

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

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

**ITA NOs. 6691 & 6692/MUM/2019
(A.Ys: 2007-08 & 2008-09)**

Lavina Gwalani 28, Veena Beena, Gurunanak Road Bandra (W), Mumbai - 400050 PAN: AAKPG2410J	v.	Income Tax Officer – 22(2)(3) Mumbai
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Sanjay J. Sethi
Date of Hearing	:	02.09.2021
Date of Pronouncement	:	02.09.2021

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee against common order of the Learned Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.08.2019 for the A.Y. 2007-08 and 2008-09, in restricting the disallowance to 12.5% of purchases as against the 25% of the purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, assessee engaged in business of exporter of jewellery, filed return of income on 31.10.2007 and 29.09.2008 declaring income of ₹.4,26,701/- and ₹.3,16,570/- for the A.Y.2007-08 and A.Y. 2008-09 respectively, and the returns 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 assessments were 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 various parties as mentioned the Assessment Order. In response assessee furnished purchase bill issued by the party, copy of ledger account, copy of bank account wherein cheque issued by the assessee and submitted that the purchases made from the parties 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 the parties are returned unserved 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 parties to prove the genuineness of the transactions. Therefore, Assessing Officer treated 25% of the alleged bogus purchases of ₹.3,33,795/- and ₹.21,55,932/- for the A.Y. 2007-08 and A.Y. 2008-09 respectively as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to 12.5% of purchases.

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

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 various judicial pronouncements along with the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the addition to 12.5% of purchases. While holding so, the Ld.CIT(A) observed as under: -

" 5.5. Conclusion on case laws:

*The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the appellant. It is also seen that putting an onus on the AQ to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A.Sanghavi (supra). **If the bogus purchases are unproved and are declared consumed by appellant itself in its trading, manufacturing or non-trading activities, the entire addition can be made as it only goes to inflate the expenses of the appellant. (refer M/s. Shoreline Hotel Pvt. Ltd vs. CIT Central-1 in ITA NO.964/M/2015 dated 19.05.2015).***

5.6 In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from one of the hawala operator to the extent of Rs.3,33,795/-. The A.O. attempted to verify such party by making independent enquiries u/s.133(6) of the I.T. Act, 1961. In response to notice u/s. 133(6)

issued, the party filed their copy of acknowledgement of the return of income, copy of invoice, ledger of the appellant in their books and photocopy of bank statement. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc could not be submitted before the AO. Nor the Principle Officer of these concerns was produced before the AO for examination. However, it is also a fact that the AO has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such accommodation entry. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The AO has rightly disallowed part of the purchases claimed such hawala dealers. However, in my opinion, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. Thus the disallowance of purchase is upheld in principle but it should be based on ratio of Simit P. Seth 356 ITR 461 (Guj.) as the appellant is a trader not manufacturer. Thus the A.O. is directed to restrict the disallowance to the extent of 12.5% of purchase from suspicious dealers. Thus, the ground of appeal is **partly allowed**.

In the result, the appeal for AY 2007-08 is **partly allowed**.

B. A.Y.2008-09 (I.T.No. 10403):

1.1. The facts and circumstances of this case are absolutely identical to that of A.Y.2007-08 except that the bills for bogus purchases in this year are as under:

Sr. No.	Name of the entity	Amount (Rs.)
1.	M/s.Ankita Exports	10,20,042/-
2	M/s. Prime Star	11,35,890/-
'	Total	21,55,932

1.2. On the basis of arguments, discussion and reliance of case laws, 25% disallowance of purchases made by the A.O. is upheld in principle but restricted to 12.5%. The ground of appeal filed by the appellant on this issue is therefore, partly allowed.

1.3. In the result, the appeal for A.Y.2008-09 is partly allowed.”

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, and taking the totality of facts and circumstances into consideration we are of the view that it would be just and proper to restrict the addition to 8% of the non-genuine purchases as against 25% disallowed by the Assessing Officer in both these assessment years. Thus, we direct the Assessing Officer to recompute the income of the assessee by restricting the disallowance of non-genuine purchases in both these Assessment Years to 8%. Grounds raised by the are partly allowed.

8. In the result, appeals of the assessee are partly allowed.

Order pronounced in the virtual court on 02.09.2021.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 02.09.2021
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