

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4402/MUM/2016
Assessment Year: 2009-10**

Smt. Savitaben Patel, Prop. Dipesh Engineering, Works, W-44, c, Additional Ambarnath, 2 nd Area Anand Nagar, Ambarnath, East- 421506.	Vs.	Assistant Commissioner of Income Tax-Cir 2, Mumbai.
PAN No. AFPPP7431L		
Appellant		Respondent

**ITA No. 4869/MUM/2016
Assessment Year: 2009-10**

The Dy. Commissioner of Income Tax, Circle-2, Kalyan, 2 nd floor, Mohan Plaza, Khadakpada, Wayale Nagar, Kalyan (W), 421301.	Vs.	Smt. Savitaben Patel, Prop. Dipesh Engineering, Works, W-44, c, Additional Ambarnath, 2 nd Area Anand Nagar, Ambarnath, East-421506.
PAN No. AFPPP7431L		
Appellant		Respondent

Assessee by : Mr. VimalPunmiya, AR
Revenue by : Mr. Chaudhary Arun Kumar Singh, DR

Date of Hearing : 30/07/2019
Date of pronouncement: 31/07/2019

ORDER

PER N.K. PRADHAN, AM

The captioned cross appeals – one filed by the assessee and the other by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-3, Thane (in short 'CIT(A)') and arise out of the assessment order passed u/s 143(3) r.w.s 147 of the Income Tax Act 1961, (the 'Act').

ITA No. 4402/MUM/2016
Assessment Year: 2009-10

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

1.a. The Ld. CIT(A) has erred in directing the A.O. to make ad-hoc addition of 20% as inflated purchases amounting to Rs.22,20,903/- (being 20% of Rs.1,11,04,513/-), from the below stated parties and treating the same as not genuine purchase of materials, which were used in the fabrication of equipments supplied to the customers of appellant and treating the same as bogus purchases, on the basis of inference and assumptions and the same is not based on any adverse evidence or detection of accounting entries in the books of accounts of the Appellant.

Particulars	Amount of Purchases Disallowed (Rs.)
M/s. Pooja Steel & Alloys	42,39,245/-
M/s. NavratanImpex	68,65,268/-
Total	1,11,04,513/-

b) The Ld. CIT(A) has erred in directing the A.O. to disallow and to make the addition towards the inflated purchases amounting to Rs.22,20,903/- (being 20% of Rs.1,11,04,513/-), disregarding completely the fact that the equipment fabricated out of the purchase of material from M/s Pooja Steel & Alloys and M/s NavratanImpex, at the manufacturing unit of the appellant is liable to excise duty

and the captioned equipment fabricated at the factory of the appellant was delivered to the customer only after payment of excise duty and the same is recorded in statutory, excise and other records maintained by the appellant.

2. The Ld. A.O. Ought to have given an opportunity to the appellant before charging interest u/s. 234B of Rs.30,44,234/- and u/s 234C of Rs.1,04,584/-.

3. Briefly stated, the facts are that the assessee filed her return of income for the assessment year (AY) 2009-10 on 30.09.2009 declaring total income of Rs.1,62,02,770/-. On receipt of the information from the Sales Tax Department, Government of Maharashtra that the assessee has obtained bogus purchase bills from entry providers, the Assessing Officer (AO) reopened the assessment by issuing notice u/s 148. In response to it, the assessee requested to consider the original return filed on 30.09.2009 to be treated as the return filed in response to the notice u/s 148 of the Act. The details of bogus purchase bills taken by the assessee as noted by the AO are as under :

Sr. No.	Name of the alleged party from whom purchases are made	Amount of alleged purchases for AY 2009-10 (Rs.)
1.	M/s. Pooja Steel & Alloys	42,39,245/-
2.	M/s. Navratan Impex	68,65,268/-
	Total	1,11,04,513/-

During the course of reassessment proceedings, in order to verify the genuineness of purchases, the AO issued notice u/s 133(6) to the above two parties. He also deputed the Inspector of Income Tax for gathering the information. The Inspector reported that neither such

parties/suppliers were present at the available address nor were they present in the vicinity. Thereafter, the AO issued a notice calling for filing the details like party wise details of purchases, octroi receipts/transport and delivery challan, stock register, bank book and cash book, contact address of the above parties etc. for verification. In response to it, the assessee furnished the details in respect of the aforesaid parties viz. ledger copy, copies of sample purchase bills, copy of stock register and copy of bank statement reflecting payment to the aforesaid parties. However, the assessee failed to furnish any delivery challan or transport receipt in respect of the goods received from the aforesaid parties. The assessee also failed to produce the aforesaid parties. The AO has noted that the assessee *vide* letter dated 29.01.2015 furnished the certificate of Chartered Engineer regarding matching of the technical specifications of the material purchased from M/s Navratan Metal Impex, M/s Alankar Steels and Pooja Steel & Alloys so that the material procured from them should not be treated as non-genuine and claimed that the impugned purchases were genuine and had been used for making machineries which could be physically verified.

However, the AO was not convinced with the above explanation of the assessee for the reason that (i) the Sales Tax Department, Government of Maharashtra has made exhaustive inquiries in respect of the aforesaid parties and found that the above parties are non-genuine, (ii) the purchase invoices furnished by the assessee in respect of the aforesaid parties do not contain the details like lorry No., mode of

transport etc. (iii) none of the delivery challans were furnished in support of the purchases made from the aforesaid parties.

In view of the above facts, the AO made an addition of Rs.1,11,04,513/- to the income shown by the assessee.

4. In appeal, the Ld. CIT(A) observed that on the purchases there were corresponding sales and the payments were made by account payee cheques, therefore, the disallowance of entire purchases made from the hawala dealers is not justified. Having examined the inward register showing material purchased from the above two parties and the fact that the GP ratio of the assessee for AYs 2008-09, 2009-10 and 2010-11 being @ 20%, 19.87% and 23.46% respectively, the Ld. CIT(A) restricted the disallowance to Rs.22,20,903/- (20% of Rs.1,11,04,513/-). Thereby, the assessee got relief of Rs.88,83,610/-.

5. Before us, the Ld. counsel of the assessee files a written submission and submits that the AO ought to have considered the letter dated 19.03.2014, which was submitted before him on 22.03.2014, where proof of purchase and their receipt and consumption of the materials for production of goods to be supplied to the clients of the assessee have been stated. Further, it is stated that the assessee has also provided the details such as (a) copy of the bank books, (b) contact address of the suppliers as per the appellant's knowledge, (c) name of agents, (d) sales tax copy of e-return acknowledgement of Navratna Metal Impex, (e) copy of appellant's bank statements, (f) supplier's bank statements reflecting clearance of the issued cheque payments to the

abovementioned parties, (g) supplier's copy of PAN card and (h) copy of bank stock statement.

The Ld. counsel further submits that, the AO failed to understand that the said materials were purchased from the aforesaid parties and it was procured through the agent of the assessee. As per him it was the responsibility of the agent to procure materials on behalf of the assessee and deliver required materials to factory premises of the assessee along with tax invoice and delivery challan of the suppliers. Also it is stated that upon receipt of the said materials along with the above documents, entries were made in the inward register maintained by the assessee and account payee cheque was issued in favour of the above suppliers. Thus it is stated that the AO ought to have considered that the transactions were routed through the agent of the assessee and there was no direct connection or communication that the assessee had with the supplier of the material in any manner.

In respect of the purchase from Navratan Metal Impex, it is submitted that the AO ought to have considered the facts that upon receipt of the said materials with the related documents, entries were made in the inward register and the copy of the abstract of stock inward register was submitted before the AO. It is argued that the payment of the same was made by account payee cheque issued in favour of the above suppliers and following standard accounting practice, the assessee had also obtained the confirmations from the above suppliers after payment made to the parties by account payee cheques, the details of which were submitted before the AO. Also it is stated that the AO

ought to have considered the fact that the material which was supplied by M/s Navaratan Metal Impex has been used for manufacture of excisable goods/equipments and the assessee had supplied the equipment/goods fabricated to M/s Aventis Pharma Ltd. and M/s Matrix Laboratories Ltd. by raising invoices.

Regarding the purchases from M/s Pooja Steel & Alloys, the Ld. counsel submits that the AO ought to have considered the facts that upon receipt of the materials along with above documents, entries were made in the inward register maintained by the assessee. It is explained that the payment of the same was made by account payee cheque issued in favour of the supplier and following standard accounting practice, the assessee had also obtained confirmations from the suppliers after payment made to the parties by account payee cheques. It is further clarified that the details of bill wise payment and copy of the bank statement of supplier showing the amount received from the assessee were submitted before the AO. It is further stated that the AO ought to have considered the fact that all the material which was supplied by M/s Pooja Steel & Alloys has been used for manufacture of excisable goods/equipments and the assessee has supplied the equipment/goods fabricated to the parties by raising invoices. The Ld. counsel submits that the AO ought to have considered the submission of the assessee dated 29.01.2015 in which the assessee submitted the details of certificate regarding the matching of the technical specifications of the materials purchased to add the authenticity of the genuineness of the said transaction of purchase.

In response to a reference from the Bench the Ld. counsel filed a copy of the decision of the Hon'ble Bombay High Court dated 11.02.2019 in the case of Pr. CIT v. M/s Mohommad Haji Adam & Co. (ITA no. 1004 of 2016) and submits that the case of the assessee is distinguishable from the above decision on merits.

6. On the other hand, the Ld. DR relies on the decision in N K Proteins Ltd. v. CIT (2017-TIOL-23-SC-IT), N K Proteins Ltd. v. CIT (2016-TIOL-3165-HC-AHM-IT), CIT v. Arun Malhotra 47 taxmann.com 385 (Delhi)/[2014] 363 ITR 195, Vijay Proteins Ltd. v. ACIT [2015] 58 taxmann.com 44 (Gujarat), CIT v. La Medica [2001] 117 Taxman 628 (Delhi)/[2001] 250 ITR 575 (Delhi)/[2001] 168 CTR 314 (Delhi), UditKalra v. ITO Ward 50(1) of Hon'ble Delhi High Court ITA No. 220/2019 & CM No. 10774/2019 dated 08.03.2019, Pr. CIT (Central)-1 v. NRA Iron & Steel Pvt. Ltd. Civil Appeal No. of 2019 (Arising out of SLP (Civil No. 29855 of 2018) Supreme Court recent decision dated 05th March 2019, Pr. CIT-6, New Delhi v. NDR Promoters Pvt. Ltd. ITA 49/2018 of Hon'ble Delhi High Court dated 17.01.2019 and Jansampark Advertising & Marketing Pvt. Ltd. (2015) 231 Taxman384 (Delhi).

The Ld. DR thus relying on the above case-laws submits that the order passed by the AO be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. Having examined the facts of the case, we are of the considered view that the issue in the instant case could be resolved fairly by the examination of the above two parties by the Assessing Officer and giving an opportunity to the assessee to cross examine them.

A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Cross-examination is allowed by procedural rules and evidently also by the rules of natural justice. Any witness who has been sworn on behalf of any party is liable to be cross-examined on behalf of the other party to the proceedings.

The Hon'ble Supreme Court in *State of Kerala vs. K.T. Shaduli Grocery Dealer* AIR 1977 SC 1627, recognised the importance of oral evidence by holding that the opportunity to prove the correctness or completeness of the return necessarily carry with it the right to examine witnesses and that includes equally the right to cross-examine witnesses.

In *ITO vs. M. PiraiChoodi* (2012) 20 taxmann.com 733 (SC), the Hon'ble Supreme Court has held that “Order of assessment passed without granting an opportunity to assessee to cross-examine, should not have been set aside by High Court; at most, High Court should have directed Assessing Officer to grant an opportunity to assessee to cross-examine concerned witness.”

Therefore, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to pass an order afresh after examining the above two parties and allowing the assessee to cross examine them. We direct the assessee to file the relevant documents/evidence before the AO.

As the matter has been restored to the file of the AO, the above order applies equally to the cross appeal filed by the revenue against the order of the Ld. CIT(A).

As the matter has been restored to the file of the AO, we are not adverting to the case-laws relied on by both sides.

8. In the result, the appeal filed by the assessee and the revenue are allowed for statistical purposes.

Order pronounced in the open Court on 31/07/2019

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;

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

Dated: 31/07/2019

Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai