

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

**BEFORE SHRI R.C.SHARMA, AM  
&  
SHRI PAWAN SINGH, JM**

**ITA No.837/Mum/2015  
(Assessment Year: 2010-11)**

DCIT 12(3)(1) Room No. 147-B, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400020.	Vs.	M/s Konark Structural Engg. Pvt. Ltd., B-006, Hinal Heritage Patelwadi, S.V. Road, Behind Digamber Jain temple, Borivali (W), Mumbai- 400092.
<b>PAN/GIR No.AAACK 9113 B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Manoj Kumar Singh
Assessee by	Shri Bhupendra Shah
<b>Date of Hearing</b>	<b>26/08/2019</b>
<b>Date of Pronouncement</b>	<b>06/09/2019</b>

**आदेश / O R D E R**

PER: R.C. SHARMA, A.M.

This appeal filed by the revenue against the order of CIT(A)-20, Mumbai dated 10/11/2014 for the A.Y. 2010-11 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the revenue is aggrieved for deletion of addition of Rs. 95,39,678/- on account of alleged bogus purchases. Even though the tax effect in respect of addition deleted by the CIT(A) is less than Rs.

50,00,000/-, however, the case comes under an exception, in so far as assessment was reopened on the basis of information from Sales Tax Department which is an outside authority.

3. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the addition was made by the A.O. on account of alleged bogus purchases made by the assessee without having actual delivery. The A.O. has added entire such purchases in assessee's income. By the impugned order, the Id. CIT(A) has deleted the entire addition by relying on the decision of the Coordinate Bench and the Hon'ble Bombay High Court as narrated at para 3 of the appellate order.

4. The. Ld. AR has relied on the decision of the Hon'ble Bombay High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. Income Tax Appeal No. 1004 of 2016 dated 11/02/2019, wherein it was held that the addition in respect of bogus purchases should be restricted to difference between the gross profit shown by the assessee in respect of bogus purchases vis a vis normal purchases. Meaning thereby the addition should be confined to gross profit shown on the bogus purchases which is found to be lower than the gross profit on normal purchases. The precise observation of the Hon'ble Bombay High Court was as under:

“8 *In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*

*" So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/-which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly,*

*the said question is answered partially in favour of the assessee and partially in favour of the revenue."*

9 *In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."*

5. In view of the above facts and circumstances, we direct the A.O. to recompute the addition in respect of bogus purchases in terms of the proposition laid down by the Hon'ble Bombay High Court as stated above. We direct accordingly.

6. In the result, appeal of the revenue is allowed in part.

Order pronounced in the open court on 06<sup>th</sup> September, 2019.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 06/09/2019

\*Ranjan

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

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