

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।

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

श्री अमित शुक्ला, न्यायिक सदस्य एवं

श्री रमित कोचर, लेखा सदस्य के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. : 3718/Mum/2013

(Assessment year: 2009-10)

Asst Commissioner of Income Tax Circle 25(2), Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051	Vs	Shri Hanvantisingh J Ranawat, C/240, Arishant Apartment, SodawalaLae, Borivali(West), Mumbai -400 092 स्थयी लेखा सं.:PAN: ADXPR 7563 F
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Vijay Shankar
Respondent by	:	Shri Vijay C Kothari

सुनवाई की तारीख /Date of Hearing : 28-08-2015

घोषणा की तारीख /Date of Pronouncement : 04-11-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the revenue against impugned order dated 15.02.2013, passed by CIT(A)-35, Mumbai for the quantum of assessment passed u/s 143(3) for the assessment year 2009-10, on the following grounds :-

- (i) *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition of Rs. 74,01,988/- on account of inflated and bogus purchases without appreciating the fact that the bills and cheque payment on which the assessee is placing reliance is accepted as bogus by the alleged supplier i.e. the Proprietor of M/s P K Trading, Shri Pascal Ferandes.*
- (ii) *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition of Rs. 74,01,988/0 without appreciating the facts that the Banker has stated in the letter dated 05.12.2012 that only one cheque bearing No. 420012 was credited in the current account No. 500797 of M/s P K Trading on 28.07.2009 and other cheques details are not found in the same account which proves that the purchases are not genuine".*

2. The brief facts *qua* the issue involved are that, assessee is a civil contractor mainly doing work as a sub-contractor of M/s S V Jiwani & Co., who are mainly engaged in civil repair work allotted by Bombay Municipal Corporation or Municipal Corporation of Greater Mumbai (MCGM). The original contract / work order here in this case was allotted by MCGM to the main contractor, a part of which was given as a sub-contract to the assessee. For carrying out the sub-contract work, the assessee had to perform the civil work as per the tender document and specifications. To fulfill the criteria/specification, assessee had to undertake purchase of certain fixed materials and employ labours. For the year under appeal, the assessee has debited an amount of Rs 8,38,25,020/- on account of purchase of materials, in contrast to the receipts from the contract work which was Rs. 9,50,92,857/-, on which net profit of Rs. 53,77,254/- was declared (i.e., @ 5.87%). During the course of the assessment proceedings, information was received to that one, M/s P K Trading Co, who was one of the supplier was engaged in providing accommodation entries / bills for purchases. The assessee had also claimed purchases of Rs. 74,01,988/- from the same party i.e., M/s P K Trading & Co. In wake of these information, the assessee was asked to submit delivery challans and stock register for the purchases for verification and was require to file stock register of purchases. In response, the assessee had submitted the entire detail, as per letter dated 27.10.2011. However, the AO did not accept the assessee's contention and has made observation in the assessment order that, assessee had not submitted the stock register to prove the genuineness of the expenses and the delivery challans produced does not contain any Truck number or Lorry number or any acknowledgement of receiver, etc. Further, the assessee has failed to produce the party for verification. After referring to various decisions, AO held that purchase amounting to Rs.74,01,988/- in respect of M/s P K Trading & Co. is bogus and are inflated

purchases which needs to be added to the income of the assessee.

3. Before the CIT(A), assessee gave the entire details of all the purchases made by the assessee including with M/s P.K. Trading co. and the entire background of the nature of civil contract and was submitted that, the assessee is a sub-contractor who is carrying out the civil work for its main contractor, M/s S V Jiwani & Co. The contract work is purely for the MCGM which use to release the payment only after complete verification and inspection of quality and quantity of material consumed and the work done of each work order. Only when the work has been done satisfactorily, the payment is to be released. Thus, all the purchases including purchase made from M/s P K Trading & Co. was incurred for the Government contract and the materials have actually been consumed / utilized. The payment to M/s P K Trading & Co. is reflected in the books of account and all the payments have been made through account payee cheques. Assessee's detailed submissions along with the various evidences were sent to the AO for submitting the remand report. Relevant extract of the 'remand report' have been incorporated by the CIT(A) from pages 6 to 7 of the appellate order. In the remand report, the AO had contended that, summons was issued to M/s P K Trading & Co. u/s 131 and ITI was also deputed to make enquiry, however, the said firm was not traceable. Enquiry was also made from the bank which informed that cheques paid to M/s. P K Trading & Co. were by debiting the account of M/s Jain Contractor, however the Bank were not able to clarify the query satisfactorily with regard to other particulars of P.K. Trading Co. Thus, the assessee's purchases from the said party were not open to verification at all. In response, the assessee has given its rebuttal which has been incorporated and dealt by the CIT(A) from pages 8 to 15 of the appellate order.

4. The Ld. CIT(A) after considering the entire materials placed on record and the submissions and counter submissions of the assessee as well as the AO noted that, assessee is a sub-contractor

and during the course of the appellate proceedings was required to file the details connected to the contract such as nature and scope of the work, date of commencement and the date of completion of the work contract etc. In response, the assessee had furnished the entire work orders which have been undertaken for reinstatement of trenches, repairs of potholes, etc., for the period up to 31st March, 2010. The ld. CIT(A) has taken notes of these details in para 8.5 of the appellate order. After examining the nature of work, the ld. CIT(A) observed that, for carrying out the civil work, the assessee had to necessarily purchase materials such as cement, steel, etc., without which it is not possible to complete the sub-contract work awarded by the main contractor. The materials have been received at site and issued for work. The payments of the materials have been made through account payee cheque duly routed through books of account. He further noted that when the work is being executed as per the specification and the site is visited and Inspected by Senior Engineers of MCGM/BMC for checking the progress and quality and thereafter a report is submitted to House Vigilance Department, from there report is prepared and sent to Dy. Chief Engineers who after examining every aspect of the work give direction or approve the release of the payments. All these factum of the execution of the work and how the payment is released has been discussed by the ld. CIT(A) from pages 16 to 18 of the appellate order. After referring to all these facts, he held that without any material, the assessee cannot complete the civil contract work and therefore, no addition on account of bogus purchases can be made.

5. Before us, the ld. DR, submitted that in this case, specific information was received from the sales tax authorities that the supplier, M/s P.K. Trading & Co. has been found to be providing accommodation bills and entries. After confronting this information, the assessee could not prove that purchases made from said firm are genuine or not. During the course of the remand

proceedings, the AO had carried out detailed enquiry and found that the said party was not traceable and even the payments through account payee cheques could not be completely verified from the bank as all the particulars were not made available. The assessee has completely failed to discharge the onus of showing/proving that purchases made from M/s P K Trading & Co. of Rs. 70,41,088/- is genuine. He strongly referred to the remand report of the AO which has been placed in paper book pages 104 to 107, highlighting the points that the supplier as well as payments made could not be proved by the assessee.

6. On the other hand, the Ld. Counsel, pointed out that, the assessee being a civil contractor has to perform its sub-contract work as per the terms and conditions of tender document and specifications, whereby the assessee was required to utilize certain amount of quantity and quality of materials and only when such standards are met, the payment is made by the Government Department (MCGM). All these facts have been duly noted by the CIT(A) in detail. Not only that, the assessee's net profit for the present assessment year was also very high which was commensurate with the total work/contract performed. One very important fact as brought on record by Ld. Counsel was that, in the case of main contractor, M/s S V Jiwani, the Settlement Commission has held that overall total net profit rate from contract receipts from Mumbai Corporation of Greater Mumbai (MCGM) was at 8% and the contract of MCGM executed by others, that is, was 2.87% and 5%. Thus, when the Settlement Commission has accepted that work through sub-contract has been done on 5% on same project and in the case of the assessee who is sub-contractor of M/s S V Jiwani has shown net profit of 5.87%, then such an income and N.P. rate should be accepted. If the addition of Rs. 74 lakhs is added to the income of the assessee, then the net profit rate would be far too high and excessive, which is not possible in such contract or sub-contract work. He further relied upon various

decisions of the Tribunal, wherein on similar cases of contractors where information was received regarding bogus / accommodation bills, the Tribunal have deleted the addition after comparing the profit ratio. One such reliance was placed on the decision of Ramesh Kumar vs ACIT in ITA No. 2959/Mum/2014 vide order dated 28.11.2014 and on the decision of Shri Ganpatraj A Sanghavi vs ACIT in ITA No. 2863/Mum/2013 vide order dated 05.11.2014.

7. In the rejoinder, the Ld. DR by way of an alternative argument submitted that, in case net profit rate is to be applied then same should be taken at @ 8% as held in various decisions and which is also a presumptive rate of profit in the case of a contractor is as prescribed under section 44AB.

8. We have heard the rival submissions, perused the relevant finding given in the impugned order and the material placed on record. The assessee is a civil contractor who has undertaken a sub-contract work from the main contractor, S. V. Jiwani & Co. who was awarded contract for repair works and civil contract by MCGM. For executing the contract work, the assessee has to comply with the conditions and specifications of the tender document which prescribes the quantity and quality of the materials consumed, such as cement, steel, sands, stone grits etc. These materials are essentially required for carrying out the contract work. Not only that, right from the stage of quality testing of materials to actual work performed/executed, every stage is subject to inspection by engineers of MCGM to check the progress and the quality of work and sent a report to its Dy. Chief Engineers. Only after full verification and complete satisfaction of the work completed, the payments is released to the main contractor and from there it goes to the sub-contractor. Thus, in case of contract work performed by the assessee, every material consumed is accounted for. There is very little or no margin of

manipulating the purchase of materials, because not only the quantity and quality of material is specified but even the range of profit percentage is also agreed upon. The entire conditions under which the civil contract work is carried out in the case of the assessee and the manner in which payment is released has been discussed in the appellate order from pages 16 to 18. From the said observations and the finding given the Id. CIT(A), it is absolutely clear that for performing the contract work, certain quantity and quality of material has to be utilized and there is little scope of manipulation of inflating the purchases in the books . If the assessee has undertaken the civil contract work of Rs. 9,50,92,857/- then for execution of such work, certain quality and quantity of material as specified has to be purchased and utilized. From the sub-contract work, the assessee had shown a net profit of 5.87% (net profit of Rs. 53,77,254/-) and if such an amount of purchase which has been added by the AO is included in the profit, then the profit rate will shoot very high, which is neither in consonance with the assessee's past history nor is comparable with the other contractors or sub-contractors. Now even if we agree with the contention of the revenue that the alleged purchases of Rs.72,01,988/- which has been made through account payee cheques from M/s P K Trading & Co. is bogus or not genuine, that is, assessee has taken accommodation bills for purchases, then there can be no denying fact that, the assessee must have purchased the same quantity and amount of purchase in cash from some other party to perform its contract work. In other words, to regularize the cash payment for purchases from other parties, the assessee must have taken some kind of purchase entry or accommodation bill from M/s P K Trading & Co. In that situation, the source of the payment of the cheques to P.K. Trading Co. is from the books of account and the amount of cheque paid must have been encashed for making the payment to other parties for the purchases made in cash. Thus, the source of purchase in cash is also routed from the books of account. Even if we agree

that purchases made through P K Trading Co. is not genuine but the facts remains the assessee had made the purchases for completing the contract work which is evident from the nature of contract work itself that the payments has been released only when the quantity and quality of the material utilized has met the standard prescribed by the MCGM, this *inter alia* proves that, the assessee must have made the purchases and correspondingly must have utilized the same. Further for executing the sub-contract work the range of percentage of profit is also pre-determined in the tender document or agreement. If the contract receipts are not disturbed and gross/net profit are not doubted, then how the purchases can be doubted. Such an addition will only disturb the trading account. If certain purchases are not open to verification and source are from books of account only, then at best the profit results can be disturbed and reasonable estimate can be made under the principle of best judgment assessment, only if it is found that assessee is suppressing his profit. Here in this case one very important fact which has been brought on record by Ld. Counsel is that, in the case of the main contractor i.e. M/s S.V. Jiwani & Co., the Settlement Commission has given a categorical finding of fact that, entire net profit from the contract received from MCGM was @8% and the contract executed by sub-contractor the net profit rate approximately ranges between 2.87% to 5%. Another categorical finding of fact which has been given is that there is no material difference in quantity data as per the records of the MCGM and as per the books of account of the main contractor. In this case also exactly similar addition of purchases were made on the basis of same information and the finding given by Settlement Commission clearly clinches the issue before hand. The relevant observation and finding of the Settlement Commission is as under:-

“8.1 We have considered the arguments put forth by both the parties. The Department claims that some of the suppliers to the applicant are hawala parties and they have not supplied any genuine material to the applicant. The stand of the applicant is that the payments towards the suppliers have been made by account payee cheques and money has been transferred from the applicants account to the suppliers account. Suppliers are registered not only with the Sales Tax Department but also supplied relevant details to the bank while operating their accounts. In our considered view in these circumstances when the contract work is executed, because the payment of the contract work has been released by MCGM, it cannot be said that the purchases are bogus. Without purchases of the material, execution of the work is not possible. It may be so that for any number of reasons, the supplier is not traceable or has not been coming forward to confirm the sales before the Income Tax Department or the Sales tax Department of the Government of Maharashtra but the fact of purchase from the suppliers to the applicant cannot be denied. In fact under the circumstances estimation of the profit by rejecting the book result would be the correct method of working the profit. The applicant has shown 8% NP on the works contracted to it and also executed by it and 5% on the sub-contracts executed by it. There is nothing on record to suggest that the applicant has earned actually more than this income. Shri Naresh Kumar, the Ld. AR has pointed out before us that in similar cases the Bench has accepted such percentage of profit”.

9. From the above, it is absolutely clear that, *firstly*, without purchase of material the execution of work contract given by the MCGM is not possible and even if the supplier is not traceable and not coming forward to confirm the sales, then also the factum of purchase cannot be denied; and *secondly*, the net profit rate on the entire contract work and of the sub-contractor is not more than 8% and 5% respectively.

10. Here in this case also, even if the particular supplier has not confirmed the purchases, this does not lead to any inference that assessee has not made any purchases and the net profit rate of 5.87% is not only unreasonable but is still on a higher side as per finding given by Settlement Commission. Accordingly, the finding of the fact as recorded by the CIT(A) in the impugned order is affirmed and we hold that the addition of Rs. 74,01,988/- made by the AO has rightly been deleted. Thus, grounds raised by the revenue stands dismissed.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 4th November, 2015.

Sd/-

(रमित कोचर)

लेखा सदस्य

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

(AMIT SHUKLA)

JUDICIAL MEMBER

Mumbai, Date: 4th November, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -35, Mumbai.
 - 4) The CIT- 25, Mumbai.
 - 5) विभागीय प्रतिनिधि "H", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "H" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, मुंबई

Dy./Asstt. Registrar

I.T.A.T., Mumbai

*चव्हांन व.नि.स

*Chavan, Sr.PS