

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

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

**ITA NOS. 1300 & 1301/MUM/2020
(A.Ys: 2011-12 & 2010-11)**

Income Tax Officer – 22(3)(6) Room No. 206, 2 nd Floor Piramal Chambers, Lalbaug, Mumbai – 400 012	v.	M/s. R.K. Fashions Shop 2/3, Thakur Sadan Bhavani Shankar Road Dadar (W), Mumbai -400016 PAN: AAIFR7465A
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Sanjay J. Sethi
Date of Hearing	:	13.09.2021
Date of Pronouncement	:	13.09.2021

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the revenue against common order of the Learned Commissioner of Income Tax (Appeals)-33, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.12.2019 for the A.Y. 2010-11 and 2011-12, in restricting the disallowance to 12.5% of purchases as against the 20% of the purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, assessee engaged in business of manufacturing readymade garments of girls western outfits, filed return of income on 06.10.2010 and 29.09.2011 declaring income of ₹.7,43,571/- and ₹.7,42,625/- for the A.Y. 2010-11 and A.Y. 2011-12 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 vide letter dated 23.11.2015 furnished invoices 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 furnish transportation bills and even failed to furnish any delivery challans which even though he is specifically required to do so. Therefore, Assessing Officer treated 20% of the alleged bogus purchases of ₹.31,72,410/- and ₹.4,27,420/- for the A.Y. 2010-11 and A.Y. 2011-12 respectively as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricting 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, I proceed to dispose of these appeals on merits on hearing Ld.DR.

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), I 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 restricted the disallowance to 12.5% of purchases. While holding so, the Ld.CIT(A) observed as under: -

"A.Y. 2010-11

"5. I have carefully gone through the findings given in the assessment order and the written submissions of the appellant on the issue and material available on record. The information received from the Sales Tax Department based on their detailed enquiries and investigation was a tangible material on the basis of which the AO applied his mind and drawn satisfaction for re-opening the case. The AO had proper reasons to believe that the income had escaped assessment and hence the re-opening is held valid.

5.1 So far merits of the additions are concerned, the AO has categorically mentioned in the assessment order that, he had issued notices u/s 133(6) to all the parties which could not be served by the postal authorities. The information from Sales Tax Department also support the view that the alleged suppliers were only hawala bill providers. In view of above, it is held that the appellant had taken accommodation bills from the parties under consideration. the approach of the AO to assess the profit elements in the hands of the appellant is found to be justified but the disallowance at the rate of 20% is found to be excessive in the facts and circumstances of the case. The appellant had claimed that enquiry u/s 133(6) was conducted almost after 5 years since transactions were done and the assessee was not confronted with the same or asked to provide alternate address. On perusal of assessment order also, it is found that the assessee was not not made aware about the return of notices u/s 133(6), nor the assessee was asked to produce the parties or to file their alternate addresses. The materials claimed to have been purchased are tailoring materials like buttons and embroidery patches which do not require any elaborate arrangement of transportation. Considering the entirety of facts, the disallowance is confirmed at the rate of 12.5% of total bogus purpose following several decisions of the jurisdictional ITAT on the issue of bogus purchases. In view of above, the addition @ 12.5 % of Rs.31,72,410/- = Rs. 3,96,551/- is hereby confirmed and balance addition of Rs. 2,37,9317- is deleted. The grounds are party allowed.

A.Y. 2011-12

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13. I have carefully gone through the findings given in the Assessment Order and the written submissions of the appellant on the issue and material available on record. The facts and submission of the appellant in the appeal for A.Y. 2011-12 are identical as that of AY 2010-11. Therefore, following the findings given in AY.2010-11, it is held that re-opening of the case for AY 2011-12 is justified and the addition made is restricted to 12.5 % of total bogus purchase. In view of above, 12.5% of Rs. 4,27,420/- = Rs. 53,428/- is hereby confirmed and balance addition of Rs. 32,056/- is hereby deleted. The grounds are partly allowed.

14. In the result, appeal of the appellant for A.Y.2011-12 is partly allowed.

15. To conclude, both appeals for AY 2010-11 & AY 2011-12 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 to 12.5% of purchases as against 20% of the purchases disallowance made by the Assessing Officer in both these assessment years under consideration. Grounds raised by the revenue are dismissed.

8. In the result, appeals of the Revenue are dismissed.

Order pronounced in the virtual court on 13.09.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 13/09/2021
Giridhar, Sr.PS

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