

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

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

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5084 to 5086/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2009-10, 2010-11 and 2011-12)

Bulakidas Premram Mistry 54/2500, Ashtavinayak CHS, Gandhi Nagar, Bandra (E) Mumbai 400051	बनाम/ v.	ACIT, Circle-21(1) Piramal Chambers, Lalbaug, Mumbai 400012
स्थायी लेखा सं./ PAN : AADPM9833G		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri. Varun Bramheena
Revenue by :		Shri. V. Justin

सुनवाई की तारीख /**Date of Hearing** : **08.08.2017**

घोषणा की तारीख /**Date of Pronouncement** : **31.10.2017**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

These three appeals, filed by the assessee, being ITA No.5084 to 5086/Mum/2016 , are directed against common appellate order dated 20.05.2016 passed by learned Commissioner of Income Tax (Appeals)-33, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, 2010-11 and 2011-12 respectively, appellate proceedings had arisen before learned CIT(A) from three different assessment orders passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s 147 of the

Income-tax Act, 1961 (hereinafter called “the Act”) for AY 2009-10 to 2011-12.

2. First we shall take appeal for the assessment year 2009-10. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) for AY 2009-10 reads as under:-

- “1. Learned CIT(Appeal) erred in confirming the profit element to 25% and erred in treating the same as bogus purchase ..*
- 2. Learned CIT(Appeal) erred in ignoring the detailed evidences brought on record and ignoring the judicial precedents brought to his knowledge.*
- 3. Learned assessing officer erred in rejecting the prices of Purchased Goods on summarise and conjecture basis and Learned CIT(Appeal) erred in confirming the same.”*

The assessee has raised similar grounds of appeal for AY 2010-11 and 2011-12 filed with the tribunal.

3. The brief facts of the case are that the assessee is proprietor of the firm ‘UMA Arts’ engaged in the business of work contractor for furniture and fixtures , civil and electrical fittings and related job work . The information was received by the A.O from sales tax department through DGIT (Inv), Mumbai regarding alleged bogus purchases made by the assessee from hawala dealers wherein the assessee appeared as one of the beneficiaries of the accommodation bills issued by said hawala dealers. The case of the assessee was reopened by the A.O u/s. 147 by issuing notices u/s. 148 on 18th March, 2014 which was undisputedly duly served on the assessee. The following parties namely N.B. Enterprises, Kamlesh Trading Companies, Newspark Trading P. Ltd, P.K Trading Company, Ruby Impex, Mark Enterprises, Universal Supplier, Paras Enterprises and Nidhi Industries had allegedly supplied Ply, Fevicol railing etc. to the assessee , wherein there is an allegation of the Revenue that no material was supplied by these parties and only bogus bills were issued without supplying any material to the assessee . The assessee filed copies of invoices , ledger and bank statements regarding purchases from these parties before the AO and it was contended that the purchase transactions were genuine. It is contended by the assessee that the assessee is a work contractor for furnishing and fixture, civil and electrical fittings and related jobs and that material required at every site is

ordered as per requirements . The work orders are raised in favour of suppliers who deliver the material at site which is checked by supervisor or person in charge. It is contended that material so supplied has been used at the site and duly charged to the customer which proves consumption of material for the business of the assessee and against which sales bills were duly raised. It was submitted that the parties from whom material was purchased are not available at the addresses right now and the same cannot be produced . It was submitted that efforts were made to contact them but despite best efforts they could not be located. The A.O issued notices u/s. 133(6) to these selling parties which were returned unserved and hence cross examination could not be allowed by the AO . It was observed by the A.O that onus is on the assessee to prove the genuineness of the purchases as the assessee is claiming the expenses . The A.O. also deputed inspector who gave his report that the parties are not existing at the given addresses the report of inspector is as under:-

“Further, inspector enquiry was done in their case wherein Ward inspector visited the addresses of the parties, as provided by the assessee. However, no party existed in the said locations. Inspector report is reproduced as below.

“As directed by you, today I visited to the parties of M/s. N B Enterprises, M/s. Kamlesh Trading Co., M/s. Newspark Trading Co. P.Ltd., M/s. P K Trading Co., M/s. Ruby Impex, M/s Mark Enterprises, M/s Universal Supplier, M/s Paras Enterprises and M/s Nidhi Industries in the above mentioned case. On inquiry, it is gathered that the above parties are not existing at the given address.”

The A.O asked the assessee to produce stock register which was not produced by the assessee . The A.O also observed that the assessee has not been able to draw a direct co-relation between the purchases made from the bogus parties and the utilisation in the course of business . It was also observed by the AO that the transport proof, delivery challans, transport expenses proof , stock register etc. could not be produced by the assessee. Thus, the AO concluded that genuineness of purchases could not be proved and additions to the tune of 100% of the purchases to the tune of

Rs.67,02,550/- were made by the AO vide assessment order passed by the AO u/s 143(3) r.w.s. 147.

4. The assessee carried the matter in appeal before the learned CIT(A). The assessee contended before ld. CIT(A) that the purchases are genuine and it was submitted that the assessee brought on record ledger account of these parties , copies of bills , bank statements showing payments made through bank, delivery challans duly stamped at the site on receipt of material , matching of the bills wise details of purchases with corresponding sales . It was also submitted the material was consumed for the purposes of use at site for the work contract undertaken by the assessee and it was billed to the customers. The assessee submitted that additions cannot be made without affording cross examination of the persons who have given incriminating statement against the assessee. It was submitted that merely because these dealers are placed in list of hawala dealers as they have defaulted in payment of VAT , no additions can be made in the hands of the assessee. It was held that the AO erred in ignoring the books of accounts of the assessee. It was submitted that sales are not in dispute. It was submitted that the assessee has shown GP ratio of 17.05% and NP ratio of 9.5% which is reasonably good . The learned CIT(A) restricted the addition to 25% of alleged bogus purchases by relying on CIT v. Simit P Sheth in ITA no. 553 of 2012 , order dated 16-01-2013 passed by Hon'ble Gujarat High Court , and also decision of ITAT in Vijay Proteins Private Limited v. CIT reported in 58 ITD 428, as the purchases were unverifiable as to the parties from it was made as the parties were not traceable. The learned CIT(A) observed that either purchases are over-invoiced or the assessee has purchased material from grey market without proper billing , vide his appellate order dated 20-05-2016.

5. The assessee has come in an appeal before the tribunal and its contended by the Ld. Counsel for the assessee that the assessee is work contractor for furniture & fixtures, civil and electrical fittings and related jobs. The A.O. has made addition to the tune of 100% of the alleged bogus purchases to the tune of Rs. 67,02,550/- while the learned CIT(A) has restricted addition to the tune of 25% of alleged bogus purchases. It was submitted that the

assessee has submitted consumption/utilisation details of the entire material purchased before the A.O and also before the learned CIT(A).

The Ld. DR at this point submitted that it is no where coming from the orders of the A.O that assessee has given details about consumption/utilisation of material for business purposes and its correlation with sales. It was submitted by Ld. DR that assessee be directed to file paper book to prove details of utilisation/consumption of material and its correlations with sales were submitted before the A.O. . At this point of time Bench directed assessee to file paper book as to the documents which were submitted before the authorities below to prove utilisation/consumption of material and also its correlation with sales. The assessee has submitted paper book running into 472 pages after closure of hearing but the assessee has not certified the paper book as to which document were submitted before A.O and which document were submitted before the learned CIT-A. The learned DR relied on the orders of authorities below.

6. We have considered rival contentions and carefully perused the material on record . The assessee is proprietor of the firm 'UMA Arts' engaged in the business of work contractor for furniture and fixtures , civil and electrical fittings and related job work . The information was received by the A.O from sales tax department through DGIT (Inv), Mumbai regarding alleged bogus purchases made by the assessee from hawala dealers wherein the assessee appeared as one of the beneficiaries of the accommodation bills issued by said hawala dealers. The case of the assessee was reopened by the A.O u/s. 147 by issuing notices u/s. 148 on 18th March, 2014 which was undisputedly duly served on the assessee. The following parties namely N.B. Enterprises, Kamlesh Trading Companies, Newspark Trading P. Ltd, P.K Trading Company, Ruby Impex, Mark Enterprises, Universal Supplier, Paras Enterprises and Nidhi Industries had allegedly supplied Ply, Fevicol railing etc. to the assessee wherein there is an allegation of the Revenue that no material was supplied by these parties and only bogus bills were issued without supplying any material to the assessee . The assessee filed copies of invoices , ledger and bank statements regarding purchases from these parties before the AO and it was contended before the AO that the purchase

transactions were genuine. It is contended by the assessee before the AO that the assessee is a work contractor for furnishing and fixture, civil and electrical fittings and related jobs and that material required at every site is ordered as per requirements . The work orders are raised in favour of suppliers who deliver the material at site which is checked by supervisor or person in charge. It is contended by the assessee that material so supplied has been used at the site and duly charged to the customer which proves consumption of material for the business of the assessee and against which sales bills were duly raised. It was submitted that the parties are not available at the addresses right now and the same cannot be produced . It was submitted that efforts were made to contact them but despite best efforts they could not be located. The A.O issued notices u/s. 133(6) to these selling parties which were returned un-served and hence cross examination could not be allowed by the AO . It was observed by the A.O that onus is on the assessee to prove the genuineness of the purchases as the assessee is claiming the expenses . The A.O. also deputed inspector who gave his report that the parties are not existing at the given addresses the report of inspector is as under:-

“Further, inspector enquiry was done in their case wherein Ward inspector visited the addresses of the parties, as provided by the assessee. However, no party existed in the said locations. Inspector report is reproduced as below.

“As directed by you, today I visited to the parties of M/s. N B Enterprises, M/s. Kamlesh Trading Co., M/s. Newspark Trading Co. P.Ltd., M/s. P K Trading Co., M/s. Ruby Impex, M/s Mark Enterprises, M/s Universal Supplier, M/s Paras Enterprises and M/s Nidhi Industries in the above mentioned case. On inquiry, it is gathered that the above parties are not existing at the given address.”

The A.O asked the assessee to produce stock register which was not produced by the assessee . The A.O also observed that the assessee has not been able to draw a direct co-relation between the purchases made from the bogus parties and the utilisation in the course of business . It was also observed by the AO that the transport proof, delivery challans, transport

expenses proof , stock register etc could not be produced by the assessee. Thus, the AO concluded that genuineness of purchases could not be proved and additions to the tune of 100% of the purchases to the tune of Rs.67,02,550/- were made by assessment order passed by the AO u/s 143(3) r.w.s. 147. The assessee contended before learned CIT(A) in first appeal that the purchases are genuine and it was submitted before learned CIT(A) that the assessee brought on record ledger account of these parties , copies of bills , bank statements showing payments made through bank, delivery challans duly stamped at the site on receipt of material , matching of the bills wise details of purchases with corresponding sales . It was also submitted before learned CIT(A) that the material was consumed for the purposes of use at site for the work contract undertaken by the assessee and it was billed to the customers. The assessee submitted that additions cannot be made without affording cross examination of the persons who have given incriminating statement against the assessee. It was submitted that merely because these dealers are placed in list of hawala dealers as they have defaulted in payment of VAT , no additions can be made in the hands of the assessee. It was submitted that the AO erred in ignoring the books of accounts of the assessee. It was submitted that sales are not in dispute. It was submitted before learned CIT(A) that the assessee has shown GP ratio of 17.05% and NP ratio of 9.5% which is reasonably good . The learned CIT(A) restricted the addition to 25% of alleged bogus purchases by relying on CIT v. Simit P Sheth in ITA no. 553 of 2012 , order dated 16-01-2013 passed by Hon'ble Gujarat High Court and also decision of ITAT in Vijay Proteins Private Limited v. CIT reported in 58 ITD 428, as the purchases were unverifiable as to the parties from it was made as the parties were not traceable. The learned CIT(A) observed that either purchases are over-invoiced or the assessee has purchased material from grey market without proper billing in his appellate order dated 20-05-2016. We have observed that the assessee has achieved turnover of Rs.7.19 crores and net profit is 75.23 lacs. We have carefully gone through the paper book filed by the assessee running into 472 pages . We have also observed that these parties are not traceable and notices issued by the AO u/s. 133(6) to these parties have returned un-served . The inspector deputed by the A.O to verify these parties have reported that these parties are not traceable . The assessee is not able to produce stock register and the assessee is not able to shown

movement of the material . The assessee has however claimed that purchases invoices are available and payments were made by cheques . It is claimed by the assessee that consumption and utilisation of the material is proved which is disputed by the Ld. DR who has stated before us no such documents to prove consumption/utilisation of material has been filed by the assessee before the AO . The assessee was directed to file paper book before the bench which is now filed by the assessee in two volumes running into 472 pages. The assessee has not filed any certificate with the paper book that these documents have been filed before the A.O and / or learned CIT(A) and from the careful perusal of these document filed in paper book before us , we could not find that the assessee has co-related purchases with the sales and utilisation/ consumption of the material was proved by the assessee before the authorities below. No, doubt large number of documents are filed before us running into 472 pages in paper book filed in two volumes. These documents need verification and authentication by the authorities below . Thus, keeping in view interest of justice and fair play it is deemed fit and appropriate that the matter need to be set aside and restored to the file of the A.O for fresh determination of the issue on merits de-novo in accordance with law as we are of the considered view that the assessee so far could not prove utilisation / consumption of material and genuineness of the purchases but since large number of evidences are filed before us , the same required verification/authentication by authorities below. The assessee has claimed these expenses and the onus is on the assessee to prove the genuineness of the said expenses for purchases of material , thus with these direction matter is set aside and restored to be file of the A.O. for fresh determination of the issue on merits in accordance with law. At this stage , we are reminded of the recent decision of Hon'ble Supreme Court in the case of N. K. Proteins Ltd. v. DCIT (2017-TIOL-23-SC-IT). Needless to say that the A.O shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law.The AO shall admit evidences/ explanations filed by the assessee in its defence in denovo proceedings. We order accordingly.

7. Thus, in the result appeal of the assessee in ITA no. 5084/Mum/2016 for AY 2009-10 is allowed for statistical purposes.

8. Our decision in ITA 5084/M/2016 for assessment year 2009-10 shall apply mutatis mutandis to the appeal of the assessee in ITA no. 5085/M/2016 and 5086/M/16 for AY 2010-11 and 2011-12. These two appeals are also allowed for statistical purposes. We order accordingly.

9. Thus, in the result all the appeals of the assessee in ITA no. 5084/Mum/2016 to 5086/Mum/2016 for AY 2009-10 to AY 2011-12 are all allowed for statistical purposes.

Order pronounced in the open court on 31.10.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 31.10.2017 को की गई ।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 31.10.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI