine purchases.

4. I have considered the rival submissions and perused the material on record. As rightly observed by learned Commissioner (Appeals), though, the AO has treated the purchases as non-genuine, however, he has not doubted the consumption and sales effected by the assessee. Thus, logical conclusion would be, in absence of the purchased goods, the assessee could not have carried on the manufacturing activity and sold the products. Thus, in such factual position, the doubt, if any, is only with regard to the source of purchases. That being the case, only the profit element embedded in such doubtful purchases can be considered for addition. After taking note of the business of the assessee and other factors, I am in agreement with the decision of the learned Commissioner (Appeals) in restricting the disallowance to 12.5% of the alleged non-genuine purchases. Grounds are dismissed.

5. In the result, appeal is dismissed.

Order pronounced in the open court on 25th June, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 25/06/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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