

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

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

ITA NO. 6556/MUM/2019 (A.Y: 2011-12)

Income Tax Officer – 6(3)(3) Room No. 524, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Jinharsh Industrial Solutions Pvt. Ltd., {Earlier Known as Jiharsh Trading Pvt. Ltd.,} 2nd Floor, Karnani Niwas, 34, Nagdevi Street, Mumbai - 400003 PAN: AAACJ1110B
(Appellant)		(Respondent)

Assessee by	:	None
Department by		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) – 12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.06.2019 for the A.Y. 2011-12 in restricting the disallowance to 5% of purchases of ₹.1,87,993/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee engaged in the business of trading of Ball bearings and Hardware items, filed return of income for the A.Y.2011-12 on 29.09.2011 declaring income of ₹.21,54,282/- 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 dealers 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 as mentioned in the Assessment Order. Assessee furnished VAT Audit Report and ledger account and bank statements reflecting payment made through banking channels submitted that the transactions 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 assessee failed to establish the genuineness of the purchases claimed by producing the parties which issued the bill. It is the finding of the Assessing Officer that notice issued u/s. 133(6) of the Act to the parties were neither returned back nor acknowledgement received and the assessee did not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated purchases of ₹.1,87,993/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 5% of the non-genuine purchases.

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

5. Ld. DR vehemently supported the orders of the Assessing Officer.

6. Heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we 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 ₹.1,87,993/-, while holding so, the Ld.CIT(A) observed as under: -

"3.2 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. Assessee also filed copies of ledger account of parties, copies of bank statement showing the each and every payment for purchases. It is noticed that on account of non-production of suppliers and brokers, transportation bills etc. the AO added 100% as non genuine purchases. It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO, one cannot conclude that the purchases were not made by the assessee. 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.

3.3 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 purchases 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 Further it is seen that in appellant's own case for AY 2009-10 & 2010-11, the same matter was involved, where the then CIT(A) following various judgments deleted the disallowance made by the A.O. in the assessment order. Keeping in view the totality of facts and circumstances of the case and respectfully following the decision of my predecessor CIT(A) in appellant's case for AY 2009-10 & 2010-11, the addition is restricted to 5% of bogus purchases. Accordingly, 5% of bogus purchases of Rs.1,87,993 coming to Rs.9,400 is sustained. The AO is directed to modify the addition accordingly. The appellant gets part relief. These grounds are **partly allowed**.*

7. 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, as the Ld.CIT(A) has followed the principle of consistency in restricting the disallowance to 5% of bogus purchases. Grounds raised by the revenue are dismissed.

8. 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