

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

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

ITA NO. 1460/MUM/2020 (A.Y: 2011-12)

Income Tax Officer – 26(2)(5) Room No. 314, 3 rd Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Late Shri Rustamali Kasamali Kapoor Legal Heir Shri Mohammad Salman Flat No. 302, Sai Kutir CHS Ltd., LBS Marg, Near Taximens Colony Kurla (W), Mumbai -400070 PAN: AABPK5011C
(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) – 38, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.11.2019 for the A.Y. 2011-12 in restricting the disallowance to 12.5% of purchases as against 25% 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 “manufacturing of flanges and industrial spares pipe fittings” filed return of income on 19.09.2011 for the A.Y.2011-12 declaring income of ₹.11,81,478/- and the return was processed u/s. 143(1) of the Act. Subsequently, 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. The assessment was reopened U/s. 147 of the Act 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 the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. Assessee vide letter dated 24.06.2016 furnished invoices 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. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark and the assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that the no supporting document for acknowledgment of receipt of goods was produced to confirm that the goods purchased were actually delivered to the deceased assessee. Therefore, Assessing Officer treated 25% of the alleged bogus purchases of ₹.29,94,622/- 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: -

"8.2.3 On careful consideration of the above submission, I find the documents produced before the AO in support of the claim that the purchases from the alleged seven parties are genuine are inadequate to establish genuineness of the said purchases claimed to have made from the aforesaid parties. It is pertinent to highlight here that in the enquiry proceedings carried out by the Maharashtra Sales Tax Department, the key persons of the aforesaid hawala concerns have confessed that only paper purchase invoices were issued to the purchasers for a small percentage of commission and there was no physical delivery of goods to the appellant. I find the appellant has failed to produce the transportation bills, Stock records before the AO as well as before me, during the appellate proceedings to substantiate physical delivery of the goods, which cast a serious doubt about the veracity of the aforesaid purchase transactions made by the appellant from the aforesaid dealers.

8.2.4 Since the information available on Maharashtra Sales Tax Department's Website cast doubt about genuineness of the purchases, it is incumbent on the assessee to produce these parties along with their necessary documents to establish the genuineness of the transaction and to get the claim of purchases verified by the AO. However, none of these parties were found at the given addresses nor were they produced by the assessee before the AO and the undisputed fact is that the purchases claimed to have been made from these parties remained unverified. Since the burden of

proof lies with the assessee, opportunity was given not only during the assessment proceedings but even at the appellate stage, to produce the aforesaid parties to prove the claim that purchases made from the accommodation bill providers were genuine. The assessee failed to produce them for examination thereby not discharging his onus. Hence, I concur with the view of the AO that the genuineness of the alleged purchases from the said parties has not been established.

8.2.5 Nevertheless, in this case, it is observed that the AO has not doubted the corresponding sales. Therefore, the AO held that while the purchases as per the purchase invoice issued by the aforesaid parties have been recorded in the books of the appellant the goods were purchased from sources best known to the appellant. In the light of the facts of the case and judicial precedents on this issue, I find force in the stand of the AO that the appellant has not made genuine purchases from the above hawala dealers and the goods were purchased from other suppliers who did not issue invoices or bills. Such indulgence in purchasing goods from the grey market and obtaining bogus bills from other parties has given some percentage of benefits to the appellant in terms of lower price for various reasons. The magnitude of benefit will depend on the facts of each case. In this regard, in the instant case, in view of the fact that the nature of business in the case of M/s. Ratnagiri Stainless P. Ltd vs. ITO (2017) 80 Taxmann.com 265 (Mumbai) and Amar Timber & Plywood ITA 1 1 13/M/2018 referred to by the appellant differs from the kind of business executed during the impugned assessment year by the deceased appellant, I do not find it factually and legally viable to grant credit of Gross Profit percentage of 18.57 (i.e. 25-18.57) already declared by the assessee, following the ratio laid down in M/s. Ratnagiri Stainless P. Ltd. In this regard, reliance is placed on the decision rendered by the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) (Gujarat), 38 Taxman.com 385 wherein the profit element embedded in the purchases was worked out applying the percentage of 12.5%. Further, the Hon'ble Gujarat High Court in the aforesaid case, laid down the ratio that the profit embedded in such transactions will vary according to the nature of business and there cannot be a uniform yardstick to measure the profit from business. Considering the entire facts of the case, the GP and NP percentages disclosed in the return of income filed for the impugned assessment year, computing the additional profit at 25%

*is considered to be on the higher side. Therefore, following the above judicial precedent applying the rate of 12.5% on the total bogus purchases to compute the additional profit is considered fair and logical which works out to Rs.3,74,728/-. The AO is directed to retain the addition to the extent of Rs.3,74,728/- (in place of Rs. 7,48,656) Thus, the appellant gets a relief Rs.3,74,728/-. Accordingly, these grounds of appeal 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