

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

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

ITA NO. 6561/MUM/2019 (A.Y. 2010-11)

Income Tax Officer – 33(2)(1) Room No. 845, 8 th Floor Kautilya Bhavan, BKC Bandra(W), Mumbai - 400051	v.	Shri Juglesh Suresh Gupta 131, Jetwa Niwas Gautam CHS Ld., Parle (W) Mumbai -400057 PAN: ARIPG0154A
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Smita Verma
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)–45, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.07.2019 for the A.Y. 2010-11 in restricting the addition @12.5% as against @25% made by the Assessing Officer.

2. Briefly stated the facts are that, assessee an individual engaged in business of dealing in trading of Alluminium, filed return of income on

14.10.2010 declaring income of ₹.1,01,820/- 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 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 M/s.Shreynas Corporation who is 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 M/s. Shreynas Corporation. In response assessee vide letter dated 21.03.2016 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 25% of the alleged bogus purchases of ₹.1,01,22,893/- for the A.Y. 2009-10 as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the addition @12.5% as against @25% 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 Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the addition restricted the addition @12.5% as against @25% made by the Assessing Officer. While holding so, the Ld.CIT(A) observed as under: -

"4. Ground No. 1(b) & 2(i) relates to the addition of ₹.25,30,723 assessing total income at Rs,26,32,540. The case was reopened by the AO following due procedure and notice u/s 148 was issued. In response to the notices/ the A.R. of the appellant attended the re-assessment proceedings and filed partial submission dated 21.03.2016. As per the ITR filed by the appellant for A.Y.2010-11, he had shown purchases of Rs. 1,01,22,893 and sales of ₹.1,03,18,083. As the appellant had furnished partial submission but failed to submit any purchase or sales bill and had also not submitted payment details, the AO took 25% of the total amount of Rs.1,01,22,893 amounting to Rs.25,30,723 as unproved / non genuine purchases and added it to the total income of the appellant.

4.3. I have considered the assessment order, The AO held in the Assessment Order that even though the appellant produced the details with regard to the purchases like invoices, ledger account and copy of indicating the payment made to the seller parties, on account of non production of minor documents like octroi receipts, transportation bills the AO added 25% bogus purchases. It is seen that many Benches of IT AT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences then one cannot conclude that the purchases were not made by the assessee. In the case of Nangalia Fabrics 40 taxmann.com 206, Gujarat High Court has held that where purchases were supported by the bills, entries were made in the books of accounts and payment was made by cheque, the said purchases could not be held as bogus. I agree with the contentions of the Ld. AR, that there are many decisions wherein the ITAT, Mumbai, has upheld addition of a percentage of alleged bogus purchases under similar facts.

4.4. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could not have made the sales. Merely relying upon the information from the Sales Tax Department the Assessing Officer could not have treated the purchases as bogus. When the appellant has brought documentary evidences on record to prove genuineness of the purchases, the action Tax the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and there is no evidence before the AO that the payments made were again routed back to the appellant, the addition of entire alleged bogus purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills from the said party for the materials purchased by it locally in grey market. In other words the Shreyans Corporation may not be the actual supplier but may have provided

the bills for the material purchased locally. This is not a case in which the signed blank cheque books etc. found with the buyer to say 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. Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit, which the AO correctly concluded. However, the 25% estimation is on higher side. Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12.5% of such purchases. The AO is directed to add of Rs.1,01,22,893/- working out to Rs.12,65,362 and modify the addition accordingly. Appellant gets part relief. This 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 @12.5% as against @25% made by the Assessing Officer. 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.

Sd/-
(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