

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

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

ITA NO. 1651/MUM/2020 (A.Y. 2010-11)

Income Tax Officer – 28(2)(2) Room No. 311, 3 rd Floor Tower No. 6 Vashi Railway Station Complex Vashi, Navi Mumbai	v.	M/s. MAC Dyechem Industries D-24/7, Opp. Balmer Lawrie Ltd., MIDC TTC Industries Area Turbhe, Navi Mumbai - 400705 PAN: AAEFM6471D
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Ms. Kranti Yadav
Date of Hearing	:	10.11.2021
Date of Pronouncement	:	10.11.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 31.01.2020 for the A.Y. 2010-11 in restricting the disallowance to 17.5% of purchases as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, assessee a partnership firm engaged in the business of manufacturing in textile dyes, filed return of income on 22.09.2010 for the A.Y.2011-12 declaring loss of ₹.2,82,608/- and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT (Investigation), 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 (Investigation), 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 parties amounting to ₹.19,40,380/- as referred in Assessment Order. Assessee furnished ledger account of purchase parties 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. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "left" 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 discharge his onus of proving the genuineness of the transactions in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer treated entire purchases of ₹.19,40,380/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to an extent of 17.5% of the non-genuine purchases.

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 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 along with decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the addition to 17.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"8. The Ground No. 2 of the appeal is against addition of Rs.19,40,380/- being 100% of total purchases made from the 6 parties. As per the investigations carried out by the Sales Tax Authorities, the aforementioned parties were found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, and as evident from the assessment order, the AO carried out extensive enquiries during the course of assessment proceedings to establish that the purchases amounting to Rs.19,40,380/- were not made from these 6 parties.

8.1 The AO issued notices u/s 133(6) which were returned unserved by the postal authorities in case of 5 parties and 1 party namely M/s. Amar Enterprises initially denied any transactions with the assessee. Subsequently, the AO issued summons to Shri Suresh V. Bohsle, Prop, of M/s. Amar Enterprises who admitted on oath giving accommodation entries to the assessee for a commission and also stated that the other 5 parties were also involved in giving accommodation entries by charging a small commission.

8.2 The other 5 parties were found to be non-existent at the address given by the appellant. The assessee also failed to provide the latest address of these parties. The assessee could not produce the parties before the AO in spite of various opportunities being given. Thereafter, the AO gave an opportunity to the assessee to cross-examine Shri Suresh V. Bhosle, Prop, of M/s. Amar Enterprises but the assessee failed to establish that the purchases were indeed made from M/s. Amar Enterprises. It later tried to introduce additional evidence in the form of an affidavit from the said party, but the same was declined to be taken on record as the appellant had been given opportunity of cross-examination by the AO and a

subsequent affidavit could not be entertained to do what the appellant could not do in cross-examination.

8.3 During the assessment proceedings, the AO also called for the bank statements of the 6 parties and after analysis of the same observed that there were immediate cash withdrawals after the payments made by the assessee through banking channels showing that the parties were only providing accommodation entries. The assessee also failed to produce all the purchase bills stating that the same were seized by the Sales Tax Department. The assessee, however, provided the stock register and sample transportation and delivery challans during the assessment and the appellate proceedings.

8.4 When allegations of this nature are made, the onus of proving the genuineness of such purchases is on the assessee which the assessee had not been able to discharge fully. When the hawala party had admitted on oath that it had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from one party will have to be considered taking this into consideration while examining the documentation submitted by the appellant in support of its claim. The documentary evidences such as purchase bills and payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine.

8.5 The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. In light of the submission made by the assessee and the extensive findings of the AO, I am of the opinion that the assessee has definitely not made the purchases from these 6 parties.

8.6 However, the assessee has shown onward sales which have not been doubted by the Assessing Officer. Further, the stock register of the assessee has also not been doubted by the AO. Since there can be no sales without corresponding purchases, the only logical explanation is that the assessee would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Simit P.Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed.

8.7 On perusal of the submissions made during the course of appellate proceedings, it is seen that the Gross Profit of the assessee is shown @11.25% for the year under consideration. It is pertinent

to note that purchases from grey market lead to the savings of VAT which is reflected in the bills. Further, the expenditure made on commission paid for the fake bills is also a disallowable expenditure which is also embedded in these purchases. Keeping the facts in perspective and in light of the information received from the Investigation Wing, the findings of the AO during the assessment proceedings, and the submissions made by the assessee, I am of the considered opinion that an estimation @17.5% of the purchases effected from the above 6 parties shall be reasonable to cover up for the profit element embedded in these purchases. It is observed that the bills presented by the appellant show VAT deduction at 4% (which would not have been paid by the appellant). Further, the usual fee to obtain an accommodation entry is around 2% (which is disallowable). Hence, a higher rate of profit estimated @17.5% for the purchases effected from the above 6 parties is justified when compared to the normal rate of profit declared by the assessee. Therefore, the addition made by the AO is restricted @17.5% of the purchases i.e. at Rs. 3,39,567/-.

- 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 17.5% of the purchases. Grounds raised by the revenue are dismissed.
- 8.** In the result, appeal of the Revenue is dismissed.

Order pronounced in the virtual court on 10.11.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai / Dated 10/11/2021
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