



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA no.4965/Mum./2019
(Assessment Year : 2011-12)

Asstt. Commissioner of Income Tax
Circle-22(1), Mumbai

..... Appellant

v/s

Chandraprakash Sharma (HUF)
21st 2nd Floor, Asiya Manzil
K.K. Road, Opp. Royal Hotel
Santacruz (W), Mumbai 400054
PAN - AAHS6863B

..... Respondent

Revenue by : Ms. Shreekala Pardeshi
Assessee by : None

Date of Hearing - 20.01.2021

Date of Order - 8.03.2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 2nd May 2019 passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2011-12.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we

proceed to dispose off the appeal ex-parte qua the respondent assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The only dispute in this appeal is, the learned Commissioner (Appeals) erred in restricting the addition to ₹ 7 lakh on account of bogus purchase as against 20% of bogus purchase made by the Assessing Officer.

4. Brief facts are, the assessee a Hindu Undivided Family (HUF) is a proprietor of M/s. Sankeshwar Enterprises and engaged in the business of civil and labour contractor. For the assessment year 2011-12, the assessee filed its return of income on 25th September 2011, declaring total income of ₹ 69,01,582. The returns of income filed by the assessee were initially processed under section 143(1) of the Income Tax Act, 1961 (for short "**the Act**"). Subsequently, on the basis of information received from the Sales Tax Department through DGIT (Inv.), Mumbai, the Assessing Officer re-opened the assessments under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the aforesaid purchases through supporting evidences. In response, the assessee submitted that the return of income filed dated 25th September 2011 may be treated as return of

income filed in response to the notice under section 148 of the Act. The Assessing Officer in the course of assessment proceedings received information from the DGIT (Inv.), Mumbai, that the assessee had entered into hawala transactions aggregating to ₹ 84,46,199, in the financial year 2010-11 from the following parties: –

<i>Sr. no.</i>	<i>Name of Party</i>	<i>Amount (₹)</i>
1.	<i>Raj Traders</i>	<i>10,13,513</i>
2.	<i>Ajay Stone</i>	<i>28,84,266</i>
3.	<i>Spice Trading Co.</i>	<i>10,44,450</i>
4.	<i>Deep Traders</i>	<i>2,72,953</i>
5.	<i>Marudhar Marble and Granites</i>	<i>5,99,079</i>
6.	<i>Shah Associates</i>	<i>26,45,405</i>
	<i>Total:-</i>	<i>84,59,666</i>

5. The Assessing Officer observed that the aforesaid sellers had admitted on oath in the statement recorded by the Sales Tax Department that they had not carried out actual trading activity and only issued bogus bills / accommodation entries. The submissions of the assessee that the Assessing Officer has recorded the figures of gross purchase which are inclusive of VAT in the reasons recorded and that will render the reasons recorded and the notice under section 148 as invalid, is found to be without merit. Accordingly, the Assessing Officer relying upon certain judicial precedents, proceeded to estimate the profit on the alleged non-genuine purchases by applying the rate

of 20% of ₹ 84,59,666 i.e., ₹ 16,91,933. Though, the assessee contested the aforesaid additions before the first appellate authority, however, the learned Commissioner (Appeals) while granting partial relief to the assessee restricted it to ₹ 7 lakh, by observing as follows: –

"Considering that the said parties had not been produced by the appellant and that there were sales by the appellant corresponding to purchases from those parties, the AO has correctly held that the appellant must have purchased the material from grey market and the actual purchase bills would have been in lated, since the appellant would have had savings from such purchases on account of vat, cash discount and lower rates. On this ground the rejection of the books of accounts, since part of the purchases were found unverifiable, is upheld. However, the AO has made an addition in respect of profit element on such purchases @ 20%, which appears to be on the higher side, in the present facts and circumstances of the case when the gross profit rate of 18.36⁰% has been declared by the appellant. from its business of civil and furniture contract work. In this regard, I find that the VAT has been charged at the rate of 5% and 12.5% and total amount of VAT on such purchases from the 6 parties is Rs.698,478/-. Considering the savings on account of purchase in the grey market on account of vat, cash discount and lower rates etc, he addition to be made is fairly estimated at Rs.700,000/-. Accordingly, the AO is directed to restrict the addition on account of profit element on bogus purchases to Rs.700,000/- and allow relief to the appellant. In view of above discussion, the grounds relating to quantum of addition are partly allowed and grounds challenging the validity of assessment are dismissed."

6. Still aggrieved, the assessee is in further appeal before the Tribunal.

7. Before us, the learned Departmental Representative relied upon the order of the Assessing Officer whereas the learned Counsel for the

assessee on the other hand relied upon the observations of the learned Commissioner (Appeals).

8. Considering the rival submissions and on a perusal of the perused the material on record, we find that the sales made by the assessee corresponding to the purchase from the above six parties the Assessing Officer was of the view that the assessee must have purchased the material from grey market and the actual purchase bills would have been inflated as the assessee would have otherwise saved money from purchase on account of not payment VAT, cash discount and lower rates and consequently rejection of books of account by the Assessing Officer was confirmed by the learned Commissioner (Appeals). The learned Commissioner (Appeals), however, observed that since the addition made in respect of profit element on the alleged purchases from the above parties @ 20% was on higher side, therefore, he restricted it to ₹ 7 lakh considering the savings on account of purchase in the grey market on account of actual VAT saved by the assessee. In view of these observations, we are of the considered opinion that the learned Commissioner (Appeals) has rightly restricted the addition to ₹ 7 lakh which is based on the actual VAT payable to the Sales Tax Department. The assessee indulged in this transaction to save the tax only. Thus, we decline to interference in the order of the learned Commissioner (Appeals) on this issue which

is hereby upheld. Consequently, the grounds of appeal raised by the Revenue are dismissed.

9. In the result, appeal by the Revenue is dismissed.

Order pronounced open court on 8.03.2021

**Sd/-
RAVISH SOOD
JUDICIAL MEMBER**

**Sd/-
S. RIFAUR RAHMAN,
ACCOUNTANT MEMBER**

MUMBAI, DATED: 8.03.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai