

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 898/Mum/2016 (Assessment Year 2009-10)

M/s. Krasny Marine Services Pvt. Ltd. 1201/1202, Great Eastern Summit, Sector 15, Plot 66 Belapur, Navi Mumbai Pin -400 614. PAN : AAACK6125D	Vs.	DCIT 10(3) 473, Aayakar Bhavan M.K. Road Mumbai 400020.
(Appellant)		(Respondent)

Assessee by	Shri Prakash K. Jotwani
Department by	Shri Saurabh Deshpande
Date of Hearing	1.5.2018
Date of Pronouncement	7.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 13.11.2015 passed by Ld CIT(A)-24, Mumbai and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in partially confirming the addition made out of purchases and expenses.

2. We heard the parties and perused the record. The assessee is engaged in the business of repairing and maintenance of navigational equipments. The revenue received information from the Sales tax department of Government of Maharashtra that certain dealers are indulging in providing only accommodation bills without actually supplying materials and upon noticing that the assessee has purchased materials from one of such dealers named M/s Ghatalia Steels to the tune of Rs.11,63,160/-, the AO re-opened the assessment of the year under consideration by issuing notice u/s 148 of the Act. Since the assessee has failed to furnish weighing slips, transporter bills etc., in order to prove that the materials were actually delivered to the assessee, the AO considered the purchases as bogus and accordingly

disallowed the entire purchases of Rs.11,63,160/-. The assessing officer also noticed that the assessee has incurred various expenses aggregating to Rs.43.36 lakhs. Since the expenses were not fully verifiable, the AO disallowed 10% of the expenses amounting to Rs.4,30,589/-.

3. In the appellate proceedings, the Ld CIT(A) restricted the disallowance of purchases to 30% by following the decision rendered by him in AY 2010-11. The Ld CIT(A) also reduced the disallowance made out of expenses to 5%. Still aggrieved, the assessee has filed this appeal.

4. We heard the parties and perused the record. With regard to the purchases made from M/s Ghatalia Steels, the assessee has submitted that the entire materials have been supplied to Coast Guard under the agreement entered by the assessee with that Government Agency. As per the agreement, the quality of materials shall be inspected by the Coast Guard officials and further the assessee is entitled to a margin of 12% of the value of purchases. Accordingly it was submitted that the purchase of materials could not have been doubted, since the same has been supplied to a Government Agency. Accordingly the Ld A.R submitted that there is no justification in making addition to the extent of 30% of the value of purchases. He also submitted that the actual value of purchases was only Rs.10,33,920/- and the balance amount was VAT tax of Rs.1,29,240/-. He submitted that the assessee has debited profit and loss account with Rs.10,33,920/- only.

5. On the contrary, the Ld D.R submitted that the supplier has admitted before the Sales tax authorities that it did not supply materials. He further submitted that the Ld CIT(A) has sustained the addition to the extent of 30% of the value of purchases by following the order passed by him for AY 2010-11. He submitted that the assessee appears to have accepted the order passed by Ld CIT(A).

6. In the reply, the Ld A.R submitted that the facts relating to the addition made in AY 2010-11 is different from the facts prevailing in the instant year.

He submitted that the assessee has supplied the materials to Coast Guard in this year, while in the preceding year, it had undertaken repair works by using the materials.

7. We heard the parties on this issue and perused the record. It is the contention of the assessee that it has supplied the entire materials to Coast Guard authorities under the back to back agreement and the assessee is entitled to a profit of 12% on such purchases. The assessee has also shown before Ld CIT(A) that the quality and quantity of materials supplied to Coast Guard is the same as that purchased from M/s Ghatalia Steels. The Ld A.R also submitted that the quality of materials is inspected by the Coast Guard authorities. All these facts show that the material has been received by the assessee and in turn, they were supplied to Coast Guard authorities. However, the question that arises here is whether the assessee has purchased these materials from M/s Ghatalia Steels or not. As pointed out by the AO, the assessee has failed to show that the materials, in fact, moved from the premises of M/s Ghatlia steels. Hence the presumption could be that the assessee has sourced the materials from some other person and obtained the accommodation bills from M/s Ghatalia Steels. Under these circumstances, there is a possibility that the assessee could have made savings towards taxes and discount. If we consider this issue from this angle, the disallowance of 30% sustained by Ld CIT(A) is very much on the higher side. Accordingly we modify the order passed by Ld CIT(A) and direct the AO to restrict the addition to 8% of the value of purchases of Rs.10,33,920/- and the same would take care of revenue leakages in claiming the above said purchase amount as expenditure. In our view, the same would meet the ends of justice. We order accordingly.

8. The next issue relates to the adhoc disallowance of 10% made out of expenses. The AO disallowed 10% of the expenses on adhoc basis on the reasoning that the entire expenses were not verifiable. The AO restricted the

disallowance to 5% of the net expenses, i.e., expenses after reduction of donation amount already disallowed by the assessee.

9. We heard the parties on this issue and perused the record. We notice that the AO has made the disallowance on adhoc basis, since the expenses claimed by the assessee were not fully verifiable. The Ld CIT(A) has given partial relief to the assessee by restricting the disallowance to 5% of net expenses. Before us, no other material was placed in order to compel us to interfere with the decision rendered by Ld CIT(A) on this issue. Accordingly we uphold the order passed by Ld CIT(A) on this issue.

10. In the result, the appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 7.5.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 7/5/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

PS