

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

**ITA No. 6688/MUM/2017  
Assessment Year: 2010-11**

DCIT-1(2)(2),  
R. No. 535, 5<sup>th</sup> floor, Aayakar Bhavan,  
M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Prince Marine Transport  
Services Pvt. Ltd., Roopam  
Building, 2<sup>nd</sup> floor, 239 P  
D"mello Road,  
Mumbai-400 001.

**PAN No. AAACP 3695 B  
Respondent**

Assessee by : None  
Revenue by : Ms. Shreekala Pardeshi, DR

Date of Hearing : 18/08/2021  
Date of pronouncement : 15/11/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-6, Mumbai [in short 'CIT(A)'] for the assessment year 2015-16 dated 13.12.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have

decided to proceed with the hearing of the case *ex-parte* with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are, the assessee filed its return of income for assessment year 2010-11 declaring total income at ₹4,66,35,750/- under normal provision and declared income of ₹15,59,31,904/- u/s 115JB of the Income Tax Act, 1961 (in short Act). The return was processed u/s 143(2) of the Act. The case was selected for scrutiny by issue of notice u/s 143(2) and 142(1) of the Act and served on the assessee. During the assessment proceedings, the Assessing Officer issued information from Investigation Wing of the Income Tax Department, Mumbai and it is inferred by the Assessing Officer that assessee is one of the beneficiaries of hawala transactions routed through the hawala dealers who have merely issued bills without supplying any goods and/or providing any services. The Assessing Officer disallowed ₹3,83,74,530/- of the accommodation bills claimed as expenditure under the head 'repairs and maintenance' and balance amount of ₹2,65,00,972/-, he disallowed from the work-in-progress of the vessels A2, A3 & A4. A survey action was conducted on Shri Dilip S. Doshi by the Investigation Wing, Mumbai in which Shri Dilip S. Doshi accepted that he was into the business of providing accommodation bills from the entities managed by him and following entities were disclosed by the him:

<b>Sr. No.</b>	<b>Name of the bogus entities</b>
1.	M/s Om Shree Enterprises
2.	M/s Netra Enterprises
3.	M/s Om Trader
4.	M/s S.M. Trading Co.
5.	M/s Chetna Enterprises
6.	M/s Alankar Steels

3.1 From the above list of entities, four entities i.e. Sr. No. 1, 3, 5 & 6 are found to be doing business with the assessee company during the year under

consideration. When the assessee was asked to submit the relevant information about the purchases made from these parties, the assessee submitted detailed information of purchases from these parties and assessee claimed that these parties are genuine. However, the Assessing Officer rejected the submissions of the assessee and observed that the assessee has not filed any supporting documents like goods receipt note, installation report, work completion, lorry receipts etc. before him. In order to verify the genuineness of the transaction, the Assessing Officer issued notice u/s 133(6) of the Act and all the notices were returned un-served with the remark that the parties are not known or unavailable. In the absence of any confirmation from these parties, the Assessing Officer presumed that these parties are not in existence and he relied on various case laws to treat these purchases as bogus purchases to the extent of ₹6,48,75,502/-.

4. Aggrieved, assessee preferred an appeal before the CIT(A) and made a detailed submission before him. After considering the detailed submissions of the assessee, the Ld. CIT(A) set aside the findings of the AO and submissions of the assessee and he came to the conclusion as below:

*"7.24 The facts in the present case are similar to the facts in the above mentioned case. In the present case, the Ld. AO has shown that the party in question was non-existent. The appellant has not been able to disprove the findings of the Ld. AO regarding the non-existence of the party. However, Ld. AO after examining the evidences did not give any adverse finding that the appellant had not shown consumption/sales of the goods and that it had not offered the income on such sale of goods. In this case, Ld. A.O. not having doubted the genuineness of sales could not have gone ahead and made addition in respect of the entire purchases as it would lead to absurd profits. Thus, the issue would boil down to finding out the element of suppressed profit embedded in purchases which the appellant would have made from some unknown or bogus entities. Hence, following the decision of the Hon'ble Gujarat High Court in Bholanath Polyfab Pvt. Ltd. (supra), the estimated suppressed profit margin*

*embedded in such amounts of purchases could only be disallowed and subjected to tax.*

*7.25 Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, partly sustained the addition. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj) and further approved the decision of Ahmedabad Bench, ITAT in the case of Vijay Proteins 58 ITD 428.*

*7.26 In the case of Vijay Proteins (supra), the Hon'ble ITAT was seized with a case of bogus suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from open market without insisting for genuine bills, the suppliers may be willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Tribunal estimated an element of profit percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.*

*7.27 The appellant has relied upon the decision of CIT(A) in its own case for A. Y.2010-11 where in disallowance has been restricted to 2%. The Ld. CIT(A) in arriving at such decision has followed decision of Hon'ble ITAT in the case of Innovators Façade vs. ACIT(Cir-2) Thane, ITA No.5450, 5451 and 5452/Mum/2015 dated 20.07.2016. It is seen that such decision of the Hon'ble ITAT has been given keeping in view the GP rate shown by the assessee and comparable figure of the GP rates in earlier year. There is no such fact given in this case to attract application of such decision.*

*7.28 As narrated earlier, the Ld. AO in this case has held that the parties from which the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the gross profit shown by the appellant. Accordingly, this ground of appeal is partly allowed."*

5. Aggrieved, the Revenue is in appeal before us raising following ground of appeal :

*"Whether on the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is right in directing the Assessing officer to restrict the disallowance to 12.5% of the purchases without appreciating the fact brought out by the AO that the evidence were gathered by Investigation wing to show that assessee had taken accommodation entries of purchases and also assessee had failed to produce documentary evidence in form of goods Receipts Note (GRN) , goods / Survey Inspection Report, Installation Report, Work Completion note, lorry receipts to establish that goods were actually received and consumed by the Assessee company?"*

6. Considered the submissions of the Ld. DR and material placed on record. We noticed that the Assessing Officer has made detailed verification of the parties were considered as bogus based on the statement of Shri Dilip S. Doshi based on the information from Investigation Wing, Mumbai. The Assessing Officer found that four parties who were supplied the material to the assessee are bogus and accordingly he disallowed 100% of the purchases from these parties and assessee has partly claimed the expenditure in the profit and loss account and partly charge to work-in-progress. We noticed that the Ld. CIT(A) analysed the findings of the Assessing Officer and submissions of the assessee in detail and he came to conclusion that the Assessing Officer has taken note of the transactions as bogus. However, AO failed to acknowledge that the assessee has declared corresponding sales. In our view, the Ld. CIT(A) came to the proper

conclusion that only profit element embedded in the purchases alone should be disallowed not the whole purchases, since the assessee has already declared corresponding income in its financial statement. Accordingly, the Ld. CIT(A) has disallowed the suppressed profit on the purchases claimed by the assessee to the extent of 12.5%. The decision of the Ld. CIT(A) is supported by the decision in the case of CIT Vs. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj), wherein, the Hon'ble Gujarat High Court has proposed that only profit element embedded in such purchased could be added to the assessee's income. Therefore, we do not see any reason to interfere with the findings of the Ld. CIT(A). Accordingly, the grounds raised by the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the open Court on 15/11/2021.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 15/11/2021

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**