IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI

BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 1259/MUM/2017
Assessment Year: 2011-12

Shri Shreekishan Joshi 922/923, 9th floor Corporate Avenue Sonawala Road, Goregaon (E) Mumbai-400063. **PAN No. AABPJ7710M**	Vs.	DCIT 30(2) C-13/5th Floor Bandra Kurla Complex Mumbai- 400051.
Appellant		**Respondent**

Assessee by	:	None
Revenue by	:	Ms. Aarju Garodia, DR
Date of Hearing	:	03/07/2018
Date of pronouncement	:	11/07/2018

ORDER

PER N.K. PRADHAN, AM

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)-41 [in short 'CIT(A)'], Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 03.07.2018, neither the assessee nor his authorized representative appeared. We decide the case below on the basis of the argument of the Ld. DR and the materials available on record.

2. <u>The 1st ground of appeal</u>

On the facts and circumstances of the case and in law, the authorities below have erred in confirming/retaining the addition to the extent of 30% amounting to Rs.6,07,933/- of the purchase value of so called purchases from genuine parties amounting to Rs.20,26,444/- u/s 69C of the I.T. Act and the reasons assigned by them were wholly wrong and not in accordance with the facts of the case and against the provisions of Income Tax Act and rules made there under.

3. During the course of assessment proceedings, the Assessing Officer (AO) received information from the Director General of Income Tax (Inv), Mumbai that the assessee had made purchases of Rs.20,26,444/- from following four hawala parties, who were engaged in the business of providing accommodation entries only.

a.	Asian Steel	Rs.7,76,017/-
b.	Mehul Traders	Rs.2,00,070/-
c.	Krishan Trading Associates	Rs.4,50,052/-
d.	Ridhi Siddhi Corporation	Rs.6,00,305/-
	Total	**Rs.20,26,444/-**

In order to verify the transactions, the AO issued notice u/s 133(6) to the above parties. In the case of two parties, the notices were returned back by the postal authorities as 'unserved'. No reply was received from the other two parties, where the notices were served. The AO noted that the assessee failed to produce the above parties for verification. However, the assessee filed copies of the bills and ledger accounts of the above parties before the AO. The AO relied on the deposition made by the proprietors of the above parties that they had only issued tax invoices to the assessee and had not conducted any actual business. Thus the AO made an addition of Rs.20,26,444/- as unexplained expenditure u/s 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) having considered the facts and circumstances of the case held that the disallowance to the extent of 100% is not justified for the reason that it was not proved that the assessee had not purchased any material from any source and the entire cash received on aforesaid accommodation entries were realized by the assessee. Therefore, the Ld. CIT(A) sustained 30% of the disallowance made by the AO which comes to Rs.6,07,933/-.

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

6. We have heard the Ld. DR and perused the relevant materials on record. In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

So considering the fact that the assessee is engaged in the business of Civil Construction, we direct the AO to restrict the disallowance to 12.5% of the disputed purchase of Rs.20,26,444/-.

Thus the 1st ground of appeal is partly allowed.

7. The 2nd ground of appeal

> On the facts and circumstances of the case and in law, the authorities below have erred in disallowing a sum of Rs.3,12,702/- u/s 40(a)(ia) of the IT Act from out of interest paid to bank/financial instructions and the reasons assigned by them were wholly wrong, and not in accordance with the provisions of IT Act and rules made there under.

8. During the course of assessment proceedings, the AO found that the assessee had not made TDS on interest paid to the following parties:

1.	Cholamandalam DBS	Rs.31,147
2.	M&M Financials Ltd.	Rs.1,01,963/-
3.	Reliance Capital Ltd.	Rs.85,115/-
4.	Religare Finvest Ltd.	Rs.94,477/-
		Rs.3,12,702/-

As the assessee failed to make the TDS, the AO made a disallowance of Rs.3,12,702/- u/s 40(a)(ia) of the Act.

9. In appeal, the Ld. CIT(A) observed that the above concerns are not exempt u/s 194A and interest paid to them should have been subjected to TDS. The Ld. CIT(A) followed the judgment of the Hon'ble Kerala High Court in *Thomas George Muthoot v. CIT* (2015) 63 taxmann.com 99

(Ker.) and held that whether the payee has considered the receipt as income and paid tax thereon does not affect the disallowance u/s 40(a)(ia) of the Act. Thus the Ld. CIT(A) confirmed the disallowance made by the AO.

10. Before us, the Ld. DR relies on the order of the Ld. CIT(A).

11. We have heard the Ld. DR and perused the relevant materials on record. We find that the above issue is squarely covered by the decision in *Thomas George Muthoot* (supra) and following the same we uphold the order of the Ld. CIT(A) and dismiss the 2nd ground of appeal.

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

Order pronounced in the open Court on 11/07/2018.

Sd/-	Sd/-
(JOGINDER SINGH)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 11/07/2018
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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai