

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 54/MUM/2021 (A.Y: 2010-11)**

Dy. CIT – Circle – 3 Room No. 2, 6 <sup>th</sup> Floor B-Wing, Ashar IT Park Road NO. 16Z Wagle Industrial Estate Thane(W) - 40604	v.	M/s. Sahyadri Constructions 1, Sheetal Chhaya Kolbad Road, Near Pratab Cinema Thane- 400601  <b>PAN: AA EFS7999E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Shubodh Ratnaparakhi</b>
<b>Department by</b>		<b>Shri B.K. Bagchi</b>
<b>Date of Hearing</b>	:	<b>17.11.2021</b>
<b>Date of Pronouncement</b>	:	<b>04.01.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 2, Thane [hereinafter in short "Ld.CIT(A)"] dated 27.01.2020 for the A.Y. 2010-11 in restricting the disallowance to 12.5% of purchases of ₹.1,38,01,103/- 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 civil Contractor, filed return of income for the A.Y.2010-11 on 21.09.2010 declaring income of ₹.1,87,05,438/- 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. Assessee furnished bank statements reflecting payment made through banking channels submitted that the transactions 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 "unserved/unclaimed". Further, the inspector deputed to serve the notices reported that no such concerns are running from the said premises and assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that the assessee failed to establish the identity of the seller and could not furnish supporting evidence of transportation, entry in stock register etc., in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer treated purchases of ₹.1,38,01,103/- 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. Ld. Counsel for the assessee supported the order of the Ld.CIT(A) and submitted to uphold the order of the Ld.CIT(A).

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

6. We have heard the rival submissions, perused the orders of the authorities below. 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 the averments in the Assessment Order and following the order of Coordinate Bench of the Tribunal in assessee's own case for the A.Y. 2009-10, restricted the disallowance to 12.5% of the non-genuine purchases of ₹.1,38,01,103/-, while holding so, the Ld.CIT(A) observed as under: -

*"6.1 Ground nos. 2A & 2B: deal with the merits of the addition of Rs. 1,38,01,103/- by disallowing purchases from 5 parties holding the same to be unproved. Similar issue had arisen in the appellants own case for A.Y. 2009-10 and the Hon. Tribunal in the above cited order has decided the same by holding as under:.*

*10. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. We have also deliberated on the various case laws relied by the lower authorities. During the course of assessment proceedings, the Assessing Officer issued notices under section 133(6) of the Act to the parties seeking details of transactions entered by them with the assessee. None of the above respond to the notices, and notices was returned un-served. The assessing officer deputed the inspector to serve the notice on the parties. The inspector reported that none of the parties is available on the given address. The assessing officer issued show cause notice to the assessee as to why the entire purchases be not disallowed. The assessee filed its reply dated 21.02.2014. In the reply, the assessee contended that they have made payment through cheques and the transactions are genuine. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that assessee failed to prove the genuinity of transaction and identity of seller and other evidence like transport, stock register. Hence the AO disallowed a sum of Rs.22,57,872/- as detailed below: -*

<b>Sr. No.</b>	<b>Name of the party</b>	<b>Amount</b>
1	Samay Sales	10,63,920/-
2	Maulik Steel Corporation	12,93,952/-
	Total	22,57,872/-

*11. We have noted the before disallowing the entire purchases from the alleged hawala dealers, the assessing*

*officer not rejected the books of account. No adverse comment was made by Assessing Officer about the consumption of the material purchased by the assessee. The assessee is Government contractor and executed the civil contract. No inquiry about the scope of work, if executed by the assessee. The Gross Profit and the Net Profit shown by the assessee in previous and subsequent year was not examined by the Assessing Officer. The Assessing Officer mainly relied on the report of sales tax department, wherein the said supplier allegedly made statement about the accommodation entry provided by them. The copy of the statement and the report of the investigation conducted by sales tax department was not provided to the assessee. The assessee raised specific grounds of appeal before Id. CIT(A) that no opportunity of cross-examination of source of adverse information (evidence) was provided to the assessee. Though, the submissions of the assessee was duly recorded by Id CIT(A) in para-4.3 of his order. The Id CIT(A) failed to adjudicate the specific ground of appeal. The assessee again has raised similar ground of appeal before us.*

*12. We are of the considered opinion that under the Income Tax Act only real income can be taxed by the Revenue. We may further conclude that even if the transaction is not verifiable, the only taxable is the taxable income component and not the entire transaction. And after considering the facts of the case and the rival contentions of the parties we are of the opinion that in order to fulfill the gap of revenue leakage the disallowance of reasonable percentage of such purchases would meet the end of justice. The Hon'ble Bombay High Court in CIT Vs Hariram Bhambhani in ITA No. 313 of 2013 decided on 04.2.2015 held that revenue is not entitled to brought the entire sales consideration to tax, but only the profit attributable on the total unrecorded sales consideration alone can be subject to income tax.*

*13. Therefore, considering the business activities of the assessee and the nature of material purchased from the hawala dealers, we are of the view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage; therefore, the disallowance is restricted to 12.5% of the impugned/disputed purchases. In the result, ground no.2 of the appeal is partly allowed.*

*14. The Ground No.3 of the appeal relates to denial of opportunity of crossexamination of source of evidence. Considering the fact that we have partly allowed the ground no.2 of the appeal and granted relief to the assessee,*

*therefore, discussion on this ground of appeal has become academic.*

*Respectfully following the above decision, I hold that addition to the extent of 12.50% of the disputed purchases would meet the ends of justice and plug any revenue leakage on account of the disputed purchase from hawala dealers. Accordingly, addition on account of disputed purchases is restricted to 12.50% of Rs. 1,38,01,103/i.e. Rs. 17,25,138/-. The addition made by the AO is upheld to the extent of Rs.17,25,138/and the appellant gets relief of Rs. 1,20,75,965/-. In view of my decision on ground no. 2A., Ground No. 2B dealing with cross examination has become academic and therefore infructuous. Ground Nos. 2A & 2B are accordingly 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, as the Ld.CIT(A) has followed the principle of consistency in restricting the disallowance to 12.5% of bogus purchases. Grounds raised by the revenue are dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 04.01.2022 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 04/01/2022  
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**