

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

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

ITA NO. 1448/MUM/2020 (A.Y. 2009-10)

Income Tax Officer – 22(1)(6) Room No. 104, 1 st Floor Piramal Chambers, Parel Mumbai – 400 012	v.	M/s. Charania Company Ground Floor, Navrang Compound Mahim Cross Road Mumbai -400017 PAN: AA AFC1187C
(Appellant)		(Respondent)

Assessee by	:	None
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) – 33, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.01.2020 for the A.Y. 2009-10 in restricting the disallowance to 25% 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 recycling of used Barrel/Drums, filed return of income on 27.09.2009 for the A.Y.2009-10 declaring income of ₹.1,36,781/- 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 parties as referred in Assessment Order. Assessing Officer issued notice u/s. 133(6) of the Act to the parties and observed that M/s. Nina Enterprises received the notice and did not respond. Assessee vide letter dated 12.02.2015 furnished certificate of confirmation for M/s. Nina Enterprises. Assessee furnished ledger accounts and submitted that the purchases made 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 and the differences have not been satisfactorily explained. Therefore, Assessing Officer treated entire purchases of ₹.66,365/- 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 25% of the non-genuine purchases.

4. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, I proceed to dispose of 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 restricted the addition to 25% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"6. I have carefully gone through the findings given in the assessment order and the statement of facts and grounds of appeal. As mentioned above, there was no personal hearing or any written submission filed by the assessee. In the ground of appeal, it has been mentioned that the AO should, have carried out independent enquiries with the concerned party instead of merely relying on -the

information received from MVAT authorities. Thereafter, reliance has been placed on several decisions.

6.1. On perusal of facts of the case, it is found that M/s. Nina Enterprise was identified as a bogus bill provider by the Sales Tax Authorities^ the basis of detailed inquiries and investigation conducted by them. The AO also issued notice u/s 133(6) which was served but no response came from the said, party. The assessee also failed to produce the party before the AO even after the AO had made a specific request to produce the party. Therefore, it is held that the AO was justified, in treating the purchase as bogus. However, the AO is not found to be justified in making 100% of disallowance which is possible if it is proved that the assessee has not at all purchased the materials from any source or the cash has come back to the pocket of the assessee. There is no such finding in the present case. Considering the entirety of facts, it is held that 25% of purchases should be disallowed to meet the ends of justice. In view of above, disallowance of Rs, 16,591/-being 25% of Rs.66,365/- is hereby sustained and balance disallowance of Rs.49,774/- is hereby deleted. The ground Is 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