

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

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

**ITA NO. 1413/MUM/2020 (A.Y. 2009-10)**

Income Tax Officer – 19(2)(1) Room No. 210, 2 <sup>nd</sup> Floor Matru Mandir, Tardev Road Mumbai – 400 007	v.	Shri Pravin K. Mehta Room No. 67, 1 <sup>st</sup> Floor Dinesh Bhavan 64, C.P. Tank Road Mumbai - 400004  <b>PAN: AHEPM6224H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>		<b>Smita Verma</b>
<b>Date of Hearing</b>	:	<b>14.09.2021</b>
<b>Date of Pronouncement</b>	:	<b>14.09.2021</b>

**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) – 29, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.12.2019 for the A.Y. 2009-10 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 an individual filed return of income on 30.09.2009 for the A.Y.2009-10 declaring income of ₹.2,60,510/- 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 not responded to the notice u/s. 143(2) of the Act and the Assessing Officer completed the assessment u/s. 144 of the Act. While passing the Assessment Order, Assessing Officer treated entire purchases of ₹.17,09,050/- 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.

3. 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.

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

5. 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 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: -

*"4.2.4 conclusion on Case laws:*

*The net conclusion that can be arrived at from the above discussion is that where the sales and purchases are verifiable and proven e.g. to or from government bodies or agencies etc no addition may be made. If however, the purchases are bogus but the direct sales are proved, the assumptions are that the purchases were made from unknown parties and the AO can apply a profit rate to determine the liability of the appellant. It is also seen that putting an onus on the AO to trace the money trail or verify the withdrawals from the banks etc may give more pointers but it is not sufficient by itself and the ITAT has not accepted such an argument in the case of Shri Ganpatraj A.Sanghavi (supra). **If the bogus purchases are unproved and are declared consumed by appellant itself in its trading, manufacturing or non-trading activities, the***

**entire addition can be made as it only goes to inflate the expenses of the appellant, (refer M/s. Shoreline Hotel Pvt. Ltd vs. CIT Central-1 in ITA No.964/M/2015 dated 19.06.2015).**

**4.1.5.** *In view of the above, it is an admitted fact that Sales Tax Department has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from the three parties (the hawala operators) totaling to Rs. 17,09,050/-. To verify the genuineness of the purchases the Assessing Officer made an independent expenditure by issuing of notice u/s. 133(6) of the Income-tax Act, 1961. The appellant failed to substantiate the purchases made from the hawala dealers. The appellant could not file any of vital documents. The specific details required to establish the genuineness of purchases could not be submitted before the A.O. From the above it is clear that the addition is not only based on report of Sales Tax Department. The appellant has failed to establish the claim of purchase. However, it is also a fact that the revenue has not questioned the sales shown by the appellant. If there is a sale there has to be a corresponding purchases of inputs/raw materials/goods. It is a case where the appellant has not purchased the relevant goods from the parties whose bills have been utilized. In other words, the goods have not been purchased from the parties which have been, examined by the Sales Tax Department. Only the bills of suspicious hawala dealers have been used and goods have actually been purchased from grey' markets. The various judicial decision in such situation have laid down a principle that additions should be restricted to the benefits obtained by using such accommodation entry. Thus the AO is not justified to disallow entire purchases without questioning the sale. Following the ratio of **Commissioner of Income-tax v. Simit P. Sheth [2013] 356 ITR 451 (Gujarat)** disallowance of 12.5% of purchase will be justified. Thus disallowance is upheld however it is restricted to 12.5% of the purchases from suspicious hawala dealers. The of appeal are therefore Partly Allowed."*

**6.** 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.

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**