

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1059/MUM/2020 : **A.Y : 2009-10**

Income Tax Officer – 22(2)(6),
Mumbai. (Appellant)

Vs. Muhammad Ali Mukadam
1, Mahalaxmi Sadan, Sane Guruji
Marg, Jacob Circle, Mumbai 400 011.
PAN : AFWPM9155R (Respondent)

Appellant by : **Shri Vivek Perampurna**

Respondent by : **Ms. Kiran Vadher**

Date of Hearing : **25/10/2021**

Date of Pronouncement : **25/10/2021**

ORDER

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-33, Mumbai (in short 'CIT(A)') in Appeal No. CIT (A), Mumbai-33/11333/2015-16 dated 27.12.2019. The assessment was framed by Income Tax Officer - 21(2)(3), Mumbai for Assessment Year 2009-10 vide his order dated 27.03.2015 under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that assessee is engaged in the business of work contracts for lift maintenance. The Assessing Officer during the course of assessment proceedings noticed that assessee has obtained bogus purchase bills from the following parties during the year under consideration :-

S.No.	Name of the party	Amount (Rs.)
1	Millennium Enterprises	3,53,193
2	Shradhha Trading Co.	3,03,761
3	Modern Traders	1,96,312
5	Balaji Traders	1,68,615
6	Souvenir Hardware & Tools	1,45,687
	TOTAL	11,67,568

It is noted by the Assessing Officer that he has received information from DGIT (Inv.), Mumbai that assessee is a beneficiary of bogus purchase bills from these parties, which are hawala parties as per the list of Maharashtra Sales Tax Department. The Assessing Officer made the addition of bogus purchases outstanding in entirety amounting to Rs.6,14,020/- and applied profit rate on bogus purchase of Rs.5,53,548/-, thereby estimating profit rate of 15.69% at Rs.86,852/-. Thus, the Assessing Officer made total disallowance of Rs.7,00,871/-. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) confirmed the estimation of 15.69% on the bogus purchases of Rs.5,53,548/- but estimated addition of 25% of bogus purchases outstanding of Rs.6,14,020/- by observing in paragraphs 7 and 8 of his order as under :-

“7. I have carefully considered the facts mentioned in the assessment order. On merits, there is no doubt that this is the case of bogus purchase. The five parties who have given bills to the assessee were identified as bogus bill providers by the Sales Tax Department based on their detailed investigation and enquiries. Notices u/s 133(6) issued to those parties were returned by the postal authorities. The appellant has also failed to produce those parties. The appellant could not file their alternative address, if any. Therefore, the quantity and rates of the actual purchase could not be verified and the AO had correctly made addition @ 15.69% of Rs.5,53,548/- which represented payments made during the year to cover the inflation and the additional profits generated in the hands of the assessee by indulging in such practices. Hence the same is confirmed.

8. *However, I am of the view that addition of 100% of bogus purchase to the extent of Rs.6,14,020/- made by the AO is not justified merely because of the fact that the same remained outstanding in the assessee's books of accounts at the year end. The appellant had filed ledger accounts showing payments in subsequent years which are partly in cheque and partly in cash. Therefore, considering the entirety of facts, I am of the view that addition of 25% of bogus purchase out of amounts which remained payable at the year-end will be most appropriate percentage to estimate profit element embedded in the bogus purchase of Rs.6,14,0120/-. In view of above, addition of Rs.1,53,505/- being 25% of 6,14,020/- is sustained and balance addition of Rs.4,60,515/- is deleted. To conclude, the total addition of Rs.1,53,505/- + Rs.86,852/- = Rs.2,40,357/- is sustained and balance addition of Rs.4,60,515/- is hereby deleted. The grounds are partly allowed."*

3. After hearing the rival contentions, I find no infirmity in the order of CIT(A). Hence, order of CIT(A) is confirmed.

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

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

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 25th October, 2021

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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