

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

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND**

ITA NO. 1350/MUM/2020 (A.Y: 2010-11)

ACIT – Circle – 15(1)(1) Room No. 470, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Excelhone Manufacturing Pvt. Ltd., 304, Building No. 6 Millennium Business Park Koparkhairne, Navi Mumbai - 400709 PAN: AABCE6882C
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Vijay Kumar Menon
Date of Hearing	:	23.09.2021
Date of Pronouncement	:	16.12.2021

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 24, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 04.11.2019 for the A.Y. 2010-11 in restricting the disallowance to 12.5% of purchases of ₹.31,92,913/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee engaged in the business of Manufacturing, Installation of UHP Gas Handling systems., filed return of income for the A.Y.2010-11 on 01.10.2010 declaring income of ₹.66,70,753/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department, 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 Sales Tax Department, 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 as mentioned in the Assessment Order. In response, assessee furnished ledger extracts of the party and 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. It is the finding of the Assessing Officer that the assessee failed to establish the identity of the seller and could not furnish supporting documents/evidences in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer treated purchases of ₹.31,92,913/- 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 12.5% of the non-genuine purchases.

4. In spite of issue of none appeared on behalf of assessee nor any adjournment was sought. Thus, we proceed to dispose of this appeal on hearing Ld. DR on merits.

5. Ld. DR vehemently supported the order of the Assessing Officer.

6. Considered the submissions of Ld. DR and material placed on record. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and also following the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the addition/disallowance to 12.5% of the non-genuine

purchases of ₹.31,92,913/-, while holding so, the Ld.CIT(A) observed as under: -

"DECISION:

2.4. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

2.4.1 The only effective Ground is in respect of the action of the Ld. AO in not accepting the purchases of Rs.31,92,913/- as genuine purchases based on the information received from Income Tax authorities. Briefly stated, the appellant is a company engaged in the business of trading. Ld. AO made the addition on the basis of information received from the investigation wing of Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who had confirmed to have given bogus bill to certain assessee including the appellant. The bogus bills were in respect of 3 parties. The appellant company was asked to submit the details of purported purchases made and to show cause why the same should not be disallowed as bogus purchases. The appellant filed reply stating that purchases were made from regular parties supported by proper bills and the accounting entries and the payments were made by account payee cheques. The Ld. AO was not in agreement with the submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to establish that the purchase was actually made by them from this party such as transportation documents, inward register etc. The investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing bills and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld.AO observed that these hawala operators were providing only accommodation entries and the appellant was also in the list beneficiaries. Accordingly, the Ld. AO treated the amount of ₹.31,92,913/- as bogus purchases and added the same to the total income of the appellant.

2.4.2 Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth, 2013 (356 ITR 451) had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. The headnote of the decision is reproduced as under

"Section 145 of the Income-Tax Act, 1961 Method of Accounting Estimation of Profits [Bogus Purchases] Assessment year 2006-17-assessee was engaged in business of trading in steel on wholesale basis-Assessing Officer having found that some alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus —He accordingly, added entire amount purchases to gross profit of assessee - Commissioner (Appeals) having found that assessee had indeed made purchases though not from named parties but other parties from grey market, sustained addition to extent of 30% of purchase cost as probable profit of assessee Tribunal however, sustained addition to extent of 12.5% Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income Held, yes Whether hence, order of tribunal needed no interference held, yes [Paras 6,7 &9] [in favour of assessee]". [emphasis supplied]

2.4.2 Based on the evidence in hand in the form of a report from DIT (Inv), Mumbai the AO has asked the assessee to produce the parties along with evidence in — order to verify the genuineness of the purchase transactions. The assessee instead submitted the ledger accounts of the above parties and bank statements extracts evidencing the payments through bank cheque. In this case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers genuinely existing. The assessee has not made any efforts to discharge the onus and failed to produce the party, in spite of the opportunities given by the Ld.AO. The assessee could not satisfactorily substantiate and establish the fact that there were genuine purchases from these parties. There was a report from SIT (inv) stating that all the seller parties as per the list supplied by them are bogus including the parties appearing in the books of the appellant company and as stated above, the assessee has not made counter submission to show that this party is really existing. The AO has brought to tax the bogus purchases by adopting the method @ 100% of such purchases keeping in view the gain made by the appellant due to purchases of material in grey market without bills and adjusting the purchases with the invoices taken from the hawala traders under discussions. Under These circumstances the AO cannot be found fault on this count. Even though the AO could not prove substantively that the amounts given to the sellers in cheque from have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of. Further, the investigations carried out by the Sales Tax Department, another Government Agency, with

regard to VAT violation cannot be lost sight of. Further, as some of the names of the so-called bogus sellers out of the list supplied by the Sales Tax Department are appearing in the books of the appellant company, the link of involvement of appellant company getting bogus bills is established. Even though there are catena of cases decided by the jurisdictional ITAT which have decided the issue in favour of the assessee, they are not uniform in all the cases as they were decided as per facts and circumstances of that particular case before them.

I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (Supra). Therefore, I hereby confirm the disallowance to the extent 12.5% of the so-called bogus purchases made by the Ld AO. This ground is partly allowed."

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we 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.
8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 16.12.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 16/12/2021
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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