

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1249/MUM/2020 : **A.Y : 2011-12**

Jogaram Gularamji Chouhan
(Proprietor of M/s. Rainbow Cables)
51/53, Popatwadi, Nr. Hanuman
Mandir, Princess Street, Kalbadevi,
Mumbai 400 002. (Appellant)
PAN : AABPT0319C

Vs. Income Tax Officer – 18(3)(4),
Mumbai 400 021. (Respondent)

Appellant by : Shri Jitendra Singh

Respondent by : Shri Vaibhav

Date of Hearing : 25/10/2021

Date of Pronouncement : 25/10/2021

ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-53, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-53/IT-341/ITO-18(3)(4)/2018-19 dated 24.09.2019. The assessment was framed by Income Tax Officer - 18(3)(4), Mumbai for Assessment Year 2011-12 vide his order dated 18.03.2016 under Section 143(3) r.w.s. 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of the assessee is as regards the order of CIT(A) confirming the action of the Assessing Officer disallowing 12.5% of the bogus purchases. For this, assessee has raised the following Ground nos. 3 & 4:-

“3. The Id CIT(A) erred in confirming the order of Assessing officer in restricting the addition to 12.5% of the purchases from nine parties aggregating to Rs.11,54,000/- without considering that the of purchase were duly supported by details like the details of bank statement showing payments made to supplier, purchase bills along with challan, ledger a/c, quantitative tally, corresponding sales against purchase etc were furnished before Assessing Officer, therefore merely on the information received from the DGIT (Inv.), purchases cannot be treated as non-genuine.

4. The Ld AO and CIT(A) failed to appreciate that assessee’s regular GP is around 6.54 therefore estimating GP @ 12.5% is on higher side.”

3. The brief facts are that the assessee is a dealer in industrial cables. The Assessing Officer during the course of assessment proceedings received information from the DGIT(Inv.), Mumbai, who in turn received information from the Maharashtra Sales Tax Department, that there are certain accommodation entry providers/bogus entry providers to various parties by issuing bogus bills of sale. As per the information received, assessee has obtained accommodation entries/bogus purchase bills from the following parties :-

Sr.	Party name	Amount
1	Kesar Enterprises	4,35,390/-
2	Arihant Traders	36,96,852/-
3	Navdeep Trading Corporation	1,36,779/-
4	Akshar Distributor Pvt. Ltd.	4,16,499/-
5	Darshat Trading Pvt. Ltd.	5,02,390/-
6	Savita International	60,816/-
7	Khimsar Impex Pvt. Ltd.	2,30,412/-
8	Fasto Traders Pvt. Ltd.	17,23,960/-
9	Navyug Enterprises	20,27,157/-
	Total	92,30,255/-

The Assessing Officer made disallowance of bogus purchases at Rs.11,54,000/-. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the disallowance by observing in paragraphs 6.5 and 6.6 as under :-

“6.5 I am guided by the ratio of decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P. Sheth pronounced on 16.1.2013 in tax appeal No. 5531 of 2012 wherein the Hon'ble Court have held that when the total sale is accepted by the AO, then the entire purchases cannot be added to the income of the appellant. The Hon'ble Court have, therefore, held that fair profit ratio would be needed to be added back to the income of the assessee.

6.6. Even if materials have been purchased, they are not purchased from these parties and may be in cash from un-disclosed parties. By purchasing from the grey market, the appellant would have benefitted by the savings of taxes. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 12.5% profit which can take care of the rotation of capital utilised for such transaction. Hence in the light of finding of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 12.5% profit is found to be appropriate for ascertainment of taxable income related to such transaction. The TAR was not filed. The assessing officer has made disallowance of Rs. 11,54,000/-, out of the purchases claimed from nine impugned parties of Rs. 92,30,255/-. The disallowance @ 12.5% comes to Rs 1153782/- Though the assessing officer has not stated so, his disallowance is at same amount. The disallowance is upheld. The same is reasonable and is sustained. Thus the Ground of appeal No. 4 to 7 are dismissed.”

Aggrieved, now assessee is in appeal before the Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that the assessee has filed copies of purchase invoices, copies of challans, PAN numbers of the entities from whom purchases were made and assessee's own ledger accounts. Assessee has also produced the proof of payment made by account payee cheques for the

purchases, but could not produce the parties for examination. Even the assessee could not produce the delivery challans, transportation receipts and octroi receipts, etc. It means that the presumption is that the assessee might have made purchases from the grey market, but obtained bogus bills to cover up the deficiency. I noted that the Assessing Officer has not doubted the sales made out of these bogus purchases. Once this is so, the only issue which remains is estimation of profit rate, which both the Assessing Officer and the CIT(A) have done. Estimation of profit rate is at 12.5% and assessee is engaged in the business of dealing in industrial cables. Going by the nature of the trade, I am of the view that the profit rate of 8% will suffice in the matter. Hence, I estimate the profit rate at 8% of the bogus purchases and direct the Assessing Officer accordingly.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 25th October, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 25th October, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai