

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

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

**ITA No.6119/M/2019
Assessment Year: 2010-11**

Income Tax Officer- 26(2)(5), Room No.319, 3 rd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	Vs.	Mr. Rajkumar Jivram Mishra, 272, Ground Floor, B/4, Santokh Mansion, BNP Road, Opp. Kokan Bank, Mazgaon, Mumbai – 400 010 PAN: AIWPM5448G
(Appellant)		(Respondent)

Present for:

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

Date of Hearing : 28.06.2021
Date of Pronouncement : 02.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 24.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

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 12.5% 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 26.09.2010 declaring total income of Rs.10,31,250/- 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.2,60,000 /- and accordingly the notice under section 148 of the Act was issued on 30.03.2017. 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 100% of the purchases of Rs. 2,60,000/- to the income of the assessee by framing assessment under section 143(3) read with section 147 of the Act dated 11.12.2017.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply rate of 12.5% of the bogus purchases by following the decision of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) by holding that only profit embedded in the bogus purchases can be brought to tax and not the entire 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. 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% can be applied depending on the facts of the case. In the present case the Ld. CIT(A) has directed to assess the income @ 12.5% which is quite justified and reasonable 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 02.07.2021.

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

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

Mumbai, Dated: 02.07.2021.

* 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.