

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.2241 & 5338/M/2019
Assessment Years: 2010-11 & 2011-12**

M/s. Rentworks India Pvt. Ltd., C-104, 105, 106, Kailas Business Park, Park Site, Vikhroli (W), Mumbai-400 079 PAN: AABCR8889C	Vs.	DCIT – 14(3)(1), Room No.482/455, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kamlesh Kapadia, A.R.
Revenue by : Shri Bharat Andhale, D.R.

Date of Hearing : 30.08.2021
Date of Pronouncement : 28.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above two appeals have been preferred by the assessee against the separate orders even dated 14.02.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 20010-11 & 2011-12. Since the appeals relate to the same assessee and involve the common issue, therefore these are being decided together by this consolidated order for the sake of brevity and convenience. First we will take up ITA No.2241/M/2019 A.Y. 2010-11.

ITA No.2241/M/2019 A.Y. 2010-11

2. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the addition of Rs.5,14,26,070/-/- as made by the AO equal to 100% of the bogus purchases.

3. The facts in brief are that the assessee filed the return of income on 15.10.2010 declaring total income of Rs.79,01,74,987/- which was processed under section 143(1) of the Act. The assessee is engaged in the business of renting/leasing of assets which may be required by assessee's clients. The assessee acquires the assets in the normal course of business as per the requirements of the clients simultaneously entering into master rental agreement with the clients. The assessee also enters into financial agreement with the financial institutions for financing the acquisition of assets making an arrangement that rent would be paid directly to the lessee. During the lease period the ownership of the asset used to remain with the assessee. The case of the assessee was selected for scrutiny and assessment under section 143(3) was framed vide order dated 28.12.2012 assessing the total income at Rs.79,42,03,691/-. The case of the assessee was thereafter reopened u/s 147 of the Act by issuing notice under section 148 of the Act dated 31.03.2017 by the AO after receipt of information from the Sales Tax Deptt , Govt of Maharashtra that Shri Shirish Shah has advanced accommodation entries by way of bogus purchase entries to the extent of Rs.5,14,26,070/- to the assessee during the year. Further during a search action u/s 132(1) of the Act on Shri Shirirsh Shan it was revealed that he is operating two companies namely M/S Advance Technology Ltd. M/S Empower India Ltd. to give accommodation entries. During

the course of assessment proceedings the AO called for various details and information from the assessee from time to time which were duly filed by the assessee before the AO in the form of Master Rental Agreement, lease rental invoices, proof of payments through RTGS and bank statements etc. However the AO was not satisfied with the explanation and reply of the assessee and treated the entire purchases of Rs.5,14,26,070/- as non genuine thereby making an addition of equal amount being 100% of the purchases, to the income of the assessee by framing assessment under section 143(3) read with section 147 of the Act dated 28.12.2017.

5. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by holding that the transactions of purchase of assets are bogus and was rightly disallowed by the AO. The Ld. CIT(A) also rejected the alternative submission of the assessee of applying 12.50% on the bogus purchases on the ground that under similar facts, in AY 2009-10 AO has applied 12.50% on the bogus purchases.

6. After hearing the Ld. D.R. and counsel of the assessee and perusing the material on record, we observe that Ld. CIT(A) has confirmed the order of AO by rejecting the evidences filed by the assessee in the form of Master Rental Agreement, rental invoices, bank statements etc and also alternative plea that a rate of 12.50% may be applied to the bogus purchase as the AO has applied 12.50% in similar set of circumstances. The undisputed facts are that the assessee is engaged in the business of leasing of assets to its clients by entering into master rental agreement with the clients simultaneously entering into

financial agreement with financial institutions for financing the acquisition of assets. The allegation of the AO is that the assessee has purchased assets from two companies namely M/S Advance Technology Ltd. M/S Empower India Ltd. worth Rs. 4,09,14,409/- and 1,05,11,661/- respectively which were alleged to be operated by Shri Shirish Shah for giving accommodation entries. We note that the assessee has capitalized these assets and had not even claimed depreciation on these assets. Under these circumstances we are not in agreement with the conclusion of the authorities below that 100% of the value of purchases that too on account of capital assets is to be added to the income. We note that in the assessment year 2009-10, the AO himself has applied 12.50% on the bogus purchases under similar set of facts. In our opinion it would be fair and reasonable to add certain percentage of the total value of bogus purchases which is in accordance with the consistent view taken by the coordinate benches on the issue of bogus purchases. In case of bogus purchases the presumption is that the assessee might have made the purchases from the grey market thereby saving the VAT and other incidental expenses. So purpose is to bring to tax the saving made by the assessee by making purchases from the grey market. The ld AR has taken alternative plea that in lines with percentage applied in AY 2009-10, the same percentage of 12.50% may be applied on the bogus purchases. Therefore accepting the alternative pleas of the assessee we set aside the order of ld. CIT(A) and direct the AO to apply a rate of 12.50% on bogus purchases of Rs. 5,14,26,070/- . The appeal of the assessee is partly allowed.

5338/M/2019 Assessment Years 2011-12

The issue raised in this appeal is similar to one as decided by us in ITA No. 2241/Mum/2019 A.Y. 2010-11 wherein we have directed the AO to apply 12.50% on bogus purchases. Therefore following the same, we direct the AO to apply a percentage of 12.50% in this appeal as well. The appeal is partly allowed.

7. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 28.10.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.