

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 878/MUM/2020  
Assessment Year: 2010-11**

Asst. Commissioner of Income Tax-  
32(2),  
720, 7<sup>th</sup> floor, Kautilya Bhavan, C-  
41 to C-43, G Block BKC, Bandra  
East, Mumbai-400051.

**Vs.** M/s M.M. Construction, A-403,  
404, Jeevan Prabha,  
Chandavarkar Road, Borivali  
(W), Mumbai-400092.

**Appellant**

**PAN No. AAGFM 5456 L  
Respondent**

Revenue by : Ms. Usha Gaikwad, DR  
Assessee by : None

Date of Hearing : 25/08/2021  
Date of pronouncement : 27/10/2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The present appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-44, Mumbai [in short 'CIT(A)'] for the assessment year 2010-11 dated 04.01.2016 and arises out of assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have

decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. Brief facts of the case are, the assessee is engaged in the business of Govt. Civil Constructor. The assessee filed its return of income on 15.09.2010 declaring total income of ₹46,39,680/-. The return was processed u/s 143(1) Of the Act. The Assessing Officer observed that the assessee has obtained bills of bogus purchases from the following parties :

| S. No. | TIN No.      | Name of Party                | Amount (₹)         |
|--------|--------------|------------------------------|--------------------|
| 1.     | 27910623885V | Deonar Trading Pvt. Ltd.     | 17,85,700/-        |
| 2.     | 27050634058V | Linux Sales Agency Pvt. Ltd. | 3,33,060/-         |
| 3.     | 27770700786V | Prince Trading Co.           | 54,23,904/-        |
| 4.     | 27090578261V | Pooja Corporation            | 7,02,878/-         |
| 5.     | 27610669252V | Swastik Enterprises          | 11,09,746/-        |
|        |              | <b>Total</b>                 | <b>93,55,288/-</b> |

4. After considering the submissions of the assessee and the Assessing Officer considered the above purchases as bogus purchases and made 100% of the above purchases as income of the assessee by disallowing the entire purchases.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) after considering the detailed submissions of the assessee, adjudicated the issue partly in favour of the assessee by restricting the disallowance to the extent of 15% of the bogus purchases with the following observation:

*"7.4.1 I have gone through the submissions made by the appellant and have perused the materials available on record. The appellant had requested to delete the impugned disallowance/addition made on account of bogus purchases at Rs.39,31,384/-. The appellant has made elaborate submissions as detailed above. The appellant has also placed reliance on the decision of the CIT(A)-44, Mumbai in its own case for AY 2011-12.*

*From perusal of the said decision dated 07.10.2016 of my Ld. Predecessor in appellant's own case for 2011-12 in Appeal No. CIT- (A)44/ACIT 32(2)/ITA-394/2013-14, while deciding the appeal ex-parte on merits, on the basis of material on record, has held as under.*

*"4. Decision on grounds of appeal no. 2,3 & 4:*

*4.1 The relevant facts are like this. The assessee is engaged in the business of civil contract. These grounds relate to disallowance of Rs 10,01,441/- as bogus purchases and consequent addition of the same amount u/s 69C. The AO has received information from the Sales Tax department that the appellant has shown purchases from a bogus concern. The A.O. extracted information from the Sales Tax Department website. The assessee was asked to show cause as to why the entire amount of Rs. 10,01,441/- should not be treated as unexplained expenditure u/s.69C of the I.T. Act, 1961. In reply to the show cause issued the assessee submitted that the purchase transactions are genuine and he had received actual delivery of goods. The A.O. however did not accept the contention of the appellant and added ₹10,01,441/- u/s.69C of the I.T. Act.*

*4.2 During the course of appeal proceedings, despite several opportunities of hearing no one appeared nor was any written submission filed. The case is therefore decided on the basis of submission made in the grounds of appeal and statement of facts. The gist of the argument put forward by "the appellant in the grounds of appeal and statement of facts can be summarized as below: -*

- 1. The appellant has made real purchases.*
- 2. The appellant has made payments for the disputed purchases through proper banking channels.*
- 3. The AO has not brought any evidence on record by his own enquiry and has simply relied on the names as appearing in the list of suspicious dealers published by the sales tax department.*

*4.3 I have carefully gone through the assessment order as well as the details filed by the appellant. Some 5-6 years ago the Sales Tax Department of the Government of Maharashtra had conducted extensive enquiries against such dealers who used to provide bills facilitating bogus purchases/sales. As a result of this inquiry, information about many assesses were forwarded to the Income Tax Department. The A.O. has stated in the assessment order that the appellant is one such person who has inflated his purchases by showing bogus purchases from such persons who appear in the list of bogus entries providers as prepared by the Sales Tax Department. During the course of assessment proceedings, the A. O. also found that the assessee had not been able to establish the genuineness of purchases in dispute. The main arguments of the AO on the basis of which he had formed his opinion were-*

1. The assessee was not able to submit any lorry receipts or any details regarding transportation of goods.

2. The suppliers from whom the disputed purchases have been made are included in the list of hawala operators prepared by the Sales Tax Department.

4.4 The appellant is a contractor. The AO in his order has dealt exclusively with the purchases of the appellant. However, in the case of a contractor, if there are no purchases of materials there cannot be any contract activity also. The AO had disallowed part of purchases without at the same time questioning the receipt figure of the assessee. The AO has not brought any material on record to show that there is suppression of receipt also by the appellant. In fact, the AO has not conducted any inquiry on his own. Further, the AO has not rebutted the arguments of the appellant that the payments have been made through banking channels. The fact remains that the appellant has taken care to make its purchases through banking channel and since the banks are required to follow KYC norms the identity of the supplier cannot be doubted.

4.5 In a judgment given by the Allahabad High Court in the case of CIT Vs Jagdish Prasad Tewari 220 Taxmann 0141 (2014), it has been held that if the payments have been made by cheques and 'are reflected in the books of account of the assessee, no adverse inference can be drawn.

4.6 Further it has been held in the case of Saraswathi Oil Traders vs. CIT 254 ITR 259 (Supreme Court) that when the sales have not been doubted then there was no question to doubt the purchases and the addition should have been made only to the extent of gross profit. To this extent I am in agreement with the appellant that if the appellant has fulfilled his onus of making the payments by banking channels and has supplied the address of the sellers, then it cannot be presumed that the sellers were bogus. However, at the same time it cannot be said that the information provided by the sales tax department should not be taken cognizance of by the A. O. Therefore, after considering the totality of facts and after following the ratio of Saraswathi Oil Traders vs. CIT(SC) cited supra, I am of an opinion that it is the profit element on the total component in dispute which needs to be added to the income of the appellant. Since the appellant has not made any written submission on the basis of which the GP rate of the assessee can be determined the GP rate of the appellant is estimated to be 15%. The total amount which is being treated as bogus by the AO is Rs 10,01,441/- Thus 15% of Rs. 40,01,441/- which is Rs. 1,50,216/- is taken as profit of the appellant on purchases that are not fully and properly explained. Addition of Rs.1,50,216/- is accordingly confirmed out of an addition of Rs. 10,01,441/- and the balance is deleted. Grounds of appeal Nos 2, 3 & 4 are therefore partly allowed."

The facts and circumstances of the case in the present assessment year on issue under consideration remain same, as that of the facts adjudicated by my Ld. Predecessor in the above referred decision in appellant's own case for AY 2011-12. Further, the appellant

*has accepted the said decision of my Ld. Predecessor. Hence, respectfully following the same, the Ld. AO is directed to restrict the disallowance/addition made on account of bogus purchases @ 15% of total of such bogus/suspicious purchases and re-compute the disallowance/addition accordingly. The Ground No. 1 raised in appeal is PARTLY ALLOWED."*

*The facts and circumstances of the present appeal are similar as that to the appeal filed against the order u/s 143(3) of the Act of the present assessment year. Hence, in view of the finding contained therein and as reproduced above, the Ld. AO is directed to restrict the disallowances/ additions made on account of bogus purchases @ 15% of total of such bogus/suspicious purchases and re-compute the disallowance/addition accordingly. The Ground No ALLOWED."*

6. After considering the submissions of the Ld. DR and material on record. We noticed that the Ld. CIT(A) restricted the estimation of profit embedded in accommodation entries of bogus purchases transactions @ 15% of the disputed purchases. The decision of the Ld. CIT(A) is in consonance with the decision of various Courts and Tribunals. It is well settled proposition that the estimation of profit is very much restricted to the benefit taken by the assessee by availing accommodation entries and at the same time tax authorities accepts the sales declared by the assessee. In our considered view, the Ld. CIT(A) has adjudicated the issue and reached the conclusion to estimate the income @ 15% is proper and just. Therefore, we are inclined not to interfere with the findings of the Ld. CIT(A) and accordingly, grounds raised by the Department are hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the open Court on 27/10/2021.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUH RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 27/10/2021  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Assistant Registrar)  
**ITAT, Mumbai**