

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1722/MUM/2017  
Assessment Year: 2011-12**

M/s. Core Energy Systems Private Limited, Plot-X-16, Prathamesh Vyapari Sankul, Behind Kamat Hospital, MIDC, Dombivli-421 203.	Vs.	ACIT-Circle -1, Kalyan.
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**PAN No. AACCC 4753 F**

**Appellant**

**Respondent**

Assessee by : Mr. Krunal Tate, AR  
Revenue by : Mr. Abi Rama Kartikeyan, DR

Date of Hearing : 21/08/2018  
Date of pronouncement: 31/08/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2 [in short 'CIT(A)'], Thane and arises out of the assessment order u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

"1. On the facts and circumstances of the case and in law, the AO has erred in law and in facts in alleging that the purchases are non- genuine based on statements given by third parties before the Sales tax Department and without bringing on record any independent and reliable evidence.

2. Further, the AO has erred in making addition of Rs. 36,73,2177-pertaining to alleged bogus purchase without providing an opportunity to cross examine the evidence received from the Sales Tax Department and has thereby violated the principles of natural justice.

3. Without prejudice to the above ground, the AO has erred in law and in facts in alleging that the appellant company has made bogus purchases by completely ignoring various information and documentary evidence such as purchase invoice submitted in support of the alleged non genuine purchase transactions.

4. Without prejudice to the above ground, on facts and circumstances of the case and in law, the A.O. has erred in making addition of the entire alleged bogus purchase of Rs. 36,73,2177- and not restricting it to the extent of gross profit embedded in the alleged bogus purchase transaction that is 34,85%.”

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) received information from the Sales tax Deptt. , Govt. of Maharashtra that the appellant had obtained bogus purchase bills from the following three entry providers :-

Sr.No.	Name of party	TIN	Amount (Rs.)
1.	Nimesh Steels Pvt.Ltd.	27180686997V	460325
2.	Ridhi Sales Corpn.	273440725515V	1834119
3.	Naina Multitrade Pvt.Ltd.	27520731818V	1378773
	<b>TOTAL</b>		<b>3673217</b>

During the course of assessment proceedings, the AO asked the appellant to produce details in respect of purchases made from the above mentioned parties. The AO noted that the said transactions were not properly supported by relevant documents such as transportation bills, delivery challans, goods received notes, octroi receipts etc. During the course of assessment proceedings, the statement of Shri Nagesh Narayan Basarkar, director of M/s. Core Energy Systems Pvt. Ltd. (the assessee company) was recorded u/s. 131(1) of the Act. Thereafter, the AO issued notice u/s. 133(6) to the above three parties asking them to produce details of transactions they had with the assessee. One notice remained

unserved and from the remaining two, no reply was received till the date of assessment on 10<sup>th</sup> March, 2015. In view of the above facts, the AO came to a finding that the said purchases as claimed by the assessee from M/s. Nimesh Steels Pvt.Ltd., M/s. Ridhi Sales Corpn. and M/s. Naina Multitrade Pvt.Ltd. were on account of unsubstantiated bills and these bills were obtained by the assessee from the above entry providers to inflate its purchases, as a result of which, the income of the assessee for the year under consideration has been understated to the extent of Rs.36,73,217/-. Therefore, the AO made an addition of Rs.36,73,217/- to the income disclosed by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). During the course of appellate proceedings, the Id. CIT(A) noticed that the GP rate, during the year under consideration, has gone down to 34.85% as against 42.19% shown in AY 2014-15, for which the assessee could not offer any valid explanation. The Id. CIT(A) thus arrived at a finding that the appellant has suppressed the Gross Profit by 7.34% (42.19% - 34.85%). The quantum of gross profit is thus worked out to Rs.59,15,213/- ( $\text{Rs.8,05,40,841} \times 42.19 / 100 = \text{Rs.3,39,80,180}$  less GP declared of Rs.2,80,64,967/-). Also the Id. CIT(A) observed that the appellant was able to have a GP @ 39.13% in immediate next year and 42.19% in AY 2014-15, from same business, by same management as against 34.85% declared in the impugned assessment year. As the quantum of suppressed GP of Rs.59,15,213/- is more than the amount of bogus purchases of Rs.36,73,217/-, the Id. CIT(A) sustained the disallowance made by the AO.

5. Before us, the ld, Counsel of the assessee submits that the ld. CIT(A) has erred in confirming the purchases of Rs.36,73,217/- without appreciating the facts that the AO made the above addition pertaining to alleged bogus purchases without providing as opportunity to cross examine the evidence received from the sales tax Department and thus violated the principles of natural justice. It is stated that the ld. CIT(A) ignored various information and documentary evidence such as purchase invoice filed by the assessee before the AO. Therefore, the ld. counsel submits that the order of the ld. CIT(A) confirming the order of the AO making addition of Rs.36,73,217/- be set aside.

6. On the other hand the ld. DR submits that the letters issued by the AO u/s. 133(6) could not elicit any information from the said parties. One notice returned unserved and from the remaining two, no reply was received by the AO till the date of order on 10<sup>th</sup> March, 2015. The ld. DR further submits that in the instant case the quantum of suppressed GP is more than the amount of bogus purchase disallowed. Since the suppressed GP of Rs.59,15,213/- is more than the bogus purchases of Rs.36,73,217/-, it is submitted that the ld. CIT(A) has rightly confirmed the disallowance of Rs.36,73,217/-.

7. We have heard the rival submissions and peruse the relevant materials on record. In the instant case, the notices were issued by the AO u/s. 133(6) of the Act. One notice returned unserved and from the remaining two no reply was received by the AO. The AO had issued these notices in the address given by the assessee. Also we find that the AO does not dispute the sales made by the assessee. In such a context, only the profit embedded in such bogus purchases has to be estimated and brought

to tax. In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

That being the position, we set aside the order of the Ld. CIT(A) and direct the AO to estimate the profit @ 12.5% on the disputed purchases of Rs.36,73,217/- and bring to tax Rs.4,59,150/- in place of Rs.36,73,217/- done by him.

8. In the result the appeal is partly allowed.

**Order pronounced in the open Court on 31/08/2018**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/08/2018

Jv., Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai.**