

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

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

आयकर अपील सं./ITA No. 2943/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2011-12)

The Asst. Commissioner of Income Tax, Circle- 7(1)-1, Room No. 573, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Gopani Metal Industries Pvt. Ltd., 37, Llyods House, Baroda Street, Carnac Bunder, Mumbai - 400009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABC1392G		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से / Revenue by : Sh. Saurabh Kumar Rai (DR)
निर्धारिती की ओर से / Assessee by : Sh. Prakash Jotwani (AR)

सुनवाई की तारीख / **Date of Hearing** : **03/08/2017**

घोषणा की तारीख/**Date of Pronouncement**: **02/11/2017**

आदेश / O R D E R

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 09/02/2016 passed by the Ld. CIT (A)-13, Mumbai pertaining to the Assessment Year 2011-12, whereby the Ld. CIT (A) has allowed the appeal of the assessee filed against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company filed its return of income for the Assessment Year (AY) 2011-12, declaring the total income of Rs. 15,25,561/-. The return was processed u/s 143 (1) of the Act. Subsequently, the assessee revised its return and declared the income of Rs. 48,20,510/-. Since, the case was selected for scrutiny notices u/s 143 (2) and 142 (1) were

issued and served upon the assessee. In response thereof the authorised representative of the assessee furnished the details called for by the AO. During the course of assessment proceedings, it came to the notice of the AO that assessee had made purchases from bogus entities M/s Bhumi and M/s Nilofer amounting to Rs. 12,71,376 and 44,83,204/- respectively. Accordingly, the assessee was asked to explain the genuineness of the transactions. The assessee submitted that the purchases were made from Bhumi and Nilofer but goods were received from M/s Bombay Oil Company. The assessee also submitted copy of delivery challan and way bridge slip etc. To verify the genuineness of the transaction the AO issued notice u/s 133 (6) to the parties however, the same were received back unserved. The assessee could not produce the parties M/s Bhumi and M/s Nilofer. Accordingly, the AO made the entire amount of purchase to the income of the assessee treating the transaction bogus.

3. In appeal, the Ld. CIT (A) relying on the decision of Hon'ble Bombay High Court rendered in M/s Nikunj Eximp Enterprises 35 Taxman 384 (Bom), deleted the addition made by the AO on account of bogus purchases. The revenue is in appeal against the impugned order passed by the Ld. CIT (A).

4. The revenue has raised the following effective ground of appeal against the impugned order passed by the Ld. CIT (A):-

“Whether on the facts and in the circumstances of the case and in law, the ld. CIT (A) correct in deleting the addition made on account of bogus purchases relying upon the decision in the case of M/s Nikunj Eximp Enterprises [35 Taxmann 384 (Bom.)] without appreciating that the identity of the party throughout the proceedings remained unverifiable.”

5. Before us, the Ld. Departmental Representative (DR) submitted that according to the assessee, the purchases in question were made from M/s Bhumi and M/s Nilofer but the goods were received from M/s Bombay Oil Company. Since, the notices issued u/s 133 (6) of the Act were received back un-served and since the assessee failed to produce the parties before AO for verification, the Ld. CIT (A) ought to have confirmed the addition made by the AO. The Ld. DR further pointed out that there is no evidence of payments by M/s Bhumi and Nilofer to Bombay Oil Company. Hence, the findings of the Ld. CIT (A) are contrary to the evidence on record, therefore liable to be set aside.

6. On the other hand, the Ld. Counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that since the assessee has submitted copy of delivery challan, way bridge slip and other documents and has proved that the payments to M/s Bhumi and Nilofer were made through banking channels, the Ld. CIT (A) has rightly set aside the order passed by the AO and deleted the addition. Relying upon the judgment of Hon'ble Bombay High Court delivered in *CIT vs. Nikunj Eximp Enterprises* (supra). The Ld. Counsel further submitted that merely because suppliers have not appeared before the AO, it cannot be concluded that purchases were not made. Since, the AO has not rejected the books of account and accepted the sales, the purchases cannot be treated as bogus.

7. We have heard the rival submissions and perused the material on record including the cases relied upon by the authorities below. The only grievance of the revenue is that the Ld. CIT (A) has wrongly deleted the addition made by the AO on account of bogus purchases made by the assessee. The contention of assessee is that it had purchased the goods from M/s Bhumi and Nilofer and received goods from M/s Bombay Oil Company.

8. The assessee has not explained as to how the Bombay Oil Company came into picture. The notices issued to the parties were received back unserved. The assessee also failed to produce the parties before the AO for verification. No evidence was produced to establish that M/s Bhumi and Nilofer paid money to M/Bombay Oil Company in order to supply goods to the assessee. These facts give rise to the conclusion that the assessee had purchased the goods from the party/parties other than the parties mentioned in its books of account. Since, the assessee has failed to establish the genuineness of the transaction by producing the parties before the AO, we are of the considered view that the AO has rightly held the transactions as bogus. Now the question arises as to whether the AO has rightly made the addition of entire amount in question or the AO was required to make addition taking into consideration, the profit element embedded in the transaction.

9. While upholding the decision of Mumbai Tribunal the Hon'ble Bombay High Court In *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd.* (supra) has held that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the respondent/assessee. But in the present case the evidence on record suggest that the purchases were made by the party/parties other than by doing so the assessee has evaded VAT and other taxes applicable during the relevant period. So in our view, the estimated profit earned by the assessee should be added to the income of the assessee.

10. The Hon'ble Gujrat High Court in *CIT vs. Simit P. Seth 356 ITR 451(Guj)* has upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases holding that only profit element embedded in such purchases can be added to income of the assessee. In the light of the aforesaid

judgment, we set aside the impugned order passed by the Ld. CIT (A) and sustain the addition of 12.5% of the total bogus purchases determined by the AO. We accordingly direct the AO to make addition of 12.5% of the total bogus purchases made by the AO.

In the result, appeal filed by the revenue for assessment year 2011-12 is partly allowed.

Order pronounced in the open court on 2nd November, 2017.

Sd/-

(RAJENDRA)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 02/11/2017

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai