

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

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

ITA NO. 665/MUM/2020 (A.Y: 2010-11)

Parshwamani Overseas Room No. 1, 1 st Floor 21, Manipur House 1 st Parsiwada Lane Mumbai - 400004 PAN: AAKFP2571K	v.	Income Tax Officer -19(2)(5) Room No. 210 Matru Mandir Tardev Road, Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Ashok Koli
Date of Hearing	:	06.10.2021
Date of Pronouncement	:	03.11.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 15.10.2019 for the A.Y. 2010-11 in enhancing the purchases to the extent of 100% of ₹.1,86,21,217/- as against 12.5% of the alleged non-genuine purchases disallowed by the Assessing Officer.

2. Briefly stated the facts are that, assessee engaged in the business of ferrous and non-ferrous metals filed return of income on 29.09.2010 declaring income at ₹.NIL/- for the A.Y.2010-11 and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), 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 DGIT (Inv.), 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 various dealers as referred in Assessment Order. In response assessee furnished copies of ledger account and bank statements and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques as such contended that all the purchases are genuine.

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. It is the finding of the Assessing Officer that assessee failed to produce the parties and as such the purchases to the extent made from the parties are remained unverifiable. Therefore, Assessing Officer treated purchases of ₹.1,86,21,217/- as non-genuine. However, he estimated the profit element from such purchases at 12.5% and disallowed ₹.23,27,652/- while computing the income. On appeal the Ld.CIT(A) enhanced the disallowance to 100% of purchases of ₹.1,86,21,217/- relying on the decision of the Hon'ble Bombay High Court in the case of Shoreline Hotel Pvt. Ltd., [98 taxmann.com 234] which was passed under the context of section 236 of the Act. Against this order of the Ld.CIT(A) assessee is in appeal.

4. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, I proceed to dispose of this appeal on hearing Ld. DR on merits.

5. Ld.DR vehemently supported the orders of the authorities below.

6. Heard Ld.DR, perused the orders of the authorities below. An identical issue has come before the Coordinate Bench in the case of Shri Pravin C. Bokadia v. ITO in ITA.No. 3552/Mum/2019 dated

17.07.2020 wherein the Ld.CIT(A) enhanced the addition to 100% of non-genuine purchases relying on the decision in the case of Shoreline Hotel Pvt. Ltd., (supra) and the Tribunal considering the decision of the Hon'ble Jurisdictional High Court in the case of M. Haji Adam & Co. (ITA.No. 1004 of 2016 dated 11.02.2019) directed the Assessing Officer to make the disallowance in accordance with the ratio of the decision of the Hon'ble Bombay High Court in the case of M. Haji Adam & Co. (supra). On a perusal of the Coordinate Bench decision in the case of Shri Pravin C. Bokadia v. ITO (supra), I find that the Ld.CIT(A) enhanced the disallowance to 100% of the non-genuine purchases placing reliance in the case of Shoreline Hotels Pvt. Ltd., (supra), the Tribunal noticed the distinguishing features of the Hon'ble Bombay High Court decision in the case of Shoreline Hotels Pvt. Ltd., (supra) to the cases where there is a disallowance made under non-genuine purchases and the observation of the Tribunal is as under: -

"7. Upon assessee's appeal learned CIT(appeals) has enhanced the addition to hundred percent. In doing so she has referred to the honourable jurisdictional High Court decision in the case of Shoreline Hotels Pvt. Ltd.(supra). It is settled law that case law cannot be considered in isolation of the context thereof. This is duly the ratio arising of out of the decision of honourable Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (198 ITR 2970. In the decision of Shorteline Hotels Pvt. Ltd. (supra) considered by the Hon'ble Bombay High Court was in context of the order passed by learned CIT(A) under section 263 of the income tax act, wherein the ITAT had upheld the order of the learned CIT, invoking his jurisdiction u/s. 263. The issue was expenditure incurred in the

maintenance by a hotel. In contrast the present case is a case where the assessee is a dealer in steel and disallowance has been done by the Assessing Officer on a finding that the assessee has made purchases through grey market.

8. In our considered opinion by no stretch of imagination it can be said that there is any similarity in the facts upon which the honourable jurisdictional High Court has rendered the above said decision and the facts of the present case."

7. Thus, I am of the opinion that the Ld.CIT(A) is not correct in enhancing the disallowance to 100% of the genuine purchases placing reliance on the decision of the Hon'ble Bombay High Court in the case of Shoreline Hotels Pvt. Ltd., (supra).

8. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as

held by the Bombay High Court in the case of CIT *v.* Nikunj Eximp [216 Taxman.com 171].

9. I agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. trader in Ferrous and non-Ferrous Metals, it would be justified if the profit element embedded in those purchases are estimated at 8%. Accordingly, I direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 8% and restrict the disallowance of purchases to 8% and compute the income accordingly.

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

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