

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6184/M/2019
Assessment Year: 2013-14**

Income Tax Officer- 12(3)(3), Room No.224, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s. Mangalam Infra Development Pvt. Ltd., Shop No.16, Ground Floor, Shreeji Shopping Centre, M.G. Road, Borivali East, Mumbai – 400 066 PAN: AAFCM3854Q
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 30.06.2021
Date of Pronouncement : 08.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 18.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. At the time of hearing when the case was called for hearing, neither assessee nor his authorised representative was present to attend the hearing nor any application for adjournment was filed. Therefore, we are deciding the appeal of the Revenue after hearing the Ld. D.R. and after considering the merits of the case.

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) restricting the addition to 14.89% of the bogus purchases as against 100% made by the AO.

4. The facts in brief are that the assessee filed the return of income on 19.09.2013 declaring total income of Rs.9,98,110/- which was processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny. AO during the course of assessment proceedings found that assessee is beneficiary of hawala purchase entries to the extent of Rs.19,53,783/-. The AO called for various details and information from the assessee from time to time during the course of assessment proceedings which were duly filed before the AO. The AO finally rejected the contentions of the assessee and treated the purchases as non genuine thereby making an addition of being 100% of the purchases of Rs.19,53,783/- to the income of the assessee by framing assessment under section 143(3) of the Act dated 18.03.2016.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply rate of 14.89% of the bogus purchases by following the decision of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) and following the decision of the co-ordinate Bench in assessee's own case in ITA No.6106/M/2016 dated 22.09.2017 A.Y 2011-12 wherein the rate of 11% has been applied on the bogus purchases by holding that during the year the GP rate of the assessee was 14.89% and the same should be applied to tax the bogus purchases.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that Ld. CIT(A) has passed the appellate order after following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra) wherein it has been held that in case of bogus purchases only profit element embedded in the bogus purchases is to be assessed. Ld. CIT(A) also followed the decision of the co-ordinate Bench in assessee's own case in ITA No.6106/M/2016 dated 22.09.2017 A.Y 2011-12 wherein the rate of 11% has been applied on the bogus purchases by holding that during the year the GP rate of the assessee was 14.89% and the same should be applied to tax the bogus purchases. We note that the co-ordinate benches of the Tribunal have been taking a consistent view that in case of bogus purchases only a GP rate ranging between 2% to 12.5% whereas the Ld. CIT(A) has directed to assess the income @ 14.89% which is quite reasonable and justified and therefore we do not find any reason why the Revenue is aggrieved by this order. Accordingly, we uphold the order of the ld CIT(A) by dismissing the appeal of the revenue.

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

Order pronounced in the open court on 08.07.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 08.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.