



**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1347/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT-12(1)(1) 2 nd Floor, Room No.223, Aaykar Bhavan M.K. Road Mumbai-400 020.	बनाम/ Vs.	M/s. Amba Enterprises Ltd. A-103, Shilpin Building, Off Borsapada Road Kandivali (W) Mumbai-400 067.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAFCA-6033-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Nishit Gandhi- Ld. AR
Revenue by	:	Shri Rajesh Kumar Yadav - Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	25/04/2019
घोषणा की तारीख / Date of Pronouncement	:	03/05/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-20, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-20/DCIT-12(1)(1)/IT-43/2015-16* dated 04/11/2016 on following grounds of appeal:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting disallowance of bogus purchase of Rs.1,36,94,518/- to 1.5% without any basis when he himself has accepted that purchases are not genuine and he should have confirmed full addition on account of bogus purchases."



2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition made on account of purchases of Rs.1,36,94,518/- to 1.5% without appreciating the fact that the assessee was not able to produce the alleged parties after giving ample opportunities."

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) also failed to appreciate that the alleged parties have accepted before the Maharashtra Sales Tax Department that no actual business or transactions have been carried out by them,"

4. "The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the A.O. be restored."

The appeal is a recalled matter since the same was adjudicated *ex-parte qua* the assessee vide order dated 15/09/2017. However, the order has subsequently been recalled, upon assessee's application, vide *MA No.194/Mum/2018 order dated 28/12/2018*. Accordingly, the appeal has come up for fresh hearing before this bench.

2.1 Briefly stated, the assessee being *resident corporate assessee* stated to be engaged in the business of *manufacturing & processing of iron & steel* was assessed u/s 143(3) r.w.s. 147 on 23/03/2015 wherein the income was determined at Rs.205.21 Lacs after sole disallowance of *alleged bogus purchases* for Rs.136.94 Lacs as against returned income of Rs.68.26 Lacs e-filed by the assessee on 30/09/2009 which was processed u/s143(1).

2.2 The reassessment proceedings got triggered pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* that the assessee obtained *bogus purchase bills* aggregating to Rs.136.94 Lacs from 4 entities, the details of which have already been given in the quantum assessment order. Accordingly, the case was reopened vide notice u/s 148 dated 13/03/2014. The reasons were reopening were supplied as demanded by the assessee. Statutory notices u/s 143(2) & 142(1) were issued directing assessee to file requisite documents in respect to purchase transactions.



2.3 The assessee submitted copy of ledger account, tax invoices and transport receipts in support of the transactions. However, notices issued u/s 133(6) to all the parties were returned back unserved by the postal authorities. The ward inspector reported that none of the parties existed at the given address. The said facts were confronted to the assessee. The assessee submitted that the material purchased during the year was used in production of finished goods and the same was accounted for in the quantitative details of sale, purchase, production, stock etc. It was also submitted that the payments were made through banking channels.

2.4 However, not satisfied, it was noted that the aforesaid parties admitted before Sales Tax Department that they had issued accommodation bills only without delivery of any material. It was also noted that the payment to all the suppliers was made after a gap of 6 to 10 months which was highly impractical for this type of purchases since the margins were low. The perusal of suppliers' addresses, transport receipts led the Ld. AO to believe that no actual delivery of goods took place. No weighment slips were submitted in support of delivery of material. The assessee failed to produce excise register in support of receipt of goods and subsequent sale. Therefore, finding that the assessee remained unsuccessful to establish the genuineness of the transactions, the purchases were termed as *bogus purchases*. Accordingly, the deduction of the same was denied u/s 37(1).

3. Before Ld. first appellate authority, the assessee made detailed submissions which were duly considered. The gist of various Tribunal's decisions on the issue of *bogus purchases* were considered on *page nos. 9 to 15* of the impugned order. At *para 4.3*, it was, *inter-alia*, observed that Ld. AO simply made additions without much inquiry and at



the same time, the assessee also failed to discharge the primary onus casted upon him to prove the genuineness of the purchases. Finally, the impugned additions were estimated at 1.5% of the *alleged bogus purchases*. Aggrieved, the revenue is in further appeal before us. It appears that no further appeal has been filed by the assessee.

4. The Ld. Departmental Representative [DR] submitted that the Ld. first appellate authority did not consider the factual matrix as observed by Ld. AO in the quantum assessment order and restricted the additions merely to 1.5%, which was not justified under the circumstances. The Ld. Authorized Representative for Assessee [AR], laid multiple propositions, *inter-alia*, to submit that the estimations made by Ld. first appellate authority would not warrant any interference.

5. We have carefully heard the rival submissions and perused relevant material on record. At the outset, we may note that both the representative, in the course of arguments, have relied upon various judicial pronouncements so as to justify reasonableness of the estimation on account of *alleged bogus purchases*. The revenue would submit that even whole addition should be sustained whereas the assessee would go to other extreme to submit that the no addition or a very minimum addition should be sustained. We are of the considered opinion that no strait-jacket formula could be adopted in the matter of estimation and the same would largely depend upon the factual matrix of a particular case and to the extent of investigation carried out by the lower authorities.

6. The facts as enumerated by us in preceding paragraphs would reveal that the assessee has failed to discharge the primary onus of establishing the genuineness of the purchases which is evident from the



fact that the estimation made by Ld. first appellate authority has been accepted by the assessee. Notices issued u/s 133(6) to all the suppliers did not elicit any satisfactory response and the field inquiries revealed that not even a single supplier existed at the given address which would weaken the argument that there was considerable time gap between purchases made by the assessee and replies sought by the revenue. The assessee failed to produce any of the supplier to confirm the transactions. At the same time, we find that the assessee was in possession of primary purchase documents and the payments to suppliers were through banking channels, albeit after a gap of 6-10 months as noted by Ld. AO. The sales turnover has not been disputed and the books of accounts were subject to audit. There could be no production of material without actual consumption of material. The quantitative details, to a certain extent, were placed on record. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. Keeping in view the fact that the assessee has already reflected Gross Profit / Net Profit rate of 14.60% & 4.1% respectively during the impugned AY and the assessee was dealing in low margin item, we estimate the same to 5% of *alleged bogus purchases*. The same works out to Rs.6,84,726/-. The impugned order stand modified to that extent.

7. The appeal stands partly allowed in terms of our above order.



Order pronounced in the open court on 03rd May 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :03/05/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.