

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**  
**BEFORE SHRI R.C. SHARMA, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 6050/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2010-11)

D.C.I.T. 9(1), R. No. 223, Aayakar Bhavan, M.K. Road, Mumbai-20.	<b>बनाम/ Vs.</b>	M/s. Acube Engineering & Consultancy Ltd 208, Acme Industrial Park, I.B. Patel Road, Goregaon East, Mumbai-400 063.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AAFCA 8128D
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri B. Pruseth
प्रत्यर्थी की ओर से/Respondent by	:	Shri Subhash Shetty

सुनवाई की तारीख / Date of Hearing	:	30/12/2015
घोषणा की तारीख / Date of Pronouncement	:	02/03/2016

**आदेश / ORDER**

Per Sandeep Gosain, J. M.:

The Present Appeal filed by the Revenue against the order of the CIT(A)-19 dated 07.08.2013 thereby allowing the appeal of the assessee filed against the order of the AO dated 13.02.2013 on the following grounds.

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.1,08,97,610/- made by the Assessing Officer on account of bogus purchases ?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition on account of bogus purchases, without appreciating the fact that the parties from whom the purchases were shown to have been made had admitted before the sales tax authorities that they have only provided accommodation bills without sale of goods?”*

2. The brief facts of the case are that the assessee was engaged in the business of contracts for air-conditioning and its maintenance, apart from consultancy in the same field. The return of income of the assessee for A.Y. 2010-11 was e-filed on 27.09.2010 declaring total income of Rs.77,44,570/-. The return of income was processed u/s 143(1) of the Income-tax Act. The statutory notices u/s 143(2) of the Act was issued and served on the assessee. And the assessing officer after considering the reply filed by the assessee had passed order of assessment u/s 143(3) dated 13.02.2013 thereby making the additions of Rs.1,08,97,610/- on account of bogus purchases.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee and delete the additions made by the AO vide order dated 13.02.2013.

3.1 Aggrieved by the order of the CIT(A), the Revenue filed the present appeal before us on the grounds mentioned hereinabove.

Ground No. 1&2

4. Since both the grounds are inter-connected and inter-related therefore we thought it fit to dispose off the same through present order.

4.1 Ld. DR representing the revenue submitted that the AO after getting information from the Sales Tax Department that the purchases made by the assessee from six parties namely:-

- (a) Niddhish Impex Pvt. Ltd.
- (b) Mahavir Sales Corporation
- (c) Deep Enterprises
- (d) Tulsiani Pvt. Ltd.
- (e) Rohit Enterprises
- (f) Samarth Enterprises

Are bogus and in this respect the AO issued notices to the assessee and asked to show cause as to why the purchase amounting to Rs.1,08,97,610/- from above parties should not be disallowed on the basis of information received from Sales Tax Department. It was also submitted by the ld. DR that the assessee had collected tax of Rs.4,19,138/- and has not deposited the same in the P& L A/c. The

assessee further failed to produce all these parties before the AO for verification regarding the genuineness of the purchases shown by the assessee. And as a result of this, the genuineness of the purchases shown by the assessee from the said parties could not be verified with supporting documentary evidences. Moreover the assessee failed to debit the tax deducted on the net purchases made from the above six parties. Therefore, the Id. AO had rightly made the addition of Rs.1,08,97,610/-

5. The Id. DR also submitted that the CIT(A) has without considering the facts of the present case in the right perspective has wrongly deleted the addition made by the AO. On the other hand the Id. AR representing the assessee relied upon the order passed by the CIT(A) and submitted that the AO has made the addition purely on the basis of general information brought from the Sales Tax Department. Ld. AO failed to appreciate that entire payments were made through cheques and documentary evidences were also placed on record and relied upon by the assessee in the shape of copies of the ledger accounts of the parties, purchase orders, delivery challans as also the bank statement evidencing payments. It was also submitted by the Id. AR that the CIT(A) has appreciated the documents placed on record by the AR and has rightly deleted the additions made by the AO.

6. We have heard the counsels from the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities, before we decide the merit of the case it is necessary to analyze the orders passed by the CIT(A) while dealing with this ground raised by the revenue. The relevant para is reproduced as under.

*“5.1 It is clear that the AO had insisted on production of the parties. He had however clearly lost sight of the fact that the onus was partly on him, in that he was seeking to rely on the statements of these six parties. As such, he was bound to provide an opportunity to the appellant to cross-examine these parties. He was-also bound to allow-the appellant access to the statements of these six parties. While the assessment order is silent on this matter, the appellant has forcefully brought this point' out during its submission. In other words, the non-production of these parties would not just be an issue against the appellant. It would actually strengthen the claim of the appellant as well.*

*5.2 In this context, the decision of the Hon'ble High Court of Delhi in the case of CIT vis Nikunj Eximp Enterprises Pvt. Ltd. (2013 1 TMI 88) is noteworthy. The Hon'ble High Court had held that,*

*"In our view, merely because suppliers have not appeared before the Assessing Officer or the Commissioner of Income Tax (Appeals) one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well the Commissioner of Income Tax (Appeals) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the, basis of suspicion because the sellers and the canvassing agents have not been produced before them. “*

*5.2 Further, it is also a fact that the AO has sought not to disturb either the gross profit or the net profit ratios, nor has he rejected the books of*

*account of the appellant. He has only sought to make an addition on the basis of certain information received from the Sales Tax Department.*

*5.3. Further, the documentation produced by the appellant in this case is seen to be specific. All the documents pertaining to all the purchases made by the appellant from all the parties have been produced by way of copies of the same. These are ledger accounts of the parties, purchase orders, delivery challans as also the bank statement evidencing payments. This documentation was once more filed before me. The AO however failed to take into account any of this.*

*5.4 Further, it is clear that the AO had sought to confront the appellant only by way of seeking the presence of the six specific parties. In other words, even the statements of 'the six parties have not been provided to the appellant. This would be important in the light of the following observation made by the Hon'ble Tribunal in the case of Jagdamba Trading Company v/s ITO [2006-(ID2)-GJX-0689-TJOD]*

*'The AO took the purchases made by the assessee from these parties as fictitious and bogus mainly on the strength of the affidavits' of these parties tendered before sales-tax authorities. These affidavits and even statement, of the asstt. Manager of the bank were never the subject-matter of cross-examination by the assessee. In these circumstances, the decisions of Hon'ble Supreme Court in the case of Kishinchand. Chellaram vs. CIT (1980) 19 CTR (SC) 360: (1980) 125 ITR 713 (SC) and in the case of Tin Box Co. vs. CIT(2001) 166 CTR (SC) 509: (2001) 249 ITR 216 (SC) 166 come to the rescue of the assessee. The Hon'ble apex Court in these decisions have categorically held that unless the contents of the affidavits, etc. are confronted giving opportunity of cross-examination, the same cannot be read in evidence against the assessee.'*

*5.5 For ensuring confrontation, availability of the statements should have been ensured. This would also be important in the context of the averment of the appellant that the statements of accommodation entries were completely general in nature and had no connection with the specific goods sold to the appellant. Unfortunately, there is no clarity on*

*this issue as the basic-matter of provision of the statement and the subsequent examination have not been attended to by the AO. Further, it is seen that all the payments made by the appellant to the six parties have, flown only through banking channels, by way of crossed cheques. It is thus clear documentary proof available for showing the flow of monies from the bank account of the appellant to the bank accounts of the six parties. In other words, these are not simple cash purchases. There is no counter available against this in the assessment order.*

*5.6 In view of the above, I am of the considered opinion that the addition made by the AO on account Of the alleged bogus purchases is not sustainable.*

*6. As stated earlier all the grounds are interconnected. The appellant hence succeeds on all the six grounds.*

*7. In the result, the appeal is allowed.”*

7. We have analyzed the order passed by the CIT(A) and while dealing with the said ground ,we found that the CIT(A) has rightly taken into consideration the judgment of the Hon’ble Delhi High Court in the case of “CIT v/s Nikunj Eximp Enterprises Pvt. Ltd” (2013 1 TMI 88) wherein it has been categorically mentioned that merely because suppliers have not appeared before the AO or the CIT(A), one cannot conculde that the purchases were not made by the respondent-assessee. We have also noticed that in the present case the assessee submitted details of purchases comprising of net purchases and sales tax along with supporting documents such as copies of ledger accounts, copies of Purchase Invoices, Copies of Purchase orders, Delivery Challans in respect of purchases, Copies of Bank

Statement of the Assessee highlighting the payments made by crossed cheques. The AO has treated the said purchases as bogus only on the basis of information received from the Sales Tax Department. We have also noticed that the AO had disallowed the purchases without considering the corresponding sales made by the assessee in respect of said goods. The Id. CIT(A) while considering the facts and the circumstances of the case has rightly noted that the AO has sought not to disturb either the gross profit or the net profit ratio, nor he has rejected the books of account of the assessee. AO has made the addition on the basis of certain information received from the Sales Tax Department. In the present case, the copies of statements received from the Sales Tax Department were also not given to the assessee in this respect Id. CIT(A) has rightly followed the observations made by the Hon'ble Tribunal in the case of "Jagdamba Trading Company vs. ITO" [2006-(ID2)-GJX-0689-TJOD] . Since in the present case the Id. CIT(A) has considered the case from all angles and has rightly come to the conclusion that the statements with regard to accommodation entries were completely general in nature and had no connection with the specific goods sold to the assessee. The CIT(A) has rightly held that there was no clarity on this issue as the basic matter of provision of the statement and the subsequent matter of cross-examination has not been considered by the AO. The defence raised by the assessee that entire transaction was based on documentary evidences and it is also an un-disputed fact

that all the payments made by the assessee to all these six parties have flown only through banking channels i.e. by way of crossed cheques and these were not simple cash purchases. Thus, it is clear that there is documentary proof available from the bank account of the assessee to the bank accounts of the six parties and moreover the assessee has also placed before us the comparative chart showing turnover, Gross Profit Rate and Net Profit Rate in the following format:

Sr.No.	A.Y.	G.P. Ratio	N.P. Ratio	Turnover
1	2010-11	24.81	3.14	19,05,77,494
2	2009-10	27.23	5.30	23,70,24,521
3	2008-09	25.72	5.14	21,88,98,682

From the comparative sheet it is clear that the Average Gross Profit rate is 25.92% whereas Gross Profit ratio of assessee in the year under consideration is 24.81%. To cover up the leakage of revenue, caused by lower Gross Profit rate we restrict the addition to the extent of lower G.P. rate applied by assessee as compared to average Gross Profit Rate i.e. 1.11 (25.92-24.81) on the alleged purchases. Accordingly addition of RS.1,19,800/- (1.11% of 1.08 crores) is upheld.

9. In the result, the revenue's appeal is allowed in part.

Order pronounced in the open court on 29<sup>th</sup> February, 2016

Sd/-  
(R.C. Sharma)

लेखा सदस्य / Accountant Member

Sd/-  
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :29.02.2016

Ps. Ashwini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**