

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

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

**ITA No.6173/M/2019
Assessment Year: 2011-12**

ACIT-19(2), Room No.207, 2 nd Floor, Matru Mandir Tardeo Road, Mumbai – 400 007	Vs.	Shri Mayurendra Gorakshnath Bhiwandkar, Flat No.B-28, Shree Ram Industrial Estate, G.D. Ambedkar Marg, Mumbai – 400 031 PAN: AAIPB8866F
(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 10.07.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

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) deleting the addition to Rs.1,22,500/- as made by the AO on account of depreciation on the fictitious purchase of plant & machinery.

4. The facts in brief are that the assessee filed the return of income on 28.08.2011 declaring total income of Rs.28,02,800/- which was processed under section 143(1) of the Act. The case of the assessee was thereafter reopened by the AO after receipt of information from DGIT (Inv.), Mumbai that assessee is beneficiary of hawala purchase entries to the extent of Rs.7,97,484/- from two parties namely; Sejal Enterprises Rs.9,984/- and Galaxy Corporation Rs.7,97,484/- and accordingly the notice under section 148 of the Act was issued on 08.03.2016. 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 observed after considering the submission of the assessee that assessee has made bogus purchases of Rs.9,984/- which were debited in the profit & loss account whereas Rs.7,00,000/- of bogus purchases were capitalized under plant & machinery and claimed depreciation of Rs.1,22,500/-. The AO finally rejected the contentions of the assessee and treated the purchases as non genuine thereby making an addition of being 25% of the bogus purchases of Rs.9,984/- which comes to Rs.2496/- and also disallowing the depreciation claimed by the assessee of Rs.1,22,500/- to the income of the assessee by framing assessment under section 143(3) read with section 147 of the Act dated 31.01.2014.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by directing the AO to delete the addition. While allowing the appeal of the assessee, the ld CIT(A) recorded a finding that assessee has produced a certificate from the bank before the AO and also before the ld CIT(A) as the plant and machinery was financed by the bank and also inspected. The ld CIT(A) has noted that AO has not made further enquiries and merely relied upon the information received from sales tax department.

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 recording that AO has not carried out any further enquires and relied on the information received from Sales Tax Deptt. The ld CIT(A) even referred to the bank certificate testifying the fact that the plant was financed by the bank and the machinery was also inspected. Thus there is no infirmity in the order of ld CIT(A) and we are inclined to uphold the same 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.