

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 7389/MUM/2019 (A.Y. 2011-12)

Income Tax Officer – 33(1)(1) Room No. 945, 9 th Floor Kautilya Bhavan, C-41 to C-43 G-Block, Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Anil Pratapraj Sanghvi (HUF) D/41, Plot No. 602 Supanth C.H.S. Ltd., Sector-6, Charkop Kandivali (W), Mumbai -400067 PAN: AAHHA2159K
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Smita Verma
Date of Hearing	:	15.07.2021
Date of Pronouncement	:	15.07.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)–45, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.10.2019 for the A.Y. 2011-12 in restricting the addition @7% as against @12.5% made by the Assessing Officer.
2. Briefly stated the facts are that, assessee engaged in business of trading of Hygienic products and chemicals and agricultural related products, filed return of income on 30.09.2011 declaring income of

₹.4,40,297/- for the A.Y. 2011-12 and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT (Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various parties as referred in the Assessment Order who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from the parties mentioned in the Assessment Order. In response assessee furnished copy of purchase bills, ledger account of alleged party, details of purchase and bank statement highlighting the payment made to the parties and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques as such contended that all the purchases are genuine.

3. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made

purchases in the gray market. It is the finding of the Assessing Officer that the assessee failed to produce the parties in support of its claim that purchases are genuinely made from the parties. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "unserved/unclaimed" by the postal authorities. Therefore, Assessing Officer treated 12.5% of the alleged bogus purchases of ₹.36,46,163/- for the A.Y. 2011-12 as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the addition @7% as against @12.5% made by the Assessing Officer.

4. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, I proceed to dispose off this appeal on merits on hearing the Ld.DR.

5. Ld. DR vehemently supported the orders of the Assessing Officer. On a perusal of the order of the Ld.CIT(A), I find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the decision of the Tribunal in assessee's own case for the preceding assessment years i.e. A.Y: 2009-10 and A.Y. 2010-11 restricted

the addition/disallowance to 7% of the non-genuine purchases of ₹.36,46,163/-, while holding so, the Ld.CIT(A) observed as under: -

"4. Ground no.2 relates to the addition of Rs.4,55,770 being 12.5% of the purchases of Rs.36,46,163 as non-genuine purchases. During the assessment proceedings, the assessee has furnished the copy of the purchase bills, ledger account of alleged party, details of purchase and bank statement highlighting the payment made to purchase parties. Further, the AO issued notice u/s 133(6) to the parties, but the notices were returned back by the postal authorities. The assessee was show-caused as to why the purchases of Rs.36,46,163 should not be held as non-genuine purchases. In response, the assessee submitted that the above parties are not traceable, purchases were genuine, statement of purchase made from above parties and corresponding sales has been furnished, payment is made by account payee cheque and that there cannot be sales without purchase and that correct income has been offered for taxation. The AO has not accepted the/ Submission of the assessee by giving certain reasons mentioned in para 4 of assessment order, AO held that the assessee has obtained purchase bills amounting to Rs.36,46,163 from the parties but has not furnished anything regarding the delivery of goods, however sales are claimed to be genuine by assessee. He reasoned out that the assessee was in possession of goods because the sales cannot be made without purchases. This leads to that the fact that purchases were made from grey market, therefore, the purchase rate mentioned in the alleged sales bills cannot be accepted. It is obvious behind doing all these things is to make high profit at lower cost. It is, therefore, concluded that the assessee has arranged bills from abovementioned parties to suppress its true profit. Considering the facts and circumstances of the case and relying upon the decision of Gujarat High Court in the case of Simit P. Sheth, the AO held 12.5% of Rs.36,46,163 which comes to Rs.4,55,770 as non-genuine purchases and added the same to the total income of the assessee.

4.1 During the appellate proceedings, the appellant made submissions through the AR to make a point that its affected purchases were genuine. It is also submitted that the appellant paid sales tax to the parties and taken the credit in its sales tax returns. The AO has added 100% of the entire amount, which is also wrong, when the rate of tax itself is 5%. Further, the appellant submitted during the appeal proceedings stated that in its own case for

A.Y.2009-10 and 2010-11 in similar facts of the case, Hon'ble ITAT estimated the profit at 7% and filed copy of the same.

4.2 I have gone through the assessment order, submission of the assessee and the ITAT order in the case of the assessee. During the assessment proceedings, the assessee furnished copy of the purchase bills, ledger account of alleged party, details of purchase and bank statement highlighting the payment made to this party but nothing was produce regarding the delivery of goods like delivery challan, lorry receipts, transport details etc. In the order passed by ITAT, SMC Bench, the decision is in the favor of the assessee. The ITAT restricted the addition made by the AO to 7% of the purchases. Respectfully following the order of ITAT, SMC Bench in assessee's own case, the addition made by AO is restricted to 7% of the purchases of Rs:36,46,163 which comes to Rs.2,55,231. AO is directed to modify the addition accordingly. Assessee gets the part relief. Ground no.2 is partly allowed."

- 6.** On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, I do not find any infirmity in the order passed by the Ld.CIT(A) in restricting the addition/disallowance to the extent of 7% of the purchases. Grounds raised by the revenue are dismissed.
- 7.** In the result, appeal of the Revenue is dismissed.

Order pronounced in the virtual court on 15.07.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 15/07/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum