



IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.511/Mum/2016

(Assessment Year :2009-10)

The Dy. Commissioner of Income Tax – 14(1)(2) Room No.470, 4 th Floor Aayakar Bhavan Maharshikarve Road Mumbai – 400 020	Vs.	M/s. Bright Power Projects (India) Pvt. Ltd., 3B, 32, Corporate Avenue Mahal Industrial Estate Near Paper Box Off. Mahakali Caves Road Mumbai -400 093
PAN/GIR No.		AAACB1943Q
Appellant)	..	Respondent)

ITA No.719/Mum/2016

(Assessment Year :2009-10)

M/s. Bright Power Projects (India) Pvt. Ltd., 3B, 32, Corporate Avenue Mahal Industrial Estate Near Paper Box Off. Mahakali Caves Road Mumbai -400 093	Vs.	The Asst.. Commissioner of Income Tax – 14(1)(2) Mumbai – 400 020
PAN/GIR No. AACB1943Q		
Appellant)	..	Respondent)
Revenue by		Shri Rajat Mittal
Assessee by		Shri Rakesh Joshi
Date of Hearing		07/06/2018
Date of Pronouncement		19/06/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are cross appeals filed by Revenue and assessee against the order of CIT(A)-22, Mumbai dated 17/11/2015 for A.Y.2009-10 in the matter of order passed u/s.143(3) rws 147 of the IT Act.

2. Common grievance of assessee and Revenue relates to addition made on account of bogus purchases. Assessee is also aggrieved for reopening of assessment.
3. Rival contentions have been heard and record perused.
4. The brief facts of the case are that the Sales Tax Authorities of Mumbai had carried out an investigation in those cases where there were defaults of VAT set off credits. During the course of investigation it was found that there were certain parties who were engaged in the business of issuing bills as per the requirement of the customer, no goods were transacted in these transactions and only bills were issued as per demand and requirement of the customer. These parties were surveyed by the Sales Tax Authorities and statements of the authorized persons were recorded. These persons had stated during interrogation that they had not supplied any material to their customers and had issued bills as per the desire and requirement of the customers. This information was passed on by the Sales Tax Authorities to the Investigation Wing of Income Tax Dept., Mumbai which in turn had segregated the A.O. wise information and had forwarded the same for necessary action. In the instant case, information of persons claimed to be assessee's suppliers was received from the Maharashtra Sales tax department indicating that purchases shown to have been made by the assessee from seven parties were not genuine. After having observation at page 2 para 4, AO

estimated gross profit of 17.74% on the alleged purchases of Rs.1,11,50,980/- and added the same in assessee's income.

5. By the impugned order, CIT(A) has upheld the reopening and estimated profit of 12.5% by relying on the decision of the Gujarat High Court in case of Simit P Sheth 256 ITR 451. Against the above order of CIT(A), both assessee and Revenue are in appeal before us.

6. It was argued by learned AR that assessee has filed all the documentary evidence before the lower authorities to prove the genuineness of purchases. He further contended that gross profit shown by the assessee during the year was 17.74%, therefore, making further addition by disallowing bogus purchases at 12.50% was not justified. He further contended that the GP shown by the assessee in respect of regular purchases vis-à-vis alleged purchases were same and that it is not the case of the Department that assessee had shown lower GP in respect of the sales made out of goods purchased from alleged bogus suppliers.

7. Learned AR further submitted that Id.CIT(A) by relying on the decision of Gujarat High Court in the case of CIT Vs. Simit Sheth (2013) [38 taxmann.com 385 (Guj. HC)] had held that 12.5% of the alleged bogus purchases shall be disallowed.

8. It was also submitted that the facts of instant case is distinguishable from the facts of decisions relied upon by the Id. CIT(A) as under:

With respect to the decision of CIT vs. Simit Sheth, it was argued that:

- *The judgment in the case of Simit Sheth is relevant to assessment year AY 2006-07 whereas the appellant's case pertains to AY 2010-11.*
- *Simit Sheth was carrying out his business operation in state of Gujarat whereas the present appellant is operating in South Mumbai, Maharashtra where competition is very high.*
- *In the case of M/s. Simit Sheth, the suppliers made their statements on oath to the effect that they had not supplied the steel to the assessee but in the case of the appellant company no such statement was given by the supplier.*
- *The AO had rejected the books of account in that case. However, in the case of appellant, the Id. AO has not rejected the books of accounts.*
- *Also, it is also not clear whether Simit Sheth was a stockist or not.*

9. Our attention was also invited to the copy of decision in case of Suman Gupta in ITA No.4774/Mum/2014 order dated 23/08/2017, wherein under similar facts and circumstances disallowance to the extent of 2% of the alleged bogus purchases was upheld.

10. Reliance was also placed on the following decisions in support of the contention that simply based on the information from Sales Tax department, AO cannot make addition without making further investigation to substantiate his allegation of bogus purchase. In all the said case law, It has been held that if assessee has provided quantitative details and if sales are not doubted by AO, then addition cannot be sustained only because of non-appearance of supplier before the AO.

- M/s. Imperial Imp & Exp vs. ITO (ITA No.5427/Mum/2015)[Mum.ITAT]
- ACIT vs. Mahesh K Shah (ITA No.5194/Mum/2014)[Mum ITAT]
- Rajesh P Soni vs. ACIT [100 TTJ 892](2006)(Ahd. Trib)

- CIT vs. Nikunj Eximp Enterprises (P) Ltd., (35 Taxmann.com 384) (Bom.)
- Ramesh Kumar & Co., vs. ACIT (ITA No.2959/ Mum/2014) (Mum.ITAT)
- Hiralal Chunilal Jain vs. ITO (ITA No.4547/Mum/2014) (Mum.ITAT)
- DCIT vs. Rajeev G. Kalathil (67 SOT 52)(Mum.ITAT)
- ITO vs. Paresh Arvind Gandhi (ITA No.5706/Mum/2013)(Mum.ITAT)

11. On the other hand, learned DR relied on the order of the AO and contended that he has very reasonably made addition by estimating profit at 17.74%.

12. We have considered rival contentions and carefully gone through the orders of the authorities below. We have also gone through the judicial pronouncements cited before us as well as relied on by lower authorities in their respective orders. From the record, we found that assessee is engaged in the business of electric contractor. On the basis of information from Sales Tax department, AO reopened the assessment. Before the AO, assessee had submitted quantitative details of material purchased and corresponding sales details. It was also submitted that payments were made by way of account paying cheques. The bank statements highlighting the payments so made were also submitted to the Id. AO. With regard to transportation documents, it was submitted that assessee does not take inventory nor handle logistics and follow Just In Time (JIT) Methodology. However, AO did not agree with assessee's contention and added 17.74% of alleged purchase in assessee's income.

13. By the impugned order, CIT(A) confirmed the addition to the extent of 12.50% of alleged bogus purchases after relying on the decision of Gujarat High Court in the case of Simit P Sheth. We found that place of assessee's business and year under consideration were different and as such gross profit margin in this case cannot be used for comparison purposes. Therefore, the ratio of these decisions cannot be applied to the facts of instant case. After going through the judgment of Simit Sheth we found that it is pertaining to A.Y.2006-07 whereas assessee's case pertains to A.Y.2009-10. Simit Sheth was carrying on his business in the State of Gujarat whereas the present assessee is operating in South Mumbai, Maharashtra where competition is very high. We also observe that in the case of Simit Sheth suppliers made their statement on oath to the effect that they did not supply the steel to the assessee but in the case of the assessee company, no such statement was given by the suppliers. In the present case, books of accounts have not been rejected by the AO where as in the case of Simith Sheth books of accounts were rejected by the AO. We had also carefully gone through the judicial pronouncements of co-ordinate Benches referred by learned AR and also found that assessee had shown gross profit of 17.74% on the goods so purchased. The gross profit shown in respect of such alleged bogus purchases vis-à-vis other purchases were same. Keeping in view totality of facts and circumstances of the case, when the assessee himself has declared GP of 17.74% and the GP declined in respect of alleged bogus

purchases was not lower than the normal GP, there is no justification for making further addition of 12.5%. However, keeping in view the totality of facts and circumstances of the case vis-à-vis observation of the AO we direct the AO to restrict the addition to the extent of 2% of such alleged bogus purchases. We direct accordingly.

13. In the result, appeal of Revenue is dismissed whereas appeal of assessee is allowed in part.

Order pronounced in the open court on this 19/06/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 19/06/2018

Karuna Sr.PS

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai