

**THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH MUMBAI**

**SHRI S RIFAUH RAHMAN, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA NO.1129/MUM/2022
(A.Y.2011-12)**

Income Tax Officer-32 (2) (1), Room No. 704, 7 th Floor, Kautilya Bhavan, G Block, Bandra Kurla Complex, Bandra (East) Mumbai-400 051	V/s	M/s. Proto Chemicals Industries 403, V Star Plaza, Chandavarkar Lane, Borivali (W) Mumbai-400 092 PAN No.AAJFP3713C
Appellant		Respondent

Assessee by	None
Department by	Shri Vaibhav Jain
Date of Hearing	08.08.2022
Date of Pronouncement	04.11.2022

ORDER

PER KAVITHA RAJAGOPAL:

This appeal has been filed by the Revenue challenges the order of learned Commissioner of Income Tax (Appeals)-NFAC, Mumbai [hereinafter referred to as “CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) pertaining to assessment year 2011-12. The Revenue has challenged the order on the ground that the learned CIT(A) has erred in restricting the disallowance to 5% of accommodation entries of purchase bills as against the



addition of 15% on bogus purchase made by the Assessing Officer (AO) without giving any cogent reason. As there was no representation on behalf of the assessee we proceed to decide this appeal by hearing the learned DR and upon perusal of the materials available on record.

2. The brief facts are that the assessee firm is engaged in business of manufacturing of bulk drugs and fine chemicals. The assessee filed its return of income dated 14.09.2021 declaring total income at Rs.6,61,059/- for the impugned year. The assessee's case was reopened based on the information received from the Sales Tax Department and DGIT (Inv.), Mumbai that the assessee has received bogus purchase bills from certain parties who are said to be hawala bill providers. It is observed that the assessee was a beneficiary of such bogus purchase bills from the following parties:

TIN	NAME OF THE PARTY	AMOUNT
27600648257V	NIDDHISH IMPEX PVT LTD	4,87,147/-
27270244094V	SHREE GANESH TRADING CO.	2,625/-
27960764459V	AMRISH TRADERS	4,410/-
27270583788V	S P CORPORATION	4,66,715
27110244473V	KRISHNA CHEMICAL WORKS	4,89,946/-
27310710545V	J.B. TRADERS	10,81,238/-
	TOTAL	25,32,081/-



3. The assessment order dated 17.02.2016 was passed u/s 143(3) r.w.s. 147 of the Act determining total income at Rs.10,40,870/- wherein the AO made an addition of Rs.3,79,081/- calculated @ 15% of the purchases made from the alleged hawala dealers amounting to Rs.25,32,081/-. The assessee was in appeal before the learned CIT(A) against the reopening of the assessment and on the addition made by the AO. The learned CIT(A) restricted the bogus purchase to 5% by relying on the decision of the Tribunal in assessee's case for AY 2009-10 on similar issue. Aggrieved by this the Revenue is in appeal before us.

4. The learned Departmental Representative (DR) contended that the assessee has failed to prove that the impugned purchase was genuine by producing the parties before the AO. The learned DR further contended that the AO has rightly rejected the books of account and had estimated the profit out of the purchases made through hawala parties @ 15% based on the nature of the business of the assessee. The learned DR relied on the order of the AO.

5. Having heard the learned DR and perused the materials on record, it is evident that the assessee's case was reopened based on the information received from the Sales Tax



Department and the DGIT (Inv.) that the assessee was beneficiary of bogus purchase bills obtained from the above mentioned parties. It is observed that the assessee has made the purchases from these parties and payments for these were made by account payee cheques. The assessee contended that the impugned transactions were genuine and the assessee had accepted the addition @ 5% of the purchases for earlier years in AY 2009-10, 2010-11 and 2011-12 only to buy peace and not to infer that these were bogus transactions. The assessee further submitted that being a small firm the gross profit of the assessee was only 8.18% and the net profit ratio was 0.07% only. The assessee also stated that various decisions of the jurisdictional Bombay High Court and the Co-ordinate Bench has held that only net profit can be added to the income declared by the assessee and the sales tax rate on the commodity was only 5% and charging 15% was exorbitant.

6. From the above observation, we are of the view that there is no infirmity in the order of the learned CIT(A) in restricting the addition to 5% of the bogus purchases by placing reliance on the decision of the Co-ordinate Bench in assessee's case for AY 2009-10 on identical issue. The AO is



hereby directed to confirm the addition to the extent of 5% of the total bogus purchases.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 04.11.2022.

Sd/-

(S RIFAUH RAHMAN)

ACCOUNTNANT MEMBER

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai:

Dated: 04/11/2022

MAHESH SONAVANE (P.S)

Copy of the Order forwarded to :

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

BY ORDER,

//True COPY//

(Assistant Registrar)

ITAT, Mumbai



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M/S. PROTO CHEMICAL INDUSTRIES