

आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं./I.T.A. No.1024/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

The Asst. CIT-27(2) Room No. 420, 4 th Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	M/s. Polyplast & Paper Product, 322/9, Trimurti Housing Society, Hingwala Lane, Ghatkopar (E), Mumbai-400 077
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA EFP 7401 Q		
(Revenue)	:	(Assessee)

आयकर अपील सं./I.T.A. No.1241/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Polyplast & Paper Product, 322/9, Trimurti Housing Society, Hingwala Lane, Ghatkopar (E), Mumbai-400 077	बनाम/ Vs.	The Asst. CIT-27(2) Room No. 420, 4 th Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA EFP 7401 Q		
(Assessee)	:	(Revenue)

Revenue by	:	Shri Y. K. Bhaskar
Assessee by	:	Shri Anuj Kisnadwalla

सुनवाई की तारीख / Date of Hearing	:	07.05.2018
घोषणा की तारीख / Date of Pronouncement	:	11.05.2018

आदेश / ORDER

Per Saktijit Dey, J. M.:

The afore-said cross appeals arise out of order dated 30.12.2015 of the Id. Commissioner of Income Tax (Appeals)-25, Mumbai pertaining to the assessment year 2011-12.

2. The common issue arising for consideration in these appeals pertain to the decision of the Id. Commissioner of Income Tax (Appeals) in deleting/sustaining part of the addition made by the Assessing Officer on account of alleged bogus purchases.

3. Briefly the facts are that the assessee, a company is a wholesale trader in plastic granules, packing bags and tubing rolls. For the assessment year under dispute, the assessee filed its return of income on 05.06.2012, declaring total income of Rs.22,88,580/-.

4. In course of the assessment proceedings, the Assessing Officer wanting to verify the genuineness of the purchases made by the assessee during the year, issued notice u/s. 133(6) of the Act to some of the parties. Calling for copies of ledger accounts of the assessee in their book, the nature of goods sold, along with the sample copies of bills issued, copy of delivery challan for goods, dispatch and transportation bills, copy of bank statement showing receipt of the consideration towards goods sold as well as a copy of the return of income filed for the assessment year under dispute. As observed by the Assessing Officer, the notices issued u/s. 133(6) of the Act were

rejected as unserved by the postal authorities. As stated by the Assessing Officer, when he called upon the assessee to furnish fresh address of the concerned parties and also to produce them along with the supporting documentary evidences to verify the genuineness of the transaction, the assessee submitted that after lapse of more than four years, it has not been able to contact the concerned parties and furnish the other details. However, the assessee submitted that it is maintaining a stock register where the income coming and outgoing materials are entered. For that, it was submitted that the assessee has paid the consideration for purchase of goods through account payee cheque, which have been reflected in the books of account. Further, the purchases were supported by vouchers, invoices. The assessee also furnished quantitative details to demonstrate that the purchases made have ultimately resulted in sales. The Assessing Officer after considering the submissions of the assessee observed that the assessee was unable to produce the parties, as a result of which, identity of the parties and genuineness of the purchases could not be proved. He also observed that the assessee failed to produce delivery challans, transportation bills, etc. and could only furnish the purchase invoices and bank account copy. However, the Assessing Officer accepted the fact that goods in question have been received and entered in the stock register and the corresponding sales have been accounted. Irrespective of that, the Assessing Officer observed that the purchases have not been made from the declared source, but from undisclosed parties in the open market on payment of cash. Thereby, the assessee must have purchased the goods at a lower price on account of

nonpayment of sales tax. He observed to regularize the transaction, the assessee has obtained bill from hawala dealers. Accordingly, he held the purchases to the tune of Rs.44, 33,12,661/-, claimed to have been effected from seven parties as non genuine. Accordingly, he was of the view that peak of the credit standing in the names of such bogus parties, has to be treated as unexplained expenditure u/s. 69C and added to the income of the assessee. In the aforesaid manner, he worked out the addition to be made at Rs.11,68,52,886/-.

5. Further, the Assessing Officer found that the assessee has shown purchases of goods worth Rs.40,67,124/- from M/s. Yash Corporation. However, in response to the notice issued u/s133(6) of the Act, the said party furnished information before the Assessing Officer, as per which the sales effected by the said party to the assessee was to the tune of Rs.31,97,850/-, as against Rs.40,67,124/- shown by the assessee. As the assessee failed to reconcile the difference of Rs.8,69,274/-, the Assessing Officer added back the amount to the income of the assessee.

6. Being aggrieved of the afore-said addition, the assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals).

7. As regards the addition of Rs.11,68,52,886/- made u/s. 69C of the act, the Id. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee in the context of facts and material on record though agreed with the Assessing Officer that the assessee could not conclusively prove the genuineness of

the purchases from the concerned parties. However, at the same time, we found that there is no dispute regarding the fact that the goods were indeed purchased by the assessee and corresponding sales were effected. He found from the observations of the Assessing Officer that what the assessee could have gained by indulging in purchases from undisclosed sources, was only the difference between the price in the open market and in the grey market on account of sales tax, etc. Therefore, the Id. Commissioner of Income Tax (Appeals) opined that only profit element embedded in the transaction could be brought to tax. Noticing that the assessee has disclosed gross profit rate of 1.5% for the year under consideration, he held that the same gross profit rate should also be applied to the bogus purchases for making the addition. Accordingly, he sustained addition of Rs.64,99,690/-, being 1.5% of the alleged bogus purchases. As regards the addition made of Rs.8,69,274/- on account of difference in purchase value of goods purchased from Yash Corporation, the Id. Commissioner of Income Tax (Appeals) sustained the addition, observing that the assessee could not produce any evidence to reconcile the difference.

8. Being aggrieved of the aforesaid decision of the Id. Commissioner of Income Tax (Appeals), both the assessee and the Revenue are in appeal before us.

9. While the assessee is challenging the addition sustained by the Id. Commissioner of Income Tax (Appeals), the department is aggrieved with the partial relief granted by the Id. Commissioner of Income Tax (Appeals) to the assessee.

10. The Id. Authorized Representative submitted that the assessee is a wholesale trader in plastic granules and the profit rate in such kind of business remains within the range of 1 to 1.5%. Furnishing a chart of gross profit disclosed by the assessee, in the preceding as well as subsequent assessment year, the Id. Authorized Representative submitted, the gross profit rate shown by the assessee in the impugned assessment year at 1.16%, favorably compares with the gross profit rate shown in other assessment years. The Id. Authorized Representative submitted that when the assessee has maintained stock register and sales effected have not been disputed, there is no reason to treat the purchases as bogus, because, in the absence of such purchases, the assessee could not have effected the sales. Thus, it was submitted, addition should not have been made only because the assessee was unable to produce the concerned parties before the Assessing Officer.

11. As regards the addition of Rs.8,69,274/- on account of difference in purchases made from M/s. Yash Corporation, the Id. Authorized Representative reiterated the submissions made before the departmental authorities.

12. The Id. Departmental Representative submitted that the assessee has not been able to prove the genuineness of the purchases either by producing the concerned parties or furnishing documentary evidences like delivery challan, transportation bills. The Id. Departmental Representative submitted that in such type of cases, profit is generally estimated in the range of 12.5% to 25%. He submitted that considering the

facts of the present case, the estimation of profit at 12.5% of the bogus purchases will be justified.

13. We have considered rival contentions and perused the materials on record. The undisputed facts are, during the assessment proceedings to verify the genuineness of the purchases made by the assessee, the Assessing Officer had issued notices u/s. 133(6) of the Act to some of the parties and as observed by him, such notices returned unserved by the postal authorities. Thereafter, the Assessing Officer called upon the assessee to produce the concerned parties before him. However, the assessee expressed its inability in producing the concerned parties due to considerable lapse in time. As it appears from the materials on record, thereafter the Assessing Officer did not pursue the issue any further and proceeded to make addition. It is also relevant to observe that the Assessing Officer has accepted the fact that the assessee has maintained regular stock register and the goods purchased have been entered in the stock register and corresponding sales have been accounted for. It is evident that the Assessing Officer has only expressed doubt about the source of purchase. According to the Assessing Officer, the assessee had purchased the goods from grey market, thereby avoiding the payment of sales tax. That being the case, in our considered view, only the profit element embedded in such purchases, alleged to be bogus, has to be added to the income of the assessee. That being the case, the question which arises is what will be the reasonable rate at which the profit of the alleged bogus purchases can be estimated. As could be seen from the comparative chart furnished before us,

out of the total sales made during the year amounting to Rs.58,46,87,084/-, the alleged bogus purchases account for Rs.43,33,72,661/-. Thus, it appears that most of the goods treated as bogus purchases have been sold during the year. However, at the same time, it is a fact on record that the assessee was unable to conclusively prove the source of the purchases either by producing the concerned parties or through documentary evidences like delivery challan, transportation bills, etc. That being the case, the gross profit rate applicable to the normal transactions cannot be applied for estimating the profit on the alleged bogus purchases. After considering the overall facts and circumstances of the present case, we are of the considered view that the addition on account of bogus purchases should be made by applying the rate of 2% on the quantum of alleged bogus purchases. The Assessing Officer is directed to sustain the addition to that extent. The order of the Id. Commissioner of Income Tax (Appeals) stands modified accordingly.

14. As regards the disallowance of Rs.8,69,274/- on account of difference in the quantum of purchases effected from M/s. Yash Corporation, on perusal of the record it is found that neither before the Assessing Officer nor before the Id. Commissioner of Income Tax (Appeals), the assessee was able to reconcile the difference with supporting evidence. The factual position remains same even before us. That being the case, we do not find merit in the ground raised before us in this regard. In view of the above, the grounds raised by the assessee are dismissed and the grounds raised by the Department are partly allowed.

15. In the result, Revenue's appeal is partly allowed and the assessee's appeal is dismissed.

Order pronounced in the open court on 11.05.2018

Sd/-
(N. K. Pradhan)

लेखा सदस्य / Accountant Member

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 11.05.2018

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