

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

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

ITA NO. 1792/MUM/2020 (A.Y. 2011-12)

Income Tax Officer – 2(1) 2 nd Floor, Mohan Plaza Building Wayle Nagar, Kadakapada Kalyan (W), Mumbai -421301	v.	Smt Asha Sureshlal Basantani Prop. Of M/s. Ashakala Industries Plot No. 27, Industrial Area O.T. Section, Ulhasnagar Thane, Mumbai – 421002 PAN: ABIPB0299B
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Sajay J. Shethi
Date of Hearing	:	23.09.2021
Date of Pronouncement	:	04.10.2021

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) – 3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.02.2020 for the A.Y. 2011-12 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 filed return of income on 17.09.2011 for the A.Y.2011-12 declaring income of ₹.4,53,040/- 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 M/s. S.S. Enterprises amounting of ₹.12,28,500/- as referred in Assessment Order. Assessee furnished books of accounts and submitted that the purchases made are genuine. During the course of re-assessment proceedings none appeared on behalf of appellant thus, Assessing Officer passed order u/s.144 of the Act treating entire purchases made from M/s. S.S. Enterprises 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 and remand report of the Assessing Officer, restricted the disallowance to an extent of 25% of the non-genuine purchases.

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

"8.2 *During the course of appellate proceedings the AR of the appellant has attended the hearing on various occasions and adduced various submissions related to his claims such as ledger account of hawala party, copies of purchase bill, copy of bank statement, copy of GP and NP Comparisons etc with respect to his claims that the expenses on account of purchases made from the party were not bogus and they should be treated as genuine and requested to decide the appeal on the basis of decisions of Mumbai High Court in the case of PCIT VS Mohammad Haji Adam (Bom HC) CIT(A) No. 4650,/Mum/2018 dt. 16-05-2019(A.Y. 2009-10) and ITAT Mumbai's decision in case of VR Enterprises vs. ITO Mum(Trib.) wherein the Hon'ble ITAT has decided the appeal by restricting the addition to the extent of 12.5%.*

After considering the submissions of the appellant the case was remanded back to the AO for his comments. In remand report, the AO has mentioned that notice dated 04.10.2018 u/s 133(6) of the Act was issued to the abovementioned party to submit various details and at the same time a letter was issued to the appellant to substantiate his claims. But notice u/s 133(6) returned unserved by the postal authorities with remarks left⁵ and the appellant also did not produce the party along with documentary evidence such as delivery challans, goods inwards notes, transportation bills and other

supporting documents to prove the genuineness of the abovementioned transactions.

8.3 *From the above discussion, it is seen that the during the remand proceedings the appellant did not produce the Hawala dealer before the Assessing Officer for cross verification. The appellant has booked the aforesaid purchases in his books of accounts as expenses, therefore, the onus to prove the genuineness and correctness of the purchase transactions lies with the appellant by producing the party, but he failed to do so. The statements and affidavits filed by the unverifiable /Hawala dealer before the Sales Tax Department have evidentiary value, which cannot be ignored. If the purchases were genuine in toto, the appellant could have filed counter affidavit and should not have paid the VAT on behalf of the Hawala dealer/unverifiable dealer.*

There are various reasons as to why the Hawala dealer was absconding and did not appear before the Assessing Officer for cross examination during assessment proceedings, whereas in other purchases no such anomaly have been found by the Assessing Officer. At least, the appellant could have produced copy of return filed along with P & L a/c and B/S of Hawala dealer before Assessing Officer, but it did not do so.

When the supplier was not traceable and not responded to notices issued u/s. 133(6), how can the AO conduct further investigation. In fact, the purchases made from this supplier are recorded in the books of accounts of the appellant, therefore, the primary onus lies on the appellant to produce the party or else at least the copy of I. Tax return along with P&L a/c, B/s and the details of filing of return of by this supplier. It is also seen that, the appellant has not maintained stock register, therefore, the appellant failed to give the quantitative details with regard to opening stock, purchases, consumption of materials, sales and closing stock. Hence, the purchases and sales cannot be co-related with the quantitative details.

The AR of the appellant has submitted statement showing comparative net profit ratio in which the NP for the year under appeal is 5.91% as compared to the immediate preceding year @4.75%, which is better than the previous year. On the purchases, there were corresponding sales and the payments were made by account payee cheques, therefore, the appellant claimed that the disallowance of entire purchases made from Hawala dealer is not justified.

8.4 *From the above discussion, it can be concluded that, it is a case where the goods were received from the party other than the person who had issued the bills for such goods. Though the purchases were shown to have been made by making payment to Hawala dealer but goods must have come from grey market, therefore, under such circumstances, the chances of purchase cost*

being inflated cannot be ruled out. The dealer S.S. Enterprises was unverifiable.

Considering the totality of the facts of the case, I am of the considered opinion to disallow 25% of unverifiable purchases made from unverifiable/Hawala party. Accordingly, the book result of the appellant is rejected u/s. 145(3) of the Act. The disallowance 25% out of unverifiable purchases from unverifiable/Hawala dealer had been upheld in the aforesaid case:

(1) Sanjay Oil Cake Industries Vs CIT (2008) 316 ITR 274 (Guj)

(2) Vijay Proteins Ltd Vs ACIT 58 ITD 428 (Abd)

(3) M/s Nand Kishore Meghraj Jewellers, Jaipur Co. No. 105/JP/09 arising out of ITA No. 433/JP/2009 by ITAT Jaipur

(4) M/s. Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.

In view of the above stated facts, the disallowance @ 25% of Rs.12,28,500/- works out at Rs.3,07,125/- is sustained and the same is added to the total income of the assessee. The appellant get relief of Rs. 9,21,375/-(12,28,500 - 3,07,125)''

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 25% of the purchases. Grounds raised by the revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced on 04.10.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

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

Mumbai / Dated 04/10/2021
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