

आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष
Before Shri Joginder Singh, Judicial Member,**

**ITA No.5203/Mum/2017
Assessment Year: 2009-10**

M/s. Cassette World India Private Limited, 343, Raajesh Building, Opp. Lamington Road Police Station, Lamington Road, Mumbai-400007	बनाम/ Vs.	Income Tax Officer-5(1)(3) Aayakar Bhavan, M. K. Road, Mumbai-40020
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No. AABCC5731L		

निर्धारिती की ओर से / Assessee by	Shri Pradeep Sharma
राजस्व की ओर से / Revenue by	Shri Ram Tiwari-DR

सुनवाई की तारीख / Date of Hearing	08/06/2018
आदेश की तारीख / Date of Order:	08/06/2018

आदेश / O R D E R

The assessee is aggrieved by the impugned order dated 28/06/2016 of the First Appellate Authority, Mumbai, sustaining the addition of Rs.4,37,010/- @ 12.5% of the alleged bogus purchases of Rs.34,96,076/-.

2. During hearing, the ld. counsel for the assessee, Shri Pradeep Sharma, contended that necessary details for purchases made from three parties were filed by the assessee for which our attention was invited to the assessment order. My attention was invited to para 4.1 of the assessment order, wherein it has been categorically mentioned that the assessee submitted the addresses of the parties, copies of purchase bills, copies of ledger account of the parties. My attention was further invited to page-35 of the paper book, wherein, registration of M/s Ankita Impex was canceled by the Sales Tax Department with effect from 14/08/2006 which was challenged before the Hon'ble Bombay High Court, wherein, the matter was set-aside to the file of the Maharashtra Sales Tax Tribunal. The crux of the argument is that even M/s Ankita Impex was a genuine party. It as empathetically claimed that the purchases made from these parties are

genuine, therefore, the addition may be deleted. On the other hand, Shri Ram Tiwari, ld. DR strongly defended the addition by contending that even if it is presumed that the purchases are genuine the assessee may be directed to produce these parties before the Ld. Assessing Officer and also to file confirmation from these parties.

2.1. I have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is engaged as a dealer in computers, telephones and accessories, filed original return declaring income of Rs.22,53,650/- was filed by the assessee on 07/07/2019, which was processed on 16/12/2010 accepting the return income. Subsequently, the assessment was reopened with the issuance of notice under section 148 of the Act. The assessee filed the return on 04/02/2014. Notice under section 143(2) and 142(1) of the Act were served upon the assessee to which the assessee attended the proceedings. As per the Revenue, an intimation was received from the office of the commissioner that the assessee has made bogus purchases amounting to Rs.34,97,726/- from M/s Sandesh Sales Pvt. Ltd., M/s Kalpataru Trading Company, M/s Umiya

Sales Agency Pvt. Ltd. & M/s Ankita Impex. The assessee was asked to submit the necessary details of such purchases, proof of payment made to the parties, delivery details of purchase, vehicles numbers, transportations bills, proof of transportation charges, etc with respect to the purchases claim to have made from these parties along with the stock register. The assessee submitted the addresses of the parties, purchase bills, copy of the ledger account of the parties except M/s Kalpataru Trading Company. Due to non-filing of confirmation from the parties and return of notices issued under section 133(6) as unserved from M/s Sandesh Sales Pvt. Ltd. & M/s Umiya Sales Agency Pvt. Ltd., the purchases were treated as non-genuine and consequently, the addition was made under section 69C of the Act. There is no dispute to the fact that part details were filed by the assessee along with the addresses. The registration of M/s Ankita Sales was cancelled by the Sales Tax Department which was directed to be examined by the Maharashtra Sales Tax Tribunal as directed by the Hon'ble High Court. The Hon'ble jurisdictional High Court in CIT vs Nikunj Exim Enterprises Pvt. Ltd. (2015) 372 ITR 619 (Bom.) held/observed as under:-

“7. We have considered the submission on behalf of the Revenue. However, from the order of the Tribunal dated April 30, 2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement, i.e., reconciliation statement but also in view of the other facts. The Tribunal records that the books of account of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department, i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the Commissioner of Income-tax (Appeals), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated April 30, 2010, of the Tribunal.”

Considering the totality of fact and the ratio laid down by Hon'ble jurisdictional High Court in the aforesaid case, we direct the assessee to produce the parties before the Ld. Assessing Officer so that the genuineness of the purchases can be examined by him. Even as per mandate of Article-265

of Constitution of India, only due taxes has to be levied and collected. The assessee is also directed to furnish the necessary details in support of its claim. The assessee be given opportunity of being heard. Thus, the appeal of the assessee is allowed for statistical purposes only.

Finally, the appeal of the assessee is allowed for statistical purposes only.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 08/06/2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : **08/06/2018**

Shekhar, P.S/निजी सचिव

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT, Mumbai.
4. आयकर आयुक्त / CIT- , Mumbai
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