

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

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

ITA NO. 6551/MUM/2019 (A.Y. 2010-11)

Income Tax Officer – 6(1)(1) Room No. 503, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. ACME Solvents Pvt. Ltd., 6, 2 nd Floor, Samuel Street Mumbai - 400003 PAN: AADCA9369E
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Sanjay J. Sethi
Date of Hearing	:	12.07.2021
Date of Pronouncement	:	12.07.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.06.2019 for the A.Y. 2010-11 in restricting the addition @5% as against @12.5% made by the Assessing Officer.
2. Briefly stated the facts are that, assessee engaged in business of wholesaler in petrochemical goods, filed return of income on 16.09.2010 declaring income of ₹.19,35,100/- for the A.Y. 2010-11 and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer

received information from the Sales Tax Department, 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 Sales Tax Department, 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 vide letter dated 23.11.2015 furnished invoice from vendor, inventory, bank statement showing payment to vendors and also account confirmation from the vendor 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. Therefore, Assessing Officer treated 12.5% of the alleged bogus purchases of ₹.13,39,187/- for the A.Y. 2010-11 as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the addition @5% 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 various judicial pronouncements including the decision of the Coordinate Bench of the Tribunal in the case of Shri Sanjay H Shah in ITA.Nos. 5063, 5064 & 5065/Mum/2017 dated 16.02.2018, restricted the disallowance to 5% of the non-genuine purchases of ₹.13,39,187/-, while holding so, the Ld.CIT(A) observed as under: -

"4.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the assessment order that the appellant produced the details with regard to purchases made. A.O himself mentioned in the order that eth

assessee filed, invoices, inventory, account confirmation from vendors and bank statement to prove payment for purchases. Further, this is also not case in which signed blank cheque books are found with the buyer to hold that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K. Proteins Ltd 250 taxman 0022(SC) would not apply to the case. It is noticed that on account of non-production of suppliers and brokers, transportation bills etc., the A.O. added 12.5% as non-genuine purchases on assumption. It is seen that in appellant's own case for A.Y: 2009-10, the same matter was involved, where the then CIT(A) following various judgements deleted early hearing disallowance made by the A.O. in the Assessment Order.

4.3 Further, in the recent judgment of the Hon'ble IT AT, Mumbai vide order ,16.02.2018 being ITA Nos. 5063, 5064 & 5065/Mum/2017 in the case of Shri Sanjay H Shah has restricted the disallowance to 5% of the alleged bogus purchase, as under:

"7. The Ld. AR of the Assessee in his submission claimed that VAT rate is only 4%. The rate of VAT is not disputed by Revenue. In our view considering the nature of trade of assessee and the facts of the present case, the disallowance made by AO and sustained by Ld. CIT (A) is excessive and unreasonable. In our view the assessee has given sufficient evidences to substantiate its purchases, on which no finding was given by the lower authorities. Moreover, no incriminating material is brought on record except assumption and presumption of AO that assessee has availed accommodation bills. The addition of alleged bogus purchased are based on third party information. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable income component and not the substantial part of the transaction. Thus, keeping in view the assessee has paid the VAT at the applicable rate on all the purchases. Further, in our view no yardstick formula can be applied while assessing the amount of revenue leakage. Moreover, the revenue has not disputed the consumption of steel. Hence, keeping in view of any possibility of the revenue leakage in the present case, the disallowance of purchases of steel at 5% of the purchases would meet the end of justice. Similar view was taken by Hon'ble Gujarat High Court in CIT Vs Simiih P Seth

[2013(356 ITR 451)] and by Hon'ble Bombay High Court in Hariram Bhambani ITA No 313 of 2013.

8. Thus, respectfully following the decision of Hon'ble Gujarat High Court in CIT Vs Simit P Seth supra and by Hon'ble Bombay High Court in Hariram Bhambani (supra), the disallowance of cost of purchases of steel is restricted to 5% of the purchases. The assessing officer is directed accordingly. In the result the ground No.1 of the appeal is partly allowed."

*3.4 Keeping in view the totality of facts and circumstances of the case, the addition is restricted to 5% of bogus purchases. Accordingly, the addition to the extent of 5% of bogus purchases of Rs.13,39,187/- which comes to Rs.66,960/-is sustained. The AO is directed to modify the addition accordingly. The appellant gets part relief. These grounds are **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 5% 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 12.07.2021.

(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 12/07/2021
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