

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

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

ITA NO. 1450/MUM/2020 (A.Y. 2011-12)

Income Tax Officer – 8(2)(2) Room No. 622, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Simandar Herbal Pvt. Ltd., Shop No. 86, Dallas Building Gya mandir Road Off. S.K. Bole Road Dadar (W), Mumbai -400028 PAN: AAGC0699Q
(Appellant)		(Respondent)

Assessee by	:	Prayag Jha
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) – 14, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 09.12.2019 for the A.Y. 2011-12 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 manufacturing and trading of herbal and ayurvedic medicine and allied products, filed return of income on 29.09.2011 for the A.Y.2011-12 declaring income of ₹.10,61,330/- and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department, 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 Sales Tax Department, 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 xerox of purchase invoice, copy of ledger account, delivery challans, Xerox copy of bank statements 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 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 ₹.61,114/- 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) and supported the order of the Ld.CIT(A).

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 various judicial pronouncements along with 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: -

"Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj) and further approved the decision of Ahmedabad Bench, ITAT in the case of Vijay Proteins 58 ITD 428.

In the case of Vijay Proteins (supra), the Hon'ble ITAT was seized with a case of bogus suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from open market without insisting for genuine bills, the suppliers may be willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Tribunal estimated an element of profit at 25% percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.

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Since the facts of the assessee's case are similar, respectfully following the above decisions, the AO is directed to tax 12.5% of such purchases towards element of profit embedded in such purchases from the hawala parties."

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