

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 741/MUM/2020
Assessment Year: 2009-10
&
ITA No. 740/MUM/2020
Assessment Year: 2010-11**

ITO-22(3)(6),
206, 2nd floor, Piramal Chambers,
Lal Baugh, Parel,
Mumbai-400012.

Vs. Ramniklal K. Bora (HUF),
Plot 357, RN 19/19, 1st floor,
Shamji Ladha, Bldg. Bhandarkar
Road, Matunga,
Mumbai-400019.

PAN No. AAAHV 3842 H

Appellant

Respondent

Revenue by : Mr. Sanjay J. Sethi, DR
Assessee by : None

Date of Hearing : 02/08/2021
Date of pronouncement : 05/08/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The captioned appeals filed by the Revenue are directed against the respective orders passed by the CIT(A)-33, Mumbai dated 28.11.2019 for AYs 2009-10 & 2010-11. As the issue involved in the captioned appeals are inextricably interlinked or in fact interwoven and having common issue, the same are therefore being taken up and disposed off by way of a consolidated order. Facts being identical we begin with the AY 2009-10.

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are, the assessee is engaged in the business of manufacturer of readymade garments under the name and style Unique Creations. The assessee filed his return of income on 15.10.2010 u/s 139(1) of the Income Tax Act, 1961 declaring total income of Rs.8,52,093/-. The assessment was completed u/s 143(3) and subsequently, the case was reopened u/s 147 of the Act. Accordingly, assessment was completed u/s 143(3) r.w.s 147 of the Act by the AO thereby making 100% addition on account of bogus purchases. On the basis of information from the Investigation Wing regarding bogus purchases made by the assessee from the following parties :

| Sr. No. | Name of the Partly | Amount (Rs.) |
|----------------|-----------------------------|---------------------|
| 1. | Trichipuram Trading P. Ltd. | 10,400/- |
| 2. | Pooja Traders | 3,00,062/- |
| 3. | Aadeshwar Enterprises | 3,76,475/- |
| 4. | Mayur Trading Co. | 4,18,882/- |
| 5. | Amit Trading Co. | 5,99,737/- |
| 6. | Trade Link | 7,28,342/- |
| | Total | 24,34,798/- |

4. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee.

However, the Ld. CIT(A) agreed with the AO that the above parties figured in the Sales Tax Department's list of suspicious dealers who issue accommodation entries without actual delivery of goods. However, the assessee has shown onwards sales which has not been doubted by the AO. By

relying on various case law, he reduced the disallowance @ 25% of bogus purchases and partly allowed the appeal of the assessee.

5. Now before us, the revenue has preferred appeal by raising the grounds of appeal as under:-

1. On the facts and circumstances of the case in law, the Ld. CIT(A) has erred in restricting addition made by the A.O amounting Rs.17,19,761/-100% of total purchase to 25%, ignoring the fact that the action of the Assessing Officer was based credible information received from the Maharashtra Sales Tax Department and that the see, during the course of assessment proceedings, failed to prove the genuineness of the purchase transactions.
2. On the facts and in the circumstances of the and in law, the Id. CIT(A) has erred in estimating addition on account of bogus purchase to 25% of such purchases as against the estimation the AO of 100% of bogus purchases without appreciating the fact that the assessee had failed to establish the genuineness of the alleged parties whom purchases is claimed to have been made during the year.
3. On the facts and in the circumstances of the and in law, the Id. CIT(A) has erred in estimating addition on account of bogus purchase to 25% of such purchases as against the estimation the AO of 100% of bogus purchases without appreciating the fact that the assessee could neither produce the delivery challans or the transport bills/invoices nor could produce the alleged parties from whom purchases is claimed to have been made during the year.
4. On the facts and in the circumstances of the and in law, the Id. CIT(A) has erred in estimating addition on account of bogus purchase 25% of such purchases as against the estimation the AO of 100% of bogus purchases without appreciating the fact that the Sales Tax Department well as the DGIT (Inv.) Mumbai during their course of investigations found the alleged parties be providing only accommodation/bogus purchase bills.
5. On the facts and in the circumstances of the and in law, the Id. CIT(A) has erred in estimating addition on account of bogus purchase to 25% of such purchases as

against the estimation the AO of 100% of bogus purchases without appreciating the ratio of the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., wherein the Court has held that when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed.

6. This case is filed because it is covered under the exception provided in para 10(e) of the "s Circular No. 3 of 2018 dated 11.07.2018 as amended vide F.No.279/Misc.142/2007-ITJ(Pt) dated 20.08.2018.

6. Considered the submission of Ld. DR and material placed on record. We are of the considered view that no doubt the purchases made from the suspected parties are not genuine. However, the purchases itself cannot be doubted as rightly adjudicated by Ld. CIT(A) that AO has not doubted sales declared by the assessee, only he suspects the purchases. Even the revenue raised grounds of appeal mainly on the purchases not being genuine. Ld. CIT(A) has considered the corresponding onward sales and came to the decision. By respectfully following the decision of Hon'ble Gujrat High Court in the case of **CIT vrs. Smith P. Sheth 356 ITR 451 (Guj)**, we are inclined to agree with the findings of Ld. CIT(A). Therefore, grounds raised by the revenue are **dismissed**.

Facts being identical, our decision for AY 2009-10 applies *mutatis mutandis* to AY 2010-11.

7. In the result, the appeals filed by the revenue are **dismissed**.

Order pronounced in the open Court on 05/08/2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 05/08/2021.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai