

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3219/M/2017
Assessment Year: 2012-13**

Income Tax Officer 4(1)(4), 6 th Floor, Room No.637-A, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s. Enrich RD Infraprojects Pvt. Ltd., 30, Gopal Bhavan, 2 nd Floor, 199, Princess Street, Mumbai-400 002 PAN: AADCR 7020F
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri Suman Kumar, D.R.

Date of Hearing : 26.07.2018
Date of Pronouncement : 06.08.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 29.04.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue is against the deletion of addition of Rs.1,26,85,525/- being 8% of the total gross receipts during the year without appreciating the fact that the AO has pointed out specific defect in the books of accounts of the assessee wherein bogus purchases from two parties were made and only thereafter applied the said rate.

3. At the outset, the Ld. Counsel of the assessee pointed out that the identical issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case in ITA No.3190/M/2017 for A.Y. 2010-11 wherein the co-ordinate bench of the Tribunal has taken a view that income of the assessee should be estimated in respect of bogus purchases by applying the GP @ 12.5%. The Ld. A.R. submitted that the present addition as made by the AO by making the estimation of 8% of the gross turnover should be deleted in view of the said order of the co-ordinate bench of the Tribunal and income qua the bogus purchases should be estimated by applying 12.5%.

4. The Ld. D.R. relied on the order of Ld. CIT(A) and opposed the arguments of the Ld. Counsel.

5. Having heard the rival submissions and perusing the material on record, we observe that identical issue has been decided by the co-ordinate bench of the Tribunal in ITA No.3190/M/2017 for A.Y. 2010-11 wherein the co-ordinate bench has decided the issue as under:

"7. We have carefully heard the rival contentions and perused relevant material on record. So far as rejection of books of accounts and estimation of income @8% is concerned, we find the stand of Ld. CIT(A) quite logical one since the accounts of the assessee were duly audited u/s 44AB of the Income Tax Act and Audit Report in Form 3CA was available on record. Further, the assessee produced relevant registers & statements etc. during remand proceedings. Therefore, the rejection of books was not justified. Moreover, there was no basis to adopt net profit rate of 8% by Ld. AO. Extending the same logic to income being reflected by the assessee from trading division, the disallowance of loss of Rs.15.15 Lacs as computed by Ld. AO was also not justified without there being any material on record to controvert the financial results reflected by the assessee. Resultantly, Ground No.1 of revenue's appeal stands dismissed.

8. So far as the addition against alleged bogus purchases is concerned, we find strength in the argument of the revenue that the assessee miserably failed to substantiate the purchases and mere payment through banking channels was not sufficient to prove the genuineness of the purchases particularly when notices issued u/s 133(6) elicited no response and the assessee could not produce any of the supplier to confirm the transaction. The onus casted upon assessee, in this regard, in our opinion, has remained unsubstantiated. From the order of first appellate authority, we note that the supplier namely Uttam Engineering denied having made any transaction with the assessee company since the name of the assessee was changed consequent to merger with another entity. However, the assessee, in the remand proceedings, filed purchase bills, account balance confirmation, bank statement etc. from the said supplier to substantiate the same. Hence, upon factual matrix, the argument advanced by Ld. AR, in this regard, is plausible one and addition to that extent deserves to be deleted. However, on the balance alleged bogus purchases of Rs.16,39,801/- made by assessee from remaining two parties, we estimate addition @12.5% which comes to Rs.2,04,975/- . Resultantly, Ground No. 2 stands partly allowed. Ground No. 3 is supporting ground whereas Ground No. 4 is general in nature and hence, do not require further elaborations.

9. Finally, the revenue's appeal stands partly allowed in terms of our above order.”

6. We, therefore, respectfully following the decision of co-ordinate Bench as above, direct the AO to delete the addition of Rs.1,26,85,525/- and instead make addition @ 12.5% on the amount of total bogus purchases.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.08.2018.

**Sd/-
(Joginder Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 06.08.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.