

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4538/MUM/2019
Assessment Year: 2011-12**

M/s Rolex Steel & Engg Co.,
Room No. 7, Ground Floor,
Kisan Pahelwan, Bldg No. 80,
Sant Sena Maharaj Marg, 2nd
floor, Kumharwada,
Mumbai-400 004.

PAN No. AAIFR 2636 P
Appellant

Vs.

ITO 19(3)(1),
Matru Mandir,
Mumbai-400 007.

Respondent

Assessee by : None
Revenue by : Mr. Sanjay J. Sethi, DR

Date of Hearing : 02/03/2021
Date of pronouncement : 05/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-7, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 11.01.2021 and 02.03.2021, neither the assessee nor its authorized representative appeared before the Bench on the above dates. As there is non-compliance by the assessee, we

are proceeding to dispose off this appeal after examining the materials available on record and hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the assessee read as under :

1. In the facts and the circumstances of the case and in law, the A.O. erred in passing the order u/s 143(3) r.w.s. 147 and therefore rendering the whole re-assessment bad in law and also on the basis of borrowed satisfaction, presumption and surmises.
2. In the facts and circumstances of the case and in law, the AO erred in adding Rs.5,86,587/- as alleged Non-genuine purchases being 12.5% of the total purchases amounting to Rs.46,92,697/-.
 - a. In the facts and the circumstances of the case and in law, the A.O. erred in adding Rs.5,86,587/- as alleged Non-genuine purchases being 12.5% of the total purchases amounting to Rs.46,92,697/-, even though the payment for purchases is made from the books by A/C payee cheques and cannot be termed as Non-genuine even though the same has been fully allowed by the jurisdictional Mumbai Tribunal in recent case of Rajeev M Kalathil 6727/M/12, Ganpatraj A Sanghavi [I.T.A. No.2826/Mum/2013], Ramesh Kumar & Co. Appeal No. 2959/Mum/2014, Deepak Popatlal Gala [ITA No 5920/M/13], Ramila P Shah [ITA No 5246/M/13] Paresh Gandhi [ITA No- 5706/M/2013], Hiralal Chunilal Jain [ITA No. 4547/M/14], Tarla Shah [ITA No. 5295/Mum/2013] and M/s. Imperial Imp. & Exp [ITA No. 5427/MUM/2015].
 - b. In the facts and the circumstances of the case and in law, the A.O. erred in adding Rs.5,86,587/- as alleged Non-genuine purchases being 12.5% of the total purchases amounting to Rs.46,92,697/- only on the basis of the information on the website www.mahavat.gov.in about 10 suspicious dealers whose copy of statement recorded were not furnished to the appellant.
 - c. In the facts and the circumstances of the case and in law, the A.O. erred in adding Rs.5,86,587/- as alleged Non-genuine purchases without

appreciating the fact that no addition can be made if the suppliers are not traceable as per the judgment of the Bombay High Court.

- d. In the facts and circumstances of the case and in law, the A.O. erred in disallowing Rs.5,86,587/- as alleged Non-genuine purchases even though the payments were made by A/C Payee Cheques from the disclosed bank accounts.
3. In the facts and circumstances of the case and in law, the AO erred in levying penalty u/s 271(1)(c) and interest charged u/s 234 A, B, C & D.
4. In the facts and circumstances of the case and in law, the CIT(A) erred in confirming the above disallowances.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 11.08.2011 declaring total income of Rs.18,620/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained accommodation entries amounting to Rs.46,92,697/- from 10 parties, the Assessing Officer (AO) issued notice u/s 148 for re-opening the assessment. In response to it, the assessee *vide* its letter dated 30.09.2016 requested the AO that the return originally filed be treated as filed in response to notice u/s 148 of the Act. During the course of reassessment proceedings, the AO issued notice u/s 133(6) to the alleged entry providers to verify the genuineness of the purchases. However, those notices were returned unserved by the postal authorities with the remarks 'not known'. During the course of re-assessment proceedings, the assessee filed before the AO, copy of audited balance sheet, P&L account, audit report, bank statement, purchase/sale bill (party-wise) stock register, purchase/sale bill and mode of payment. However, the AO observed that the assessee could not file transport receipts, octroi receipts, receipts from weighbridge, excise gate pass, goods inward register. Therefore, considering the facts and

circumstances of the case and relying on the decision in *CIT v. Simit P. Sheth* (2013) 356 ITR 451 (Guj) and *M/s Bholenath Poly Fab P. Ltd.* 355 ITR 290 (Guj), estimated the profit @ 12.5% on the disputed purchases of Rs.46,92,697/- which comes to Rs.5,86,587/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that vide order dated 24.06.2019, the Ld. CIT(A) has passed an *ex-parte* order on the basis of material available on record, confirming the estimation done by the AO.

5. Before us, the Ld. DR supports the order passed by the Ld. CIT(A).

We have heard the Ld. DR and perused the relevant materials on record. As mentioned earlier, the notices issued by the AO u/s 133(6) to the said parties were returned un-served by the postal authorities with the remarks 'not known'. However, in response to a query raised by the AO, the assessee filed during the course of assessment proceedings copy of audited balance sheet, P&L account, audit report, bank statement, purchase/sale bill (party-wise) stock register, purchase/sale bill and mode of payment. However, the AO observed that the assessee could not file transport receipts, octroi receipts, receipts from weighbridge, excise gate pass, goods inward register.

Thus considering the facts and circumstances of the case, we are of the considered view that the estimation be made @ 6% of the disputed purchases. Accordingly, we set aside the order of the Ld. CIT(A) and direct the AO to estimate profit @ 6% on the disputed purchases of Rs.46,92,697/- and bring Rs.2,81,560/- only to tax.

6. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 05/03/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 05/03/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai