

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

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 330/MUM/2023 (A.Y: 2009-10)

M/s. Winner Impex G-1, Jaisingh Business Center Sahar Road, Parsiwada Andheri (E), Mumbai - 400099 PAN: AAAPW3731A	v.	ACIT – 19(3) Mumbai
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Reepal Trashawala
Department Represented by	:	Shri S.N. Kabra
Date of Hearing	:	03.04.2023
Date of Pronouncement	:	11.04.2023

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 19.12.2022 for the A.Y.2009-10.

2. Brief facts of the case are, assessee is a trader and filed its return of income on 23.09.2009 declaring total income of ₹.22,07,890/- for the A.Y. 2009-10, and the return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently, Assessing Officer received information from the Sales Tax Department, Government of Maharashtra 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 Sales Tax Department, Government of Maharashtra, 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 required to prove the genuineness of the purchases made from Kushi Impex and Jai Steel & Alloys for an amount of ₹.15,16,615/ and 22,71,071/- respectively. In response assessee submitted that the purchases made are genuine.

3. After considering the submissions of the assessee, 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 observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark and the assessee has not produced the parties before the Assessing Officer. Accordingly, Assessing Officer treated ₹.20,84,813/- being 100% of purchase amount from Kushi Impex and 25% from Jai Steel & Alloys as non-genuine.

4. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions before Ld.CIT(A). After considering the detailed submissions, Ld.CIT(A) sustained the action of the Assessing Officer and dismissed the appeal filed by the assessee.

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

A) disallowance of ₹.15,16,615/- being 100% alleged bogus purchases is unjustified and liable to be deleted

1. The Ld. CIT (Appeals) (NFAC) has erred in confirming the addition made by AO of Rs.15,16,615/- being 100% disallowance of alleged bogus purchases made from M/s. Khushi Impex without appreciating that the Appellant has genuinely purchases goods from the said party and all the supporting documentary evidence were duly filed including quantitative details and stock register and hence, the addition made of Rs.15,16,615/- being 100% disallowance of alleged bogus purchases is without any justification and liable to be deleted.

2. Without prejudice to the above and without admitting and accepting, the Ld. CIT (Appeals) failed to appreciate that the AO has not brought any evidence on record and/or any details to show any

such alleged bogus purchases were made and further, not furnished copy of any statement recorded of any personnel or any other records and thus, the addition made of Rs.15,16,615/- is unjustified and liable to be deleted.

3. Without prejudice to the above and without admitting and accepting, the Ld. CIT(A) ought to have appreciated that there cannot be sales without purchases and the quantitative details prove the same and thus, ought to have reduced the disallowance made at 100% of the purchases and accordingly relief may be given.

B) Disallowance of Rs.5,67,768/- being 25% alleged bogus purchases is unjustified and liable to be deleted

4. The Ld. CIT (Appeals) (NFAC) has erred in confirming the addition made by AO of Rs.5,67,768/- being 25% disallowance of alleged bogus purchases made from M/s. Jai Steel & Alloys without appreciating that the Appellant has genuinely purchases goods from the said party and all the supporting documentary evidence were duly filed including quantitative details and stock register and hence, the addition made of Rs.5,67,768/- being 25% disallowance of alleged bogus purchases is without any justification and liable to be deleted.

5. Without prejudice to the above and without admitting and accepting, the Ld. CIT (Appeals) failed to appreciate that the AO has not brought any evidence on record and/or any details to show any such alleged bogus purchases were made and further, not furnished copy of any statement recorded of any personnel or any other records and thus, the addition made of Rs.5,67,768/- is unjustified and liable to be deleted.

6. Without prejudice to the above and without admitting and accepting, the Ld. CIT(A) ought to have appreciated that there cannot be sales without purchases and the quantitative details prove the same and thus, ought to have reduced the disallowance made at 25% of the purchases and accordingly relief may be given."

6. At the time of hearing, Ld. AR of the assessee submitted that assessee has purchased material from Kushi Impex and this material was utilized by the assessee for manufacturing of the utensils and assessee has exported the same. Assessee has filed the various export bills in the

Paper Book which is placed at Page No. 68 to 78 of the Paper Book. Further, Ld. AR of the assessee submitted that assessee has also purchased material from Jai Steel & Alloys and the same was used to trade in the local market, as well as unsold stocks were kept in closing stock. He submitted that this fact was declared in the Books of Accounts itself. Further, he submitted that Assessing Officer has made the disallowance of 100% material purchased from Khushi Impex and 25% in the case of Jai Steel & Alloys merely relying on the information from Sales Tax Department, Government of Maharashtra. It is fact on record that department has accepted the sales and other revenue's declared by the assessee. Further, she submitted that assessee has already declared Gross Profit of 14.57% during this year and she prayed that suitable percentage of Gross Profit may be disallowed.

7. On the other hand, Ld.DR referring to Page No. 3 of the appellate order submitted that assessee itself made request before Ld.CIT(A) for disallowance of 12.5% and he relied on the orders passed by the lower authorities.

8. Considered the rival submissions and material placed on record and perused the orders of the authorities below. It is not in dispute that sales

have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT *v.* Nikunj Eximp [216 Taxman.com 171]. I agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee wherein assessee has exported the articles manufactured out of the materials purchased and other materials purchased from M/s. Jai Steel & Alloys, there is corresponding sales recorded and declared closing stock. It would be justified if the profit

element embedded in those purchases are estimated at 5%. Accordingly, we direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 5% for the A.Y. 2009-10 and restrict the disallowance of purchases to 5% and compute the income accordingly.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 11th April, 2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 11/04/2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum