

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

ITA No. 3435/Mum/2014

(A.Y. 2010-11)

The Asst. Commissioner of Income Tax-25(2), Room No. 108, 1 st Floor, Bldg. No.11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra, East Mumbai-400 051	Vs.	M/s Soni & Associates 003, Shiv Ganga Building No.3, Soni Complex, Chincholi Bunder Road, Malad (West), Mumbai-400 064
Appellant	..	Respondent
PAN No. AAAFS4432Q		

CO No. 283/Mum/2017

(Arising in ITA No. 3435/Mum/2014 for A.Y. 2010-11)

M/s Soni & Associates 003, Shiv Ganga Building No.3, Soni Complex, Chincholi Bunder Road, Malad (West), Mumbai-400 064	Vs.	The Asst. Commissioner of Income Tax-25(2), Room No. 108, 1 st Floor, Bldg. No.11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra, East Mumbai-400 051
Appellant	..	Respondent

Revenue by : V Justin, DR

Assessee by : AL Sharma, AR

Date of hearing: 05-04-2018 **Date of pronouncement :** 11-04-2018



ORDER

PER MAHAVIR SINGH, JM:

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-35, Mumbai [in short CIT(A)], in appeal No. CIT(A)-25/ACIT.25(2)/ITA.198/13-14 dated 26.02.2014. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-25(2), Mumbai (in short 'ACIT') for the A.Y. 2010-11 vide order dated 21.03.2013 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO of bogus purchases at Rs. 1,75,76,894/-. For this Revenue has raised the following ground No. 1 to 4: -

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 1,75.76,894/- made u/s 69C of the Act treating the purchases as genuine."

2. On the fact and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in not accepting the assessee's claim though the parties have already accepted in their statement on oath that they have not entered into any business with the assessee before the Sales Tax Department.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not appreciating the fact that alleged bills were not supported by supply of goods and the notice under



section 133(6) issued to parties from whom alleged bills were received were returned undelivered by the postal authorities and the assessee has also failed to produce the panics before the AO."

4. On the fact and in the circumstances of the case and in law, the 14 CIT (A) has erred in deleting the disallowance made by the AO overlooking the explicit finding of the investigation carried out by the Sales Tax Department and corroborated by the enquiries of the AO."

3. Briefly stated facts are that the Income Tax Department received information from sales tax department from Govt. of Maharashtra that some of the parties as appearing in the list of suspicious dealers issuing only bills without delivery of any material for a commission and assessee is one of the beneficiaries. As per the information given by sales tax department Govt. of Maharashtra, the assessee has purchased/ obtained bogus bills from the following parties:

VAT	NAME OF THE PARTY	AMOUNT (₹)
27580551753V	Sun Enterprises	500000
27460624763V	Shraddha trading Co.	1860500
27900588728V	Balaji Trading	10132365
27470616755V	Somnath International	5084029
	Total	17576894

4. The assessee before AO could not produce delivery challan, lorry receipts, the mode of transport of goods, evidence of payments of octoroi, stock registrar etc. for the recording of the bogus purchases from the alleged supplier in respect of its claim that the purchase are genuine. The AO added the entire bogus purchases amounting to Rs. 1,75,76,894/-. Aggrieved, assessee preferred the appeal before CIT(A).



The CIT(A) deleted the disallowance of bogus purchases in entirety by observing in para 5 as under:-

“5. I have gone through the findings of the AO and the contention of the appellant in this regard. The AO has based his findings on the basis of list of suspicious dealers who are supposed to be indulging in issuing only bills without delivering any bills, or materials for commission. The AO has further based his disallowance on the statements and affidavits of the four - parties on the fact that notice u/s.133(6) sent to these parties were returned undelivered. The appellant in turn submitted that the quantity utilization of the different materials, data along with the certificate of the Consulting Engineers and Project Managers have been field. Also the appellant has submitted that not only the bills received from these 4 parties were filed but it has submitted, that these sellers have been collecting VAT from the appellant and all the payment have been made duly by account payee cheques. The appellant has also emphasized on the fact that they have not, claimed any set off in the books of account. The appellant has also given confirmation of these parties indicating their PAN and their IT acknowledgements. On going through the various facts of the case, I am inclined to agree with the appellant that it has given all the evidences available in the books of account and in terms of scrutiny evidence to substantiate that the purchases have been made genuinely and there is no reason



that merely on the basis of suspicion thrown open to scrutiny, the purchases should be disallowed. In the light of the same, the purchase made in this regard are being allowed.”

Aggrieved, now revenue is in second appeal before Tribunal.

5. The learned Sr. DR heavily relied on the assessment order and reasoning's given in the assessment order vide para 4.6 as under:-

“4.6 In view of the facts and findings in the paragraphs mentioned above, it is held that the assessee did not purchase any goods from above mentioned parties. Accordingly, the aggregate of the purchases detailed in para no.4.1 above, totaling 1,75,76,894/-, is treated as unexplained expenditure under section 69C of the Act and added to the returned income of the assessee. In this case, the assessee had shown no income from the projects and had shown only WIP. However, the addition of unexplained expenditure under section 69C was made as the assessee failed to prove that the purchases were made from the above mentioned parties. Penalty proceeding under section 274 r.w.s. 271(l)(c) are separately initiated for concealment of income and also for furnishing of inaccurate particulars of income.”

6. We have gone through the reasoning recorded by the AO for making disallowance and when this was confronted to the learned counsel for the assessee that what promoted the assessee not to produce the all require details, he fairly agreed that the entire details are



**ITA No. 3435/Mum/2014 &
CO No. 283/Mum/2017**

readily available with the assessee but could not be produced due to certain reasons. Hence, the learned Counsel for the assessee only requested for setting aside of this matter to the file of the AO so that the assessee can produce the entire details before the AO, who can decide the issue after examining the issue in entirety.

7. The learned Counsel for the assessee also drew our attention to the cross objection of the assessee, wherein the grounds raised is regarding reducing the working in progress of Rs. 67 lacs on the basis of AY 2009-10, the ground raised is reads as under:-

“1. On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in not disposing the ground of appeal No.2 namely the learned Assessing Officer erred in reworking the dosing work in progress of building, Shiv Darshan by reducing a sum of Rs.67,00,000/- from the total working progress of Rs.2344,44,880/- on the basis of Assessment Year 2009-2010.”

8. Alternatively, the assessee also drew our attention to additional ground raised regarding reduction of work in progress qua bogus purchases which reads as under: -

“1. a) On the facts and in the circumstances of the case and in law without prejudice to our contention that no disallowance of alleged bogus purchases can be made, the appellant submits that the assessing officer erred making addition on account of alleged bogus purchases of Rs. 1,75,76,894/-



**ITA No. 3435/Mum/2014 &
CO No. 283/Mum/2017**

*instead of reducing from the work in progress to
which the said purchases were debited.”*

9. The learned Counsel for the assessee stated that the issue is regarding bogus purchases in revenue's appeal is going back to the file of the AO for fresh adjudication, hence, these two issues also can go back to the file of the AO. The learned Sr. DR has also not objected to remitting this issue to the file of the AO.

10. After hearing both the sides on this issue also and after going through the issue of revenue appeal, we are of the view that the issue of assessee's appeal as well as that of the Revenue both should go back to the file of the AO for fresh consideration. Let the assessee led the evidence in respect of bogus purchases to prove that these are not bogus purchases rather these are genuine and AO will decide accordingly. The AO will also decide this issue of assessee's cross objection regarding reduction of work in progress.

11. In the result, both the CO of assessee as well as the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the open court on 11-04-2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 11-04-2018
Sudip Sarkar /Sr.PS



**ITA No. 3435/Mum/2014 &
CO No. 283/Mum/2017**

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI