

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

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

**ITA NOs. 389, 390 & 391/MUM/2021  
(A.Ys. 2009-10, 2010-11 & 2011-12)**

Income Tax Officer - 31(1)(1) Room No. 603, 6 <sup>th</sup> Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Vikas Ravilal Gala 14, Chandan Villa Jawahar Nagar, Road No. 6 Goregaon (W) Mumbai - 400062  <b>PAN: AACPG2078C</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Hemant Sharma</b>
<b>Department by</b>		<b>Ms. Kranti Yadav</b>
<b>Date of Hearing</b>	<b>:</b>	<b>11.11.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>11.11.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

**1.** These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-42, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.01.2020 for the A.Ys., 2009-10, 2010-11 & 2011-12 in restricting the disallowance to 12.5% of purchases as against 28%, 21.29% and 23.29% disallowed as non-genuine/bogus

by the Assessing Officer for the A.Y. 2009-10, 2010-11 & A.Y.2011-12 respectively.

**2.** Briefly stated the facts are that, the assessee an individual engaged in the business of manufacturing digital temperature controllers, filed return of income on 26.09.2009, 23.09.2010 and 11.09.2011 declaring income of ₹.3,86,600/-, ₹.6,37,290/- & ₹.4,45,120/- for the A.Y: 2009-10, A.Y. 2010-11 and A.Y.2011-12 respectively, and the returns were 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 assessments were 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 referred in Assessment Order. Assessee furnished ledger accounts and other evidences 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 "Not Known" 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 before the Assessing Officer to prove the claim of the assessee. Therefore, Assessing Officer treated ₹.10,15,182/- being 28% of purchases of ₹.36,25,652/- for the A.Y. 2009-10 and ₹.6,85,688/- being 21.29% of purchases of ₹.32,20,706/- for the A.Y. 2010-11 and ₹.31,3058/- being 23.29% of purchases of ₹.1,34,413/- for the A.Y. 2011-12 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 the extent of 12.5% of the non-genuine purchases.

4. Ld. Counsel for the assessee vehemently supported the orders of the Ld.CIT(A) and whereas Ld. DR vehemently supported the orders the Assessing Officer.

5. Heard both the parties, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), I find that 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 along the decision of the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Sheth[356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) for the A.Y. 2009-10 observed as under: -

*"7.1 I have considered the submission of the appellant, carefully gone through the order of the AO, perused the material on record, and referred to the case laws relied upon by the appellant and the AO.*

*7.2 Ground No. 1 is against addition of Rs. 10,15,182/-, being @28% of non genuine purchases amounting to Rs. 36,25,652/-. 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, the AO had made enquiries by issuing notices u/s 133(6) which were returned un-served by the postal authorities. This party was found to be non existent at the address given by the appellant. The appellant also failed to provide the latest address of the party. During the scrutiny assessment the appellant furnished details of*

*purchases and corresponding sales. However, the appellant could not produce the party before the AO in spite of opportunity being given. The appellant also failed to produce delivery challans or transportation details. The onus of proving the genuineness of such purchases is on the appellant which the appellant 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 these parties 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, 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. 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. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant 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 the 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. The Hon'ble Gujrat High Court in this case has held that profit margin of 12.5% of the bogus purchases will be reasonable. Respectfully following the Order in the case of Simit P. Sheth the addition 12.5% of the bogus purchases is confirmed. Therefore, the appellant gets relief of Rs. 5,61,976/- (Rs. 10,15,182/- minus 4,53,206/-). The ground of appeal is **Partly Allowed**.*

Similarly, the Ld.CIT(A) restricted the disallowance to 12.5% for A.Y.2010-11 and A.Y. 2011-12 also.

**6.** On a careful perusal of the orders 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 12.5% of the purchases. Grounds raised by the revenue are dismissed.

**7.** In the result, appeals of the Revenue are dismissed.

Order pronounced in the virtual court on 11.11.2021.

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 11/11/2021  
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**