

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

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

ITA NO. 1402/MUM/2020 (A.Y. 2010-11)

Income Tax Officer – 33(1)(2) Kautilya Bhavan, Room No. 945 9 th Floor, Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	M/s. Amit Enterprises A/6, Suman Apartment Shankar Lane, Kandivali (W) Mumbai -400067 PAN: AAGC0699Q
(Appellant)		(Respondent)

Assessee by	:	Rajesh Kothari
Department by		Smita Verma
Date of Hearing	:	14.09.2021
Date of Pronouncement	:	14.09.2021

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) – 45, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.12.2019 for the A.Y. 2010-11 in restricting the disallowance to 12.5% of purchases 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 of Industrial Tools, Hardware, Iron & Steel, filed return of income on 10.09.2010 for the A.Y.2010-11 declaring income of ₹.6,22,010/- and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DDIT (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 DDIT (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 the parties as referred in Assessment Order. Assessee furnished purchase invoice, ledger account, copy of bank statement 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.

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 in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer treated entire purchases of ₹.16,94,755/- 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. Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A). Ld. Counsel for the assessee further submitted that in assessee's own case for the immediately preceding assessment year i.e. A.Y. 2011-12 the Tribunal in ITA.No. 4592/Mum/2015 dated 16.06.2017 sustained the order of the Ld.CIT(A) in estimating the profit element from alleged non-genuine purchases at 8%. Therefore, it is requested that following the order of the Tribunal the disallowance may be restricted to 8% of the alleged non-genuine purchases.

5. Ld. DR vehemently supported the orders of the Assessing Officer.
6. Heard 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 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 the non-genuine purchases. While holding so, the Ld.CIT(A) *observed* as under: -

"3.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the assessment order that the appellant produced the details with regard to purchases made. Assessee also filed copies of purchases invoices, ledger account of parties and also the bank statement showing each and every payment for purchases. It is noticed that on account of non-production of suppliers, delivery challans, transportation bills etc. the AO added 100% as non genuine purchases. It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO or non production of minor documents like delivery challans and lorry receipts, one cannot conclude that the purchases were not made by the assessee. I agree with the contentions of the Ld. AR. that there are many decisions wherein the ITAT, Mumbai, have upheld addition of a percentage of alleged bogus purchases under similar facts. Apart from the cases cited by the AR in the following decisions also the ITAT, Mumbai, has upheld estimation' out of alleged bogus purchases instead of addition of total purchases.

1. *Salim EbrahimPetiwala v/s. Ito 17(3)(2) ITA No 4772/Murn/2017*
2. *Tubes India v/s. Asst CIT Circle 19(3) ITA No 2230 to 2232/Murn/2016*

3. *The ACIT 19(2) v/s. M/s. Nocil Steels ITA No 4505/Mum/2015*
4. *Satish R. Rathod v/s. ITO 15(3)(1) ITA No 567/Mum/2016*
5. *Vinod H. Sanghvi v/s. DCIT 15(2)(Old) ITA No 125 to 127/Mum/2016*
6. *M/s. Pentagon System and Services P. Ltd v/s. DCIT (OSD) Cir 2(3) ITA No4804/Mum/2015*
7. *Turnkey Electrical Engineers P. Ltd v/s. DCIT 7(3) ITA No 1936,1937,1938 & 1939/Mum/2015*
8. *Montex Glass Fibre v/s. DCIT 2(2) ITA No 1520/Mum/2017*
9. *R.A. Industrial Metals v/s. ITO 14(1)(1) ITA No 1850/Mum/2015*
10. *Mehul K. Mehta v/s. ITO 15(1)(3) ITA No 3227/Mum/2016.*
11. *Nangalia Fabrics P. Ltd., 40 taxmann.com 206 (Guj.)*

3.3 Further, this is also not case in which the signed blank cheque books are found with the buyer to hold that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of *N K Proteins Ltd 250 taxman 0022(SC)* would not apply to the case. It is also seen that the AO in the original assessment for the same year added only 12.5%. It is also seen that the AO has not doubted the sales made by the appellant, and there cannot be sales without the purchases in a trading business. Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. In the case of *CIT vs. Simit P Sheth, 356 ITR 451*, Hon'ble Gujarat High Court has upheld estimation @ 12.5% of alleged bogus purchases by holding as under:

"If the payments to the abovementioned parties are made through cheque and, the subsequent sales made have been accepted in total by the assessing officer, then it can be concluded that purchases have been made from persons in the open market That being the position, not the entice purchase price but only profit element embedded in such purchases can be added to the income of the assessee,"

3.4 Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12.5% of such purchases. Therefore, the AO is directed add 12.5% of Rs.16,94,755

*working out to Rs.2,11,845 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 14.09.2021.

**Sd/
(C.N. PRASAD)
JUDICIAL MEMBER**

Mumbai / Dated 14/09/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
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