

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No.418/Mum/2021
(Assessment Year: 2010-11)

ITO, Ward-4(4) Room No.08, 6 th Floor A-Wing, Wagle Industrial Estate Thane(W)-400 604	Vs.	Hemanshu Praveen Jain Prop.of M/s. Pharma Technologies G5 & G6, Shah& Desai Industrial Estate No.2, Navghar, Vasai(E)-401 210
PAN/GIR No. ADZPJ9269Q		
(Revenue)	:	(Assessee)

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CO No. 152/Mum/2021
(Arising out of ITA No. 418/Mum/2021)
(Assessment Year: 2010-11)

Hemanshu Praveen Jain Prop.of M/s. Pharma Technologies G5 & G6, Shah& Desai Industrial Estate No.2, Navghar, Vasai(E)-401 210	Vs.	ITO, Ward-4(4) Room No.08, 6 th Floor A-Wing, Wagle Industrial Estate Thane(W)-400 604
PAN/GIR No. ADZPJ9269Q		
(Assessee)	:	(Revenue)

Revenue by	:	Shri T.Sankar, Sr.AR
Assessee by	:	Shri Bhupendra Shah
Date of Hearing	:	04.01.2022
Date of Pronouncement	:	16 .03.2022

ORDER

Per Shamim Yahya (A.M):

This appeal by the Revenue and cross objection by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Mumbai ('ld.CIT(A) for short) dated 03.08.2020 and pertains to the assessment year (A.Y.) 2010-11.

2. The issue raised in revenue appeal is that ld.CIT(A) erred in deleting the addition of Rs. 10,18,735/- out of the total addition of Rs. 13,58,313/- made on

account of bogus purchases. In the cross objection, it has been submitted that ld.CIT(A) erred in confirming the addition of Rs. 3,39,578/- being 25% of the alleged non-genuine purchases.

3. Brief facts of the case are that the assessee is engaged in the business of manufacturer of machineries. Pursuant to information from Sales tax department, that assessee has engaged into bogus purchases, assessment was reopened. In the assessment order, AO noted that assessee has purchased Rs. 13,58,313/- worth of goods from five parties, who were under list of bogus, accommodation entry provider. AO issued 133(6) notices to the parties, which returned un-served. AO asked the assessee to produce the said parties and also to produce documentary evidences of transactions of goods purchases from said parties. Assessee supplied purchase ledgers along with copy of bills from the said parties and bank statement containing payments to parties. AO proceeded to hold that these purchases are bogus and made 100% addition the same.

4. Upon assessee's appeal, ld.CIT(A) was of the opinion that assessee has purchased the material from grey market. Hence, he held that 25% disallowance served the end of justice.

5. Against the above order, assessee and revenue are in appeal before the ITAT.

6. I have heard both the parties and perused the records. I note that in this case information was received that assessee has engaged into bogus purchases. Despite notice, none of the parties responded. Assessee did not produce the supporting documents of purchases in the shape of lorry receipts, stock records etc. I note that nowhere in the orders of the authorities below, it is mentioned that assessee has submitted delivery challans and transport proof. However, ld. Counsel of the assessee in the cross objection has raised such a claim. This is dramatically opposite to the findings of the authorities below. Ld. Counsel of the assessee submitted that assessee

has already shown a gross profit of 20%. Hence, no disallowance is called for. I note that assessee is not engaged into trading operation. Assessee is in manufacturing business. Assessee has made purchases in the shape of bogus accommodation entry. In these circumstances, it can be inferred that assessee has made purchases from grey market. Such purchases benefit the assessee at the expense of exchequer. Hence, in the facts and circumstances of the case, I hold that 5% disallowance shall meet the end of justice. I direct accordingly.

7. In the result, this appeal by the revenue is dismissed and cross objection by the assessee stands partly allowed.

Order pronounced in the open court on 16.03.2022

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 16 .03.2022
Thirumalesh, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai