

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

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

ITA NO. 712/MUM/2020 (A.Y: 2011-12)

M/s. Roopa Trading Co. 138, 2 nd Floor Gagdevi Street Masjid Bunder Mumbai - 400003 PAN: AAJFR5373A	v.	Income Tax Officer -17(3)(2) Kautilya Bhavan, 1 st Floor BKC, Bandra (E), Mumbai -400051
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Smita Verma
Date of Hearing	:	15.07.2021
Date of Pronouncement	:	02.08.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-28, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.11.2019 for the A.Y. 2011-12 in confirming the addition made by the Assessing Officer.

2. Briefly stated the facts are that, assessee an individual engaged in the business of pipes and fittings filed return of income on 29.09.2011

declaring income of ₹.7,07,050/- 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 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 M/s. Revati Steel Traders. In response assessee furnished copies of ledger accounts 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. However, the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries. Assessing Officer issued notice issued u/s.133(6) of the Act to verify the transaction and existence of the party and the notices returned back with remark "Not Known". Therefore,

Assessing Officer treated purchases of ₹.2,10,222/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) sustained the addition made by the Assessing Officer. Against this order of the Ld.CIT(A) assessee is in appeal.

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 authorities below.

6. Heard Ld. DR, perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [356 ITR 451]. Simply because the parties were not produced the entire purchases cannot be added as held by the

Bombay High Court in the case of CIT *v.* Nikunj Eximp [216 Taxman.com 171]. However, at the same time keeping in view the nature of business of the assessee and the fact that the assessee is making some local purchases without any transportation bills, lorry receipts etc, the possibility of making purchases in gray market on cash cannot be ruled out. Taking the totality of facts and circumstances into consideration and following the decision of the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth (supra), I direct the Assessing Officer to restrict the disallowance/addition to 12.5% of the bogus purchases. Accordingly, I direct the Assessing Officer to restrict the disallowance of purchases to 12.5% for the assessment year under consideration i.e. A.Y. 2011-12 and compute the income accordingly.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced on 02.08.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 02/08/2021
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