

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

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

**ITA NOs. 428, 429 & 430/MUM/2021
(A.Ys: 2009-10, 2010-11 & 2011-12)**

Income Tax Officer – 4(1) Room No. 03, A-Wing 6 th Floor, Ashar IT Park Wagle Industrial estate Thane (W) – 400604	v.	Shri Bhushan P. Naik Prop of M/s. Sarthak Engg. Corporation Post: Agashi, Aashrayee Vatar Bhavd Virar (W) - 401301 PAN: ADTPN9051G
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Abdul Hakkem
Date of Hearing	:	24.11.2021
Date of Pronouncement	:	25.11.2021

ORDER

PER C.N. PRASAD (JM)

1. All these three appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)–3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 14.9.2010 in estimating the profit element from bogus purchases at 25% as against 100% disallowed by the Assessing Officer.

2. Briefly stated the facts are that, Assessing Officer while completing the assessment required the assessee company to prove the genuineness of the purchases made from various parties mentioned in the Assessment Order as these parties were listed in the Sales Tax Department as bogus dealers. Assessing Officer also issued notices u/s. 133(6) of the Act to the parties, however, there was no response from them. Assessing Officer concluded that in the absence of any reply from the suppliers, assessee has not purchased from the said dealers and therefore he disallowed the purchases made from those dealers as non-genuine. On appeal the Ld.CIT(A) estimate the profit element of the purchases at 25%.

3. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, I proceed to dispose of these appeals on hearing Ld.DR.

4. Ld. DR vehemently supported the orders of the Assessing Officer and also placed reliance on the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Limited and the decision of the Mumbai Bench of the Tribunal in the case of Pratibha Pipes and Structural Ltd., v. DCIT in ITA.Nos. 3874, 3875, 3876/Mum/2015 and ITA.No. 7120/Mum/2016 dated 10.04.2019.

5. Heard Ld. DR, perused the orders of the Authorities below. The Ld.CIT(A) considered the various aspects of the issue and also following various decisions estimated the profit element at 25% of the bogus purchases observing as under: -

"9.4 From the above discussion, it can be concluded that, it is a case where the goods were received from the parties other than the persons who had issued the bills for such goods. Though the purchases were shown to have been made by making payment to Hawala dealers but goods must have come from grey market, therefore, under such circumstances, the chances of purchase cost being inflated cannot be ruled out. In all the 3 suppliers (Kavita Sales & Jyoti Enterprises, Om Shanti Trading Co. and Dipti Trading Corporation) the notices return unserved.

Considering the totality of the facts of the case, I am of the considered opinion to disallow 25% of unverifiable purchases made from unverifiable/Hawala parties. Accordingly, the book result of the appellant is rejected u/s. 145(3) of the Act. The disallowance 25% out of unverifiable purchases from unverifiable/Hawala dealer had been upheld in the aforesaid case:

- (1) Sanjay Oil Cake Industries Vs CIT (2008) 316 ITR 274 (Guj)*
- (2) Vijay Proteins Ltd Vs ACIT 58 ITD 428 (Abd)*
- (3) M/s Nand Kishore Meghraj Jewellers, Jaipur Co. No. 105/JP/09 arising out of ITA No. 433/JP/2009 by ITAT Jaipur*
- (4) M/s. Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.*

In view of the above stated facts, the disallowance @ 25% of Rs.3,29,596/- works out at Rs. 82,399/- is sustained and the same is added to the total income of the assessee. The appellant gets a relief of Rs. 2,47,197/- (3,29,596 -82,399)."

Similarly, the Ld.CIT(A) restricted the disallowance to 25% for A.Y.2010-11 and A.Y. 2011-12 also.

6. 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 to 25% of purchases as against 100% of the purchases disallowance made by the Assessing Officer in all these assessment years under consideration. The case law relied on by the Ld.DR are distinguishable on facts. Grounds raised by the revenue are dismissed.

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

Order pronounced on 25.11.2021 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 25/11/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
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