

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

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

ITA NO. 2018/MUM/2020 (A.Y. 2009-10)

Income Tax Officer – 1(1) 1 st Floor, Mohan Plaza Wayale Nagar, Kalyan (W) Mumbai - 421301	v.	Shri Kantilal Kachara Gada A-202, H.No. 1164 Green Acre Society Behind Ostwal Sagar Hall Bhiwandi - 421302 PAN: ACKPS4697P
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Sanjay J. Sethi
Date of Hearing	:	30.09.2021
Date of Pronouncement	:	03.11.2021

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) – 2, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 08.09.2020 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 an individual engaged in the business of manufacturing of Twisted Yarn, filed return of income on 24.09.2009 for the A.Y.2009-10 declaring income of ₹.4,49,150/- 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 the parties as referred in Assessment Order. In response assessee furnished sample bills, name and address of the dealers and submitted that the purchases made are genuine and they cannot be treated as bogus.

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. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with the remark "not known /left address/unclaimed" and the assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that the assessee failed to produce the parties to prove the genuineness of the transactions. Therefore, Assessing Officer treated entire alleged bogus purchases of ₹.10,48,320/- for the A.Y. 2009-10 and as non-genuine. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the 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 by the assessee. Therefore, I proceed to dispose off 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 and following various judicial pronouncements restricted the addition to 25% of the

non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

“7. Ground No. 3 of appeal relates to challenge of the addition of Rs.10,48,320/- made on account of hawala purchases. As the relevant purchases have been debited to the P&L Account and claimed as deduction in computing the profits of the business chargeable to tax, the onus was on the appellant to prove the genuineness of the purchases with satisfactory evidences. It is observed that the appellant, during the course of appellate proceedings has produced the copy of statement of income and financial statement, copies of bank statement, etc. However, it is noted that the AO was in possession of information received from the Sales Tax Department, indicating strongly that the suppliers concerned were only providing accommodation entries and were not carrying out any real business. Thus, the onus that was cast on the appellant was of a greater degree to prove the genuineness of the parties as well as of these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.

7.1 There cannot be any dispute about the well settled legal proposition that tax can be levied only on real income. It is elementary rule of accountancy as well as of taxation laws that the profit from business cannot be ascertained without deducting the cost of purchase from sales, otherwise it would amount to levy of income tax on gross receipts or sales. Disallowance @ 25% out of Bogus purchases was held as reasonable in the case of Vijay Proteins Ltd. by the Hon'ble Gujarat High Court, in view of the fact that the savings occurred to the suppliers on account of sales tax, duties and Income-tax, by buying the goods from grey market at lower rates and booking the purchases at normal rate, the assessee got the benefit of this proportion. It is pertinent to mention here that the Hon'ble Supreme Court, vide order dated 6.4.2015, dismissed the SLP filed by the assessee and confirmed the finding of the Hon'ble Gujarat HC in the case of Vijay Protein and other decisions of the Gujarat HC in the case of Sanjay Oilcake Industries Vs. CIT (2009) 316 ITR 274 and N.K Industries Ltd. Vs. DCIT.

7.2 Considering the facts of case and in view of various decisions as discussed above, it is held that the appellant has made sales so the purchases cannot be totally bogus. Therefore only 25% of the

bogus purchases, i.e. Rs. 2,62,080/-, out of total purchases of Rs.10,48,320/- may be added to the income of the appellant. Accordingly the disallowance of Rs. 2,62,080/- is confirmed and balance amount of Rs.7,86,240/- is deleted. The above ground of appeal 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 25% of the purchases. Grounds raised by the revenue are dismissed.

Order pronounced on 03.11.2021 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 03/11/2021
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