

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

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.469/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT-26(1) Room No.623, 6 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	बनाम/ Vs.	M/s. Vijay Engineering Works, Unit No.11, Kamaldeep Industrial Estate Sonawala Cross Road No.2, Goregaon East, Mumbai-400063.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFV1227E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Prasoon Kabra	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 25/11/2021

घोषणा की तारीख /Date of Pronouncement: 17/12/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 22.01.2020 passed by the Commissioner of Income Tax (Appeals) -42 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The revenue has raised the following grounds: -

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs.1,09,659/- for AY 2007-08 on account of bogus purchases?"



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On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the addition was made on the basis of information received from DGIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assessee from dealers without supply of actual goods."

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody."

"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee could not prove the genuineness and creditworthiness of the purchase transactions during the course of assessment proceedings?"

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to purchase made from the non-existence vendors.?"

3. The brief facts of the case are that the assessee filed its return of income on 27.09.2009 declaring total income to the tune of Rs.1,11,430/-. The return was processed u/s 143(1) of the I. T. Act, 1961.. Thereafter, the case of the assessee was reopened on the basis of information received from the DGIT(Inv.), Mumbai/Sales Tax Department, Govt. of Maharashtra that the assessee has made bogus purchase and billings from various parties during the F.Y.2008-09 relevant to the A.Y.2009-10 amounting to Rs.11,76,081/-. The case of the assessee was reopened u/s 147 of the Act.



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Necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has taken the bogus purchase entry from the following parties: -

Meeti Trade Empex	AUTPK5554G	1,19,250/-
AG Corporation	ASTPK2445G	1,43,269/-
Shreeji Enterprises	AKLPP3256E	1,76,226/-
Amizara Trading Corporation	AQRPM8229L	7,37,336/-

The total bogus purchase entry was to the tune of Rs.11,76,081/-. The assessee is engaged in the business of manufacturing of sheet metal parts. The AO also issued the notices to the parties' u/s 133(6) of the Act. The notice issued to the four parties were received back with the remark of the postal authorities 'Not known'. The notice was issued to the assessee and after the reply of the assessee, the AO raised the addition to the extent of 25% of the bogus purchases of Rs.2,94,020/-. The assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 12.5% but the revenue was not satisfied, therefore, revenue has filed the present appeal before us.

ISSUE NOS. 1 to 5

4. All the issues are in connection with the restriction of the addition to the extent of Rs.12.5% of the bogus purchases. The Ld. Representative of the revenue has argued that the AO has rightly restricted the addition to the extent of Rs.25% of the bogus purchase, therefore, the finding of the CIT(A) is not justifiable, hence, liable to be set aside. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -



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“7.3.1 I have considered the submissions of the appellant, carefully gone through the order of the AO, perused the material on record and referred to the case laws relied upon by the appellant and the AO.

7.3.2 Ground No. 2 and 3 of the appeal is against addition of Rs. 2,94,020/- being 25%, of non-genuine purchases. As per the investigations carried out by the Sales Tax Authorities the aforementioned parties were found to be involved in giving accommodation entries Only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same the AO had made enquires by issuing notices u/s 133(6) which were returned un-served by the postal authorities. This party was found to be non existent at the address given by the appellant The appellant also failed to provide the latest address of the party. During the scrutiny assessment the appellant furnished details of purchases and corresponding sales However. the appellant could not produce the party before the AO in spite of opportunity being given. The appellant also failed to produce delivery challans or transportation details, Tre onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on oath that it had given accommodation entries only without actually supplying the goods. the genuineness of purchases made from these parties will have to be considered taking the into consideration while examining the documentation submitted by the appellant in support of its claim. The documentary evidences such as purchase bills, payments by cheques etc would all have been orchestrated to present a facade of genuineness and does not necessary, mean that the purchases from



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these parties are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases shown as being made from the impugned parties to suppress its profits. In such a situation the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Smit Sheth 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The Hon'ble Gujrat High Court in this case has held that profit margin of 12.5% of the bogus purchases will be reasonable. Respectfully following the Order in the case of Simit P. Sheth the addition 12.5% of the bogus purchases is confirmed. Therefore, the appellant gets relief of Rs. 1,47,010/- (Rs.2,94,020/- minus 1,47,010/-). The grounds of appeal are Partly Allowed.”

5. On appraisal of the above mentioned finding, we find that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble Gujarat High Court in the case of **CIT Vs. Simit P. Sheth (2013) 38 taxmann.com 385**. Accordingly, the CIT(A) has restricted the addition to the extent of 12.5% of the bogus purchases. No law contrary to the law relied by the CIT(A) has been produced before us. The addition to the extent of 12.5% seems justifiable. The issue is covered by the decision of Hon'ble Gujarat High Court as well as various decision of the Tribunal. It is specifically held that the 100% addition is not justifiable in such type of



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cases. The CIT(A) has also kept in mind the G.P. ratio of the gross profit of the assessee for the year concerned. We find it justifiable to restrict the addition to the extent of 12.5% of the bogus purchase, therefore, we affirm the finding of the CIT(A) on this issue and decide all the issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 17/12/2021

Sd/-
(M. BALAGANESH)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 17/12/2021
Vijay Pal Singh (Sr. P.S.)

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai