

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos.3257 and 3258/Ahd/2015
(Assessment Years : 2009-10 & 2010-11)

Jyoti Pipes Pvt.Ltd.
98, Shrinath Nagar
Ghatlodiya,Ahmedabad-380 061
[PAN No. AAACJ9235 H]
(Appellant)

The ITO
Vs. Pratyaksh Kar Bhavan
Ambawadi, Ahmedabad
.. (Respondent)

Appellant by : Shri S.N. Divatia, AR
Respondent by : Shri Saurabh Singh, Sr.DR

Date of Hearing : 19/06/2018
Date of Pronouncement : 17/09/2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeals have been filed before us by the assessee against the separate orders on identical issue dated 10.09.2015 passed by the Commissioner of Income Tax(Appeals)-2, Ahmedabad [Ld.CIT(A) in short] for Assessment Years (AYs) 2009-10 and 2010-11 arising out of the orders dated 30.09.2014 passed by the ITO, Ward-4(2), Ahmedabad.

2. The two matters are inter-connected and therefore for the sake of brevity, the same are heard analogously and are disposed of by a common judgement.

ITA No.3257/Ahd/2015 for AY 2009-10

3. The assessee has raised the following grounds of appeal:

- 1.1. *The order passed u/s.250 on 10.09.2015 for A.Y. 2009-10 by CIT(A)-2, Abad upholding the addition of ₹2,37,183/- as bogus purchases made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2. *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.*
- 2.1. *The Ld. CIT(A) has grievously erred in law and on facts in confirming the addition towards the purchases of ₹ 2,37,183/- from M/s.Siddhivinayak Steel as bogus purchase.*
- 2.2. *That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld addition towards the purchases of ₹2,37,183/- from M/s.Siddhivinayak Steel as bogus purchases. There was no material except the statement of the said party before sales tax authorities to treat the said purchases as bogus.*
- 3.1. *The Ld. CIT(A) has failed to appreciate that the notice u/s.148 issued by AO was illegal and unlawful so that the entire proceedings and the impugned orders were liable to be quashed.*

It is, therefore, prayed that the addition of ₹.2,37,183/- upheld by the CIT(A) may kindly be deleted.

4. The brief facts of the case is that the assessee is engaged in the business of trading of pipes and other material. Assessee filed its return of income on 30.09.2009 declaring income of Rs.2,39,700/-. On the basis of the information received from the Dy.CST (Inst.)-4, Investigation Division-B, Mumbai that one M/s.Sidhi vinayak Steel was indulging in issuing of bills without actual transaction of goods for commission where assessee company was one of the beneficiaries of purchase of goods through such bogus billing amounting to Rs.2,37,183/-. The case was reopened u/s.147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by issuing notice u/s.148 on 04.09.2013. The assessee company requested for reasons to be provided for reopening of the case whereupon it was informed that only after filing of return of income in response to notice u/s.148 of the Act, the same could be supplied to the assessee. Thereafter, number of

notices were served upon the assessee to that effect u/s.142(1) and ultimately the return of income filed originally on 30.09.2009 was requested to be treated to have been filed by the assessee in response to the notice u/s.148 of the Act. Written submission dated 10.03.2014 was placed by the assessee with the plea that it has documentary proof in support of purchase of goods from the said Sidhhi Vinayak Steel. Further that, the assessee raised objection against the issuance of notice u/s.148 of the Act for the assessment year 2009-10 which was disposed of by passing an order by the Ld.Assessing Officer. Ultimately, the AO was not satisfied with the contention made by the assessee in regard to the genuineness of the transaction and the purchase claimed by the assessee from Siddhi Vinayak Steel from Mumbai for Rs.2,37,183/- has been treated as bogus purchase in the FY 2008-09 relevant to the AY 2009-10 and added the same to the income of the assessee.

5. In appeal, the Ld. CIT(A) confirmed the order of addition passed by the AO and hence the instant appeal before us.

6. At the time of hearing of the appeal, the Ld. AR submitted before us that the assessee has made all endeavour to establish the genuineness of the transaction before the Ld. AO supported by documents like Bills, Road Pass issued by the Commercial Tax \officer, the Bills showing weight of goods as well. Further that, the entire transaction has been made by Account Payee cheques. In that view of the matter, the addition made by the AO is not justiciable, further confirmation of the same by the first appellate authority in the absence of any evidence against the assessee is bad in law and liable to be set aside.

7. On the other hand, the Ld. DR relied upon the orders passed by the authorities below.

7. We have heard the Ld. Representatives of the respective parties. We have perused the relevant materials available on record. It appears from the records that on 11.03.2014, show-cause notice was issued to the assessee for disallowance of purchase of Rs.2,37,183/- made from M/s.Siddhi Vinayak Steel during Financial Year 2009-10. In response thereof copies of bills of purchases, bank statement relating to payments made and ledger account of the said company of Mumbai were submitted by the assessee which were claimed to be genuine. Those payments were made by cheques. Consequently, in order to verify the genuineness notice u/s.133(6) of the Act was issued to M/s.Siddhi Vinayak Steel on 20.08.2014 with the following statement:

“To verify the claim of assessee company that the purchases made from M/s.Diddhi Vinayak Steel were genuine, a notice u/s.133(6) of the Act was issued on 20.08.2014 to M/s.Siddhi Vinayak Steel. It is pertinent to mention that this office has not received any reply from M/s.Siddhi Vinayak Steels till date. When no reply was received from M/s.Siddhi Vinayak Steel, a final show cause notice dated 09.09.2014 was issued, which is reproduced as under:

“On verification of the details submitted, your company has shown purchase from the following party during the period from 01.04.2008 to 31.03.2009.

<i>Sr.</i>	<i>Name of the party</i>	<i>Rs.</i>
<i>1.</i>	<i>Siddhi Vinayak Steel</i>	<i>237183</i>

This office has issued notice u/s.133(6) of the Act to confirm the claim of expenses made by your company on account of purchase of Rs.237183/- from Siddhi Vinayak Steel during the period under consideration. But the above mentioned party has failed to confirm the transaction made with your company. Therefore, the purchases to the tune of Rs.237183/- remain unverified. It is requested to produce above party in person along with its books of account for the relevant period for verification on 11.09.2014 at 3:00PM.

In absence of such it is requested to show cause as to why the purchase from Siddhi Vinayak Steel of Rs.237183/- should not be considered as unverified and bogus purchase in nature and addition of Rs.237183/- why should not be made by treat the same as bogus purchase for the period under consideration.”

8. It also appears from the records that the assessee filed its reply dated 23.09.2014 in response to the notice dated 17.9.2014 controverting the allegation of bogus purchases of Rs.2,37,183/- from Siddhi Vinayak Steel during AY 2009-10. The assessee further contended that for many years the company did not have any business relation with the Siddhi Vinayak Steel and the said parties was known to it only for business purposes. It was contended that payments were made by cheque. But at the end of the day the purchased claimed to have been made from M/s.Siddhi Vnayak Steels remains unverified in the absence of the concerned party. Though in the reply dated 10.03.2014, the assessee claimed the Road pass had been submitted but no such copy of Road pass was in fact produced before the authorities below as observed by the Ld. CIT(A).

8.1. The contention made by the AO has not been rebutted by the assessee by submitted cogent documents/evidences or by producing the party in question to prove the genuineness of the transaction. Neither the assessee gave any detail of corresponding sales made by the appellant with respect to the purchases of the goods from the said supplier showing consumption of items purchased from the supplier during production of the finished goods for sale.

9.1 Keeping in view the entire aspect of the matter, the purchase, sales, documents in support of that as also the conduct of the assessee, we find it proper to sustain addition of 25% of the sales amounting to Rs.59,296/- towards possibility of inflation is cost of purchases.

10. In the result, the appeal of the assessee in ITA No.3257/Ahd/2015 for AY 2009-10 is partly allowed.

ITA No.3258/Ahd/2015 for AY 2010-11

11. The assessee raised the following grounds of appeal:

- 1.1. *The order passed u/s.250 on 10.09.2015 for A.Y. 2010-11 by CIT(A)-2, Abad upholding the addition of ₹2,28,734/- as bogus purchases made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2. *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.*
- 2.1. *The Ld. CIT(A) has grievously erred in law and on facts in confirming the addition towards the purchases of ₹ 2,28,734/- from M/s. Suraj Tube Corporation as bogus purchase.*
- 2.2. *That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld addition towards the purchases of ₹2,28,734/- from M/s. Suraj Tube Corporation as bogus purchases. There was no material except the statement of the said party before sales tax authorities to treat the said purchases as bogus.*
- 3.1. *The Ld. CIT(A) has failed to appreciate that the notice u/s.148 issued by AO was illegal and unlawful so that the entire proceedings and the impugned orders were liable to be quashed.*

It is, therefore, prayed that the addition of ₹.2,28,734/- upheld by the CIT(A) may kindly be deleted.

12. The case is identical to that of the matter in ITA No.3257/Ahd/2015 for AY 2009-10 (supra). Instead of Siddhi Vinayak Steel, Mumbai the purchase from M/s.Suraj Tube Corporation, Mumbai is the issue involved in this matter. The addition of Rs.2,28,734/- made by the AO confirmed by the Ld. CIT(A) has been challenged in the instant case. The facts, evidences, finding and conclusion made by the authorities below are exactly similar in nature. Therefore, following our finding as observed in ITA No.3257/Ahd/2015 for AY 2009-10, we decide to sustain addition of 25% of the sale i.e. Rs.57,184/- towards inflated purchases.

13. In the combined result, both the appeals of the assessee are partly allowed.

This Order pronounced in Open Court on	17/09/2018
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Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 17/ 09 /2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad