

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 8001/MUM/2019 (A.Y: 2011-12)

Income Tax Officer – 28(3)(5) Room No. 323, 3 rd Floor Vashi Railway Station Complex Vashi, Navi Mumbai -400703	v.	M/s. Yash Infotech 54, Arneja Corner Plot No. 71, Sector – 17 Vashi, Navi Mumbai - 400705 PAN: AAIFY4596R
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri T.S. Khalsa
Date of Hearing	:	23.06.2021
Date of Pronouncement	:	30.07.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.10.2019 for the A.Y. 2011-12 in restricting the disallowance to 12.5% of purchases of ₹.70,13,767/- 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 in computer parts and other electrical/hardware items,

filed return of income for the A.Y.2011-12 on 30.09.2011 declaring income of ₹.74,842/- 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 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 various parties as mentioned in the Assessment Order. In reply, Assessee 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. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to all the alleged parties and M/s. Anmol

Industries (ii) Daksha Enterprise and (iii) Raj International had not responded to the notices and the remaining parties informed that they never done any type of transaction with the assessee, and the assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that the assessee failed to produce the remaining three parties in support of its claim that purchases are genuinely made from the party and failed to furnish documentary evidences such as transportations details substantiating receipt of materials claimed to be purchased from the parties. Therefore, Assessing Officer treated purchases of ₹.70,13,767/- 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 12.5% of the non-genuine purchases.

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

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

6. We have 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 the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases of ₹.70,13,767/-, while holding so, the Ld.CIT(A) observed as under: -

"6. I have considered the facts of the case and the appellant's submissions.

7. Grounds 1 to 5 of the appeal are against addition of Rs. 70,13,767/- being 100% bogus purchases. As per the investigations carried out by the Sales Tax Authorities, the aforementioned parties were found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had made enquiries by issuing notices u/s 133(6) which were returned unserved by the postal authorities in case of 3 parties. These parties were found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of these parties. During the scrutiny assessment the appellant furnished details of purchases and corresponding sales. However, the appellant could not produce the party before the AO inspite of opportunity being given. The appellant also failed to produce delivery challans or transportation details. The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on oath that it had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from one party will have to be considered taking this into consideration while examining the documentation submitted by the appellant in support of its claim. The documentary evidences such as purchase bills, payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court

*in the case of CIT vs Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The Hon'ble Gujarat High Court in this case has held that profit margin of 12.5% of the bogus purchases will be reasonable. Respectfully following the Order in the case of Simit P. Sheth the addition made by AO is restricted to 12.5% of total bogus purchase of Rs. 70,13,767. Therefore, these grounds of appeal are **'Partly Allowed'**.*

*8. Ground No 6 of the appeal is of general nature and the option mentioned therein was not exercised by the appellant. The ground is of academic in nature and no decision is required. For statistical purpose, this should be treated as **'Dismissed'**.*

*9. In the result, the appeal is **'Partly Allowed'**."*

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A) in restricting the addition/disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 30.07.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 30/07/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
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