

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.4127/Mum/2016 (Assessment Year 2010-11)

ACIT- 2(3)(1), Room No. 552, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Three M Paper Mfg. Co. Pvt. Ltd. E/2, Rajjit Studio, Dada Saheb Phalke Road, Dadar (E), Mumbai-400014. <b>PAN: AA ACT1650J</b>
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Appellant

Respondent

Appellant by : Shri Shri Saurabh Deshpande (DR)

Respondent by : Shri Devendra H. Jain (AR)

Date of Hearing : 14.05.2018

Date of Pronouncement : 23.05.2018

**Order Under Section 254(1) of Income –tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by Revenue under section 253 of the Income-tax Act (the Act) is directed against the order of Id. Commissioner of Income-Tax (Appeals)-6 [Id. CIT(A)], Mumbai dated 31.03.2016 for Assessment Year 2010-11. The Revenue has raised the following grounds of appeal:

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. The order of the CIT (A) is opposed to law and facts of the case.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition on account of bogus purchases to the element of profit embedded in the purchase, without appreciating that the whole of the transaction was bogus.
3. The CIT(A) has concluded that the motive behind obtaining bogus bills thus appears to be inflation of purchase price so as to suppress the true profits. If so whether the CIT(A) erred by not adding entire purchases in total income.
4. In case the purchases are not bogus and only seller is bogus, then whether the CIT(A) has erred in not deciding the issue as per the provisions of section 40A(3).

2. Brief facts of the case are that the assessee is engaged in the business manufacturing of Duplex Board which is used by the packaging Industries and manufacture of Electricity generated from Wind Farm. The assessee filed return of income for Assessment Year 2010-11 on 27.09.2010 declaring total income of Rs. 4,96,69,597/-. Thereafter, assessee revised his return showing total income of Rs. 5,00,21,026/- on 24.07.2011. The assessment was completed on 01.03.2013 under section 143(3). The Assessing Officer while passing the assessment order besides the other additions/ disallowance made the addition of Rs. 47,39,025/- on account of non-genuine purchases. The assessing officer made the addition of 100% of the alleged bogus purchases. On appeal before the Id. CIT(A), the addition was restricted to 12.5% of the alleged bogus purchases. Therefore, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.
3. We have heard the Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the Revenue supported the order of Assessing Officer and submits that Id. CIT(A) erred in restricting the addition on account of bogus purchases to the element of profit embedded in such purchases. The Id. CIT(A) has not appreciated the fact that whole of the transaction of purchases from two parties identified by assessee were bogus. The assessee could not substantiate the genuineness

of the purchases before the Assessing Officer. The parties from whom the assessee has shown purchases were involved only in issuing the bogus bills without delivery of goods. On the other hand, the Id. AR of the assessee submitted that the order of Id. CIT(A), the Id. AR of the assessee submits that during the relevant Financial Year, the assessee purchases various raw-material including waste paper for manufacturing the duplex board from various parties amounting to Rs. 35,75,33,918/-. The assessee purchased waste paper from M/s Bhumi Sales Corporation and M/s. Mayur Paper amount to Rs. 47,39,025/-. The Assessing Officer identified these two parties as bogus parties on the basis of information available on the website of Sales Tax Department, Government of Maharashtra. The assessee explained the fact before the Assessing Officer and substantiated the genuineness of the purchases. The assessee has contended that purchases were reflected in Inward Register and payments were made through banking channel. The assessee also contended that though there is no delivery challan, the bills are duly supported by weigh bridge bills (of waste paper delivered) and lab reports. The Assessing Officer disallowed the aggregate of the purchases from both the parties. The Id. CIT(A) restricted the addition to the extent of 12.5% of the impugned/bogus purchases on the basis of the profit element embedded in such purchases from these two parties. The Id. AR of the assessee prayed for dismissal of the appeal.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that during the assessment proceedings the Assessing Officer asked the assessee to provide the list of parties from purchases were shown. The assessing officer on the basis of information received from the Sales Tax Department's official website asking the assessee to produce bills of all purchases. The assessee furnished the details of various bills. The Assessing Officer on verification of all the payments noted that the bills of purchases except M/s Bhumi Sales Corporation and M/s. Mayur Paper had delivery challan attached to them. The assessee was asked to explain. The assessee contended that the purchases have been reflected in Inward Register and the payments were made through account payee cheque, therefore, the purchases cannot be treated as bogus. The assessee further contended that the bills are supported by Weigh Bridge Bills about the delivery. The contention of the assessee was not accepted by Assessing Officer. The Assessing Officer concluded that assessee failed to produce the actual transaction from these two entities. The Assessing Officer disallowed the entire purchases from these two parties aggregating to Rs. 47,39,025/-.

5. The assessee urged the similar contention before the Id. CIT(A). In addition, the assessee further contended that the Assessing Officer has not brought anything on record to prove that payment made to those parties came back to the assessee. The assessee has furnished party-wise details of

purchases, sales including copy of purchase bills, weightment ships, laboratory reports, bank statements, etc. The assessee further urged that such evidence have not been countered by Assessing Officer in his order. The Id. CIT(A) after considering the contentions of the assessee observed that the qualitative details were maintained by assessee. The Assessing Officer has not doubted the genuineness of sales and that could not have been gone ahead to make the addition in respect of entire purchases, when he himself accepted the purchases from other parties. The Id. CIT(A) on the basis of decision of Hon'ble Gujarat High Court in case of Bholanath Poly Fab Pvt. Ltd. 355 ITR 209(Guj) , wherein it was held that whether purchases themselves are bogus or whether parties from whom purchases were made were bogus, is essentially a question of fact and that the entire amount covered under such purchases would not be subject to tax and only profit element embedded therein was to be taxed.

6. The Id. CIT(A) also examined the Gross Profit ratio declared by the assessee in different Assessment Years and noted the variations in the Gross Profit declared by the assessee. Considering the decision of Gujarat High Court in case of CIT vs Simit Sheth [2013] 38 taxmann.com 385 (Guj.) restricted the addition to the profit element embedded in such alleged bogus purchases. We have noted that the Id. CIT(A) passed the impugned order after considering the various evidences furnished by assessee on record. No contrary material or decision is brought to our notice to take a

contrary view. Therefore, we do not find any merit in the ground of appeal raised by Revenue.

7. In the result, appeal filed by Revenue is dismissed.

Order pronounced in the open court on 23.05.2018.

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 23.05.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**