

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

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 1966/MUM/2021 (A.Y: 2010-11)

Kailash Srichand Makhija 405, A Wing, Basera Building Lokhandwala Complex Andheri (W), Mumbai - 400058 PAN: AACPM4315L	v.	Income Tax Officer – 24(2)(4) Room No. 610 Piramal Chambers, Lalbaug Mumbai – 400 012
(Appellant)		(Respondent)

Assessee by	:	Shri Priyank Ghia
Department by	:	Shri Suresh Pariasamy
Date of Hearing	:	10.05.2022
Date of Pronouncement	:	24.05.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 31.08.2021 for the A.Y. 2010-11.

2. Assessee in its appeal has raised following grounds: -

"1. The Learned CIT (A) has erred in confirming the addition of Rs. 3,14,448/- on account of bogus purchases without considering

the facts and circumstances of the case. The same be considered and the additions be deleted.

b. The Ld. CIT(A) has erred in confirming the estimated Gross Profit Ratio of 25% of total alleged purchases without considering the facts and circumstances of the case. The same be considered.

c. The Ld. CIT (A) has erred in stating that appellant onus is discharged only after producing the parties along with relevant documents without considering the facts and circumstances of the case.

d. The Ld. CIT(A) has failed to consider that there was fire at appellant's shop wherein all the stock and documents were destroyed and hence the appellant has furnished the documents to the extent available. The Ld. CIT(A) has failed to consider the genuine hardship of the Appellant. The same be considered.

2. Without prejudice to the above;

a) The Ld.CIT (A) has erred in confirming the addition of Rs.3,14,448/- as per Gross Profit Ratio of 25% of total alleged purchases without appreciating that in assessee's own case for AY 2009-10 & AY 2011-12, Ld.CIT(A) has restricted the addition made by Ld. Assessing officer to 8% of alleged purchases. The same be considered and addition be restricted to 8%.

b) The Id. CIT(A) has erred in ignoring the fact the Hon. ITAT has dismissed the department's appeal thereby confirming the addition at 8% of the alleged purchases for AY 2009-10 & AY 2011-12. The same be considered and the additions be restricted to 8% of the alleged purchases.

3. The Ld. CIT(A) has erred in confirming additional interest u/s 2348 without considering the facts and circumstances of the case. the same be considered.

4. The assessee craves leave to add, alter, amend or delete the grounds of the appeal at the time of or before the hearing.."

3. Briefly stated the facts are that, assessee an individual engaged in the business of trading and manufacturing in leather goods, filed return

of income on 23.09.2010 declaring income of ₹.3,38,571/- for the A.Y.2010-11 and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), 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 DGIT (Inv.), 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 asked to prove the genuineness of the purchases made from various parties as mentioned in the Assessment Order. In response assessee vide letter dated 27.11.2017 stating that the assessee has purchased the leather, belts and other items from the alleged parties in order to either trade the same or use in manufacture of purses, bags, belts etc., and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques as such contended that all the purchases are genuine.

4. 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 issued notices u/s.133(6) of the Act to verify the transaction and existence of the parties and the notices were returned back. Therefore, Assessing Officer treated ₹.3,14,448/- as non-genuine, being 25% of the total non-genuine purchases of ₹.12,57,793/- for the A.Y. 2010-11. On appeal the Ld.CIT(A) sustained the action of the Assessing Officer in estimating the Gross Profit at 25% for the A.Y: 2010-11. Against this order of the Ld.CIT(A), assessee is in appeal before us.

5. Ld. Counsel for the assessee reiterated the submissions made before Ld.CIT(A) and submitted that the addition made by the Ld.CIT(A) is on higher side, thus requested to reduce the same. Ld. Counsel for the assessee further submits that in assessee's own case the Tribunal in ITA.No. 5470/Mum/2018 dated 15.10.2019 for the A.Y.2009-10 and ITA.No. 5853/Mum/2019 dated 09.06.2021 for the A.Y. 2011-12 restricted the disallowance of non-genuine purchases to 8% of such purchases. Therefore, Ld. Counsel for the assessee requested that addition be restricted to 8% following the Tribunal's order for assessment years A.Y. 2009-10 and A.Y. 2011-12.

6. Ld. DR vehemently supported the orders of the authorities below.
7. Considered the rival submissions and material placed on record. We observe that on identical facts the Tribunal in assessee's own case in revenue appeal in ITA.No. 5470/Mum/2018 by order dated 15.10.2019 for the A.Y.2009-10 restricted the disallowance of non-genuine purchases to 8% observing as under: -

"6. Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carry out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate profit of 10 to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has estimated 12.50% profit, whereas the Ld.CIT(A) has scaled down estimation of profit to 8% on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said

rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken one of the possible method for estimation of profit to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Reveune."

Similarly, for the A.Y. 2011-12 the Tribunal in ITA.No. 5853/Mum/2019 dated 09.06.2021 confirmed the addition @8% of the bogus purchases as made by the Assessing Officer.

8. Respectfully following the above decisions of the Coordinate Benches and following the principle of consistency, we direct the Assessing Officer to restrict the disallowance to 8% of the purchases treated as non-genuine by estimating the profit element in such bogus purchases for the Assessment Year 2010-11 also. Ground raised by the assessee is partly allowed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 24th May, 2022.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 24.05.2022
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