

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

**BEFORE SHIR KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.2793/MUM/2022 (A.Y: 2011-12)**

Rahul Devchand Gogri 11, Rajmahal Shopping Centre Andheri – Kurla Road, Andheri (East) Mumbai - 400059  <b>PAN: AHAPG7920Q</b>	v.	CIT(A) National Faceless Appeal Centre Delhi  Income Tax Officer – 24(3)(5) Piramal Chambers, Lalbaug Mumbai – 400 012
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Bhandresh Doshi</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Ashish Kumar Deharia</b>
<b>Date of Hearing</b>	<b>:</b>	<b>02.01.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>31.03.2023</b>

**ORDER**

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

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 02.09.2022 for the A.Y.2011-12.

**2.** Brief facts of the case are, the return of income was filed on 28.09.2011 declaring total income of ₹.4,79,210/-. The return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently the case was reopened by issue of notice u/s. 148 of the Act dated 11.03.2016. In response assessee filed original return filed on 28.09.2011 and requested to treat the same as return filed in response to the notice issued u/s. 148 of the Act. Subsequently notice u/s. 143(2) were issued and served on the assessee.

**3.** The Assessing Officer received information from the office of the Director General of Income-tax (Inv.), Mumbai wherein it is stated that information received from Sales Tax Department, Government of Maharashtra regarding cases involving bogus purchases / hawala transactions. Accordingly, list of beneficiaries who have taken bogus purchases entries were forwarded to the Assessing Officer. The details of transactions containing beneficiaries with bogus billers, list in which it was noticed that during Financial Year 2010-11 assessee as acquired bogus purchase bills without delivery of goods amounting to ₹.28,12,500/- from the party M/s. Galaxy Corporation. Accordingly, notices were issued to the assessee. In response Ld. AR of the assessee attended and filed relevant information as called for.

**4.** In order to verify the genuineness of the purchases notice u/s.133(6) of the Act dated 26.08.2016 was issued to M/s. Galaxy Corporation and the said notice was served on the party and no reply has been received till completion of the assessment. The Assessing Officer relying on the investigation made by the Sales Tax Department, Government of Maharashtra came to the conclusion that the invoice and the transactions entered by the assessee is bogus. Show-cause notice was issued to the assessee dated 05.10.2016 to submit the following documents as listed below: -

*"1) Confirmation letter from the above parties that they have sold and delivered goods to the assessee.*

*2) Details of goods which are sold to the assessee along with delivery details receipts and lorry receipts/Transportation bills*

*3. Ledger account of assessee in their books of accounts as well as ledger account of above mentioned parties in the books of assessee.*

*4) Bank statement of the parties reflecting the payment received for the goods sold to the assessee*

*5) Statement of corresponding sales/consumptions if any along with stock register.*

*6) Copy of bills/invoices in respect of purchase parties in question along with bank statement showing payment to the abovementioned parties.*

**5.** In response, Ld. AR of the assessee submitted as under: -

*"..... 1. Our client has not made any trading purchases but had purchased a huge colour printing machine. The same was capitalized*

*and has not been debited to Profit & Loss account. Hence, No expenses has been claimed on this account The same was capatilised and has not been debited to Profit & Loss account. Hence, no expenses has been claimed on this account.*

2. *Copy of tax invoice and bank statement showing payment to supplier by account payee cheaque has been provided to you with our earlier submission.*

3. *The machine which was purchased in that year is in use presently, attest photograph of the machine has also been provided to you.*

4. *Since the purchase was made very long ago about 4-5 years back, we do not have the current contract details of the party.*

*Since the machine itself is in possession of our client, the purchase of machine is totally genuine and there is no reason to doubt that the purchases is bogus.*

*Without prejudice to what is submitted above, you are requested to kindly provide us with certain details as requested below*

1) *You have relied on list of beneficiaries who have taken bogus purchase bills which inter aalia includes name of our client. Please furnish us a copy of said list of beneficiaries which is stated by you to include name of our client.*

2) *You have mentioned that the said party have also declared that the said party have also declared under oath us. 14 of MVAT Act, 2002 and have relied upon the same while issuing notice w/s. 148. You are requested to kindly provide us with a copy of said statement declared on oath so as to enable us to review the same. You are requested to allow us to cross examine the said party so as to eneble us to file cross objection to the same.*

*....”*

**6.** After considering the submissions of the assessee, Assessing Officer

rejected the same with the following observations: -

"7. *The contention of the assessee has been considered but not found acceptable. The contention that the payment was made by account payee cheque is not a full fledged-safe method of substantiating the assessee's claim as it is already accepted by the*

*persons, whose statement, deposition or affidavit was recorded by the sales tax department of Maharashtra as discussed above, that cash is returned after deducting commission/ brokerage once cheque is realized. Further, the assessee has failed to produce the party and has also failed to provided the proof for the delivery of the said machinery through factory gate pass, delivery challan, octroi slip, lorry slip, delivery challan, etc. Also the inquiry notice sent to the said party u/s 133(6) is served upon, however no reply is received so far. Also the said party has not paid VAT on the said machine as per the information received in this office. Assessee has furnished the photos of machinery but that is not the conclusive evidence for the purchase of the same from the said party.*

*8. The assessee did not make any efforts to controvert the finding recorded by sales tax authorities followed by investigation wing of Income-tax department. The said dealers/sellers had already accepted before the sales tax authorities about their modus operandi of providing accommodation entry on commission basis. The assessee failed to produce the above mentioned party. Section 101 of the Indian Evidence Act' 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. According to Section 103 of the Indian Evidence Act 1872, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. Section 106 of Indian Evidence Act 1872 says that when any fact is especially within the knowledge of any person, then burden of proving that fact is upon it. All the above provisions are applicable in the instant case. In this case, assessee claims the purchases made from various parties. Therefore, burden lies on the assessee to prove that the said facts (Section 101 and 103 of Indian Evidence Act 1872). Secondly, the payment made to the purchase parties are within the knowledge of the assessee. Therefore, the burden is on it to establish that fact. However, the burden has not been discharged by the assessee.*

*9. It is pertinent to note here that the material has been received by the assessee from the sources best known to him. At the same time, it is also possible that assessee purchased machine from some other suppliers and received bill from some one else which is commonly known as grey market from the sources best known to him. In view of the above, the said expenditure to the tune of Rs.28,12,500/- is treated unexplained expenditure u/s 69C of the Act. Also the depreciation claimed asset to the tune of Rs.3,75,000/- is also disallowed as not a business expenditure. Penalty proceedings*

*u/s 271(1)(c) are hereby initiated separately for filing inaccurate particulars of income on the above stated issue."*

**7.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions before him. After considering the detailed submissions, Ld.CIT(A) dismissed the appeal filed by the assessee.

**8.** Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

*"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs.28,12,500 made under Section 69C with respect to the value of asset bought from the vendor who is alleged to be a suspicious dealer.*

*2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of depreciation amounting to Rs.3,75,000 pertaining to the same asset in spite of the fact that the Assessing Officer had accepted that the appellant had acquired the asset and only the vendor from whom it has been acquired had been doubted.*

**9.** At the time of hearing, Ld. AR of the assessee submitted that assessee is in the business of printing work and assessee has purchased the machinery during the current Assessment Year. The Assessing Officer relying on the investigations carried on by the Sales Tax Department, Government of Maharashtra and the supplier being one of the suspected Hawala trader, the case of the assessee was reopened. Assessing Officer has disallowed the whole value of the machinery along the depreciation claimed by the assessee. He submitted that assessee has submitted all

the details relating to the purchase of the machinery before the Assessing Officer and he submitted that assessee has proved the genuineness of the transaction by filing the Photos of the machinery before the Assessing Officer. Further, he brought to our notice Page Nos.4 and 5 of the Paper Book wherein assessee has submitted the various details and also the invoice and bank statement in support of making payment and photocopy of the machinery which was installed in the premises of the assessee. He prayed that the transaction is genuine and findings of the Assessing Officer is not proper and further, he relied on the decision of the Coordinate Bench in the case of Mr. Shashi Natwar Waghela *v.* ITO in ITA.No. 4779/Mum/2017 dated 27.07.2020 and he submitted that these facts are exactly to the same to the facts in the assessee case.

**10.** On the other hand, Ld.DR relied on the orders of the lower authorities and submitted that sales tax authorities have investigated the issue and the supplier was declared as non-genuine party.

**11.** Considered the rival submissions and material placed on record, we observe from the record that the case of the assessee is reopened based on the information received from Sales Tax Department, Government of Maharashtra as per which the supplier is declared as non-genuine

supplier. Accordingly, the case of the assessee was reopened and the value of the machinery declared by the assessee is disallowed and also the respective depreciation claimed by the assessee is also disallowed. In our considered view the Assessing Officer cannot disallow the total value of the asset and also simultaneously disallow the depreciation claimed by the assessee. The disallowance can only be made to the extent of the benefit claimed by the assessee under the Act. In the given case the assessee has claimed benefit only to the extent of depreciation. By observing the above, we observe that the similar issue was considered and decided by the Coordinate Bench in the case of Sashai Natwar Waghela v. ITO (supra). The relevant decision is reproduced below: -

*"6. The assessee in order to prove the genuineness of the purchase has furnished invoice and the sanction letter of the bank. The assessee had financed the purchase and installation of the machine from Andhra Bank. The bank had certified that payments were made to. M/s. Span Enterprises, the vendor and M/s. Jupiter Graphics, who had installed the machine. This fact has not been rebutted by the Department. It is noteworthy that the machine was purchased during the financial year 2008-09 and Inspector visited the premises of the vendors in December, 2014. The possibility of vendors shifting the place of business in between cannot be ruled out. Further, we observe that no finding of fact has been recorded by the Assessing Officer that these parties never had their place of work at the given addresses. Thus, the right course to verify purchase and installation of machine was to visit the premises of the assessee, which the Inspector failed to do.*

*7. We further observe that the purchases alleged to be bogus is not a trading asset but a fixed asset. The purchase of fixed asset is not reflected in the P&L Account, hence, the same was not claimed by the assessee as an expenditure. Once the expenditure has not*

*been claimed, the same cannot be disallowed. We do not find any infirmity in the order of CIT(A) in deleting the addition qua alleged bogus purchase of machinery and allowing assessee's claim of depreciation on the same. The appeal of Revenue is without any merit, hence, the same is dismissed."*

**12.** Respectfully following the above said decision, facts in the present case are exactly same to the facts in the above case and accordingly, we direct the Assessing Officer to delete the additions made. Accordingly, the appeal filed by the assessee is allowed.

**13.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 31<sup>st</sup> March, 2023

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 31/03/2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**