

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

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

ITA NO. 1487/MUM/2020 (A.Y: 2008-09)

Income Tax Officer – 28(1)(4) Room No. 330, 3 rd Floor Tower No. 6 Vashi Railway Station Complex Vashi, Navi Mumbai -400703	v.	M/s. Feelie Amit Bavisi 610, Plot No.86, Thacker Tower Sector -17, Vashi Navi Mumbai -400703 PAN: ABYPB8391E
(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 order of the Learned Commissioner of Income Tax (Appeals) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.01.2020 for the A.Y. 2009-10 in restricting the disallowance to 12.5% of purchases of ₹.19,25,560/- made from M/s.Manav Impex, as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee engaged in the business of Reseller and Distributor of chemicals, filed return of income for the A.Y.2009-10 on 29.09.2009 declaring income of ₹.14,67,300/- and the return 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 assessment was 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 parties 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 M/s. Manav Impex, M/s. Shrinath Trading Co. and M/s. Great International as mentioned in the Assessment Order. In reply, Assessee submitted that the transactions 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 alleged parties namely M/s. Shrinath Trading Co. and M/s. Great International returned unserved and M/s. Manav Impex responded to the notices and informed that they never done any type of transaction with the assessee, 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 parties in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer estimated the profit element @12.5% from the purchases made from M/s. Shrinath Trading Co. amounting to ₹.25,22,132/- and M/s. Great International of ₹.19,08,192/- and treated entire purchases made from M/s. Manav Impex amounting to ₹.19,25,560/- 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 the extent 12.5% of the non-genuine purchases made from M/s. Manav Impex.

4. Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A) and supported the order of the Ld.CIT(A).

5. Ld. DR vehemently supported the orders of the Assessing Officer.

6. Hear both sides, 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 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 made from M/s. Manav Impex amounting to ₹.19,25,560/-, while holding so, the Ld.CIT(A) observed as under: -

"6 I have considered the facts of the case and the appellant's submissions.

7. The only Ground of Appeal is against addition of Rs.5,16,665/- being 12.5% of bogus purchases of Rs. 41,33,324/- and Rs.19,25,560/- u/s. 69C of the Act being 100% of total bogus purchases as unexplained expenditure.

7.1 As per the investigations carried out by the Sales Tax Authorities, the aforementioned three parties were found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had made enquiries by issuing notices u/s 133(6) which returned un-served by the postal authorities in case of two parties and the third party denied any transactions with the assessee. Further, these parties were found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of the parties. During the scrutiny assessment the appellant furnished details of purchases and corresponding sales. However, the appellant could not produce the party before the AO in spite of various opportunities being given. The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on oath that it had given only

accommodation entries without actually supplying the goods, the genuineness of purchases made from these parties will have to be considered taking this, into consideration while examining the documentation submitted by the appellant in support of her claim. The documentary evidences such as purchase bills, payments by cheques, etc. can all be orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment made through cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspicious.

7.2 However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth, 356 ITR 451 has held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The Hon'ble Guj'rat High Court held that profit margin of 12.5% of the bogus purchases will be reasonable.

7.3 It is pertinent to note that in the case of the assessee for the A.Y. 2010-11, it is seen that the assessee has made purchases from the above three parties and the AO has estimated the profit margin @12.5%. On perusal of the submissions made during the course of appellate proceedings, it is seen that the Gross Profit of the assessee is close to 5% for the F.Ys. 2007-08 to 2009-10. Keeping the facts in perspective and in light of the information received from the Investigation Wing, the findings of the AO during the assessment proceedings for the A.Ys. 2009-10 and 2010-11, and the submissions made by the assessee, I am of the considered opinion that an estimation @12.5% of the purchases effected from the above 3 parties shall be reasonable to cover up for the profit element embedded in these purchases. It is pertinent to note that purchases from grey market lead to the savings of VAT which is reflected in the bills Further, the expenditure made on commission paid for the fake bills is also a disallowable expenditure which is also embedded in these purchases Hence a higher rate of profit estimated @12.5% for

the purchases effected from the above three parties is justified when compared to the normal rate of profit declared by the assessee.

*7.4 Hence, respectfully following the decision of Hon'ble Gujrat High Court in the case of Simit P. Sheth (supra) the addition made by AO of Rs. 5,16,665/- with respect to two parties is confirmed and the addition of Rs. 19,25,560/- on account of purchases made from M/s. Manav Impex is restricted to 12.5% i.e. Rs. 2,40,695/-. Accordingly the ground of appeal is '**Partly Allowed**'."*

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we 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