

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

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

ITA NO. 1532/MUM/2020 (A.Y: 2012-13)

Income Tax Officer – 32(1)(5) Room No. 729, 7 th Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Harshad Vinodrai Sheth HUF E-1204, Vrindavan, Rambaug Lane Off S.V. Road, Mumbai -400092 PAN: AETPM9315B
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Sanjay J. Sethi
Date of Hearing	:	16.09.2021
Date of Pronouncement	:	16.09.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 44, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 10.01.2020 for the A.Y. 2012-13 in restricting the disallowance to 12.5% of purchases as against 15% of the 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 Iron and Steel" filed return of income on 19.09.2012 for the A.Y.2012-13 declaring income of ₹.8,73,540/- and the return was processed u/s. 143(1) of the Act. Subsequently, the return was selected for scrutiny by issue of notice u/s. 143(2) of the Act. Further, Assessing Officer received information from the DGIT (Investigation), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. Assessing Officer noticed that based on the information received from DGIT (Investigation), 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 response to the notices, Ld. AR of the assessee appeared from time and time and submitted the details. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. In response Assessee furnished ledger accounts, bank statement & copy of invoices of the alleged parties 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.

However, parties were not produced before the Assessing Officer and no explanation was offered.

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. It is the finding of the Assessing Officer the purchases made by the assessee during the year remained unverifiable and thus, rejected the Books of Accounts of the assessee. Therefore, Assessing Officer treated 15% of the alleged bogus purchases of ₹.1,46,95,471/- 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 an extent of 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 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 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 and also 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. While holding so, the Ld.CIT(A) observed as under: -

"3.9 The Hon'ble ITAT, Mumbai vide its order dated 18.01.2017 in the case of Smt. Kiran Navin Doshi in ITA No. 2601/Mum/2016, under similar circumstances, where the Assessing Officer had disallowed/added the entire alleged bogus purchases u/s 69C of the Act, had confirmed the decision of Ld. CIT(A) in restricting the disallowance/addition to the extent of 12.5% of such bogus purchases.

3.10 In the present case from the facts available on records, it is observed that the AO has neither disbelieved the purchases nor the corresponding sales made. The AO has held that the impugned purchases were not made from above referred dealers/parties but from somewhere else/open market. The facts and circumstances of the present case are similar to that of facts adjudicated by the Hon'ble Gujarat High Court and Hon'ble ITAT, Mumbai in above referred cases. However the estimation made by the AO at 15% is on higher side and more than the percentage determined by the courts in the above referred cases. Therefore, the profit is restricted to 12.5% of the bogus alleged purchases. The AO is directed add 12.5% of Rs.1,46,95,471 working out to Rs.8,02,247 and modify the

addition accordingly. Appellant gets part relief. These grounds 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/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 in the virtual court on 16.09.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 16/09/2021
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