

आयकर अपीलीय अधिकरण “आई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “I” BENCH, MUMBAI

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./I.T.A. No.2928/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Poonam Skyline Construction 66/B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Fort, Mumbai-400 001	बनाम/ Vs.	Jt. CIT, Range 12(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHFP 4019 R		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Rahul Sarada
प्रत्यर्थी की ओर से / Respondent by	:	Shri Saurabhkumar Rai

सुनवाई की तारीख / Date of Hearing	:	01.08.2017
घोषणा की तारीख / Date of Pronouncement	:	15.09.2017

आदेश / ORDER

PER RAM LAL NEGI, JM

The assessee has filed the present appeal against the order dated 24.2.2016 passed by the ld. CIT(A)-28, Mumbai whereby the ld. CIT(A) has partly allowed the appeal filed by the appellant-assessee against the assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (‘the Act’ in short).

2. Brief facts of the case are that the assessee engaged in the business of development of property filed its return of income for the assessment year under consideration declaring the total income of Rs.5,01,42,080/-. The return was processed u/s. 143(3) of the Act. The case was selected for scrutiny.

3. On the basis of information received from the Investigation Wing of the Income Tax Department that the assessee had obtained bogus purchase bills

from the eight parties mentioned in the assessment order, amounting to Rs. 8766486/-. Accordingly, the AO issued notice to the assessee issued notice to the assessee to submit the details and prove the genuineness of the transactions. In response to the notice issued by the A.O., the assessee furnished the information regarding the purchase, bills of material purchased and payments made to the parties during the year. The assessee further submitted bank statement to prove that payments were made to the parties through banking channels. However, the assessee failed to furnish the documents relating to transportation and receipt of goods including the details of vehicles used for movement of goods. The assessee also failed to produce the parties from whom the alleged purchases were made. Accordingly, the A.O. added the total bogus purchases amounting to Rs.87,66,486/- to the income of the assessee.

4. In appeal, the ld. CIT(A) confirmed the disallowance made by the A.O., however, directed the A.O. to reduce the closing work-in-process by the proportionate element of these purchases as per the formula adopted by the appellant in schedule K to its balance-sheet. Still agreed, the assessee is in appeal before the tribunal on the following ground:

“The learned CIT(A) failed to appreciate that all purchases made by the Appellant were genuine duly supported by the evidence. Therefore, the CIT(A)erred in confirming the disallowance of Rs. 87,66,486/-towards alleged bogus purchases.”

5. Before us, the ld. Counsel for the assessee submitted that since the assessee has proved the genuineness of the transaction by placing on record the bills of purchases, copy of accounts of the parties concerned and the genuine payment to the party through banking channel, the ld. CIT(A) has wrongly confirmed the addition made by the A.O. The Ld. counsel relying on the judgment of Hon’ble Bombay High Court passed in Nikunj Enterprises 372 ITR 619 (Bom) submitted that the impugned is liable to be set aside.

6. On the other hand, the ld. DR relying upon the findings of the ld. CIT(A) submitted that the impugned order does not warrant any interference as the findings of the ld. CIT(A) is in accordance with the principle of law laid down by the different courts and Tribunals including the judgment of Hon'ble Gujarat High Court passed in *N.K. Protien Limited vs. DCIT in Tax appeal No 240,261,242&260 of 2003* in which it has been held that if the purchases are not proved to be genuine then the entire amount of purchases needs to be taken as incom.

7. We have heard the rival submissions and also perused the material on record including the cases relied upon the parties. The only issue in this case is whether the Ld CIT(A) has erred in confirming the disallowance of entire amount of bogus purchases made by the assessee during the relevant financial year? We notice that the AO has made disallowance in question without rejecting the books of account of the assessee. AO has also not disputed the sales made by the assessee during the relevant period.

8. In *Nikunj Enterprises 372 ITR 619 (Bom)*, the Hon'ble jurisdictional High Court has held that merely because its suppliers had not appeared before the A.O. or the ld. CIT(A) one could not conclude that the purchases were not made by the assessee. The Hon'ble Gujarat High Court in *CIT vs. Sumit P. Seth 356 ITR 451 (Guj)* has upheld the decision of the Tribunal and sustained the addition of 12.1% of the total bogus purchases holding that only profit element embedded in such purchases can be added to the income of the assessee.

9. So, in light of the facts of the case and the law laid down by the Hon'ble High Courts in the cases referred above, we partly allow the appeal of the assessee and restrict the addition to 12.5% of the total amount of bogus purchases made by the assessee during the year relevant to the assessment

year under consideration. We, accordingly, direct the A.O. to compute the addition in terms of this order.

8. In the result, the appeal filed by the assessee is partly allowed.
परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 15th.Sept. 2017

Sd/-

(Rajendra)

लेखा सदस्य/Accountant Member

मुंबई Mumbai; दिनांक Dated : 15/09.2017

Sd/-

(Ram Lal Negi)

न्यायिक सदस्य/Judicial Member

व.नि.स./Roshani, Sr. PS

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