



ITA No.1774/Mum/2018  
Aluwind Architectural Private Ltd.  
Assessment Year-2009-10

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1774/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2009-10)

<b>Aluwind Architectural Private Limited</b> 70C, Govt. Industrial Estate Charkop, Hindustan Naka Near Reliance Energy, Kandivali Mumbai-400 067.	<b>बनाम/ Vs.</b>	<b>DCIT-12(1)(1)</b> Aaykar Bhavan Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAECA-5798-A</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

पीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri Harsh Kothari-Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri Udaya Jakke-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	05/09/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16/09/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by assessee for Assessment Year [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-*



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12(1)(1)/IT-23/2015-16 dated 04/04/2017 *qua* confirmation of addition to the extent of 30% against *alleged bogus purchases* for Rs.73.37 Lacs. The assessee, vide letter dated 28/08/2019, has filed additional ground of appeal which is merely legal ground and contest the validity of reassessment proceedings and hence, taken on record. The final grounds of appeal read as under: -

1. The learned Commissioner of Income Tax {Appeals}-20, Mumbai, hereinafter referred to as the CIT(Appeals)", erred in estimating the profit element at 30% amounting to Rs.22,01,3577- in the alleged bogus purchases of Rs.73,37,858/- . Your appellant submits that, on the facts and in the circumstances of its case, there being no bogus purchases as alleged by the Assessing Officer, the addition of the estimated profit in respect thereof is incorrect and uncalled for.
2. Without prejudice to the ground of appeal no. 1, it is submitted that, the estimate of profit element of 30% in the alleged bogus purchases is without any basis, unreasonable and highly excessive. Your appellant submits that, on the facts and in the circumstances of its case and the material placed before the lower authorities, the element of profit, if at all, is much lower.
3. The reassessment proceedings are illegal and bad in law as the jurisdictional pre-conditions as required to be satisfied as per Section 147 to 151 of the Act have not been fulfilled.

2.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in carrying out Aluminum structural work was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 16/03/2015 wherein the income of the assessee was determined at Rs.125.11 Lacs after sole addition of *alleged bogus purchases* for Rs.73.34 Lacs as against returned income of Rs.51.77 Lacs e-filed by the assessee on 30/09/2009 which was processed u/s.143(1).

2.2 Pursuant to receipt of certain information from Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of



alleged bogus purchases of Rs.73.34 Lacs from 10 parties. The details of the suppliers along with amount of respective purchases have already been extracted at para-2 of the quantum assessment order. Accordingly, as per due process of law, re-assessment proceedings were initiated against the assessee u/s 147 by issuance of notice u/s 148 on 22/03/2014. In response, the assessee offered original return and demanded copy of reasons recorded, which were duly supplied in due course. The statutory notices u/s 142(1) and 143(2) were issued in due course of assessment proceedings wherein the assessee was directed to substantiate the purchase transactions. In response, the assessee furnished ledger account, bills and delivery challans etc.

2.3 To confirm the purchases transactions, notices u/s 133(6) were issued to all parties, however the same were returned back unserved by postal authorities with the remarks "not known" which was confronted to the assessee. The assessee submitted that the purchases were genuine and the material was actually received and used in the contract work carried out by the assessee during the year under consideration.

2.4 However, finding various discrepancies in the bills, as enumerated in para 4.2 of the quantum assessment order, it was concluded that the bills were not genuine. The bills were stated to be not bearing qualitative description, site addresses, not supported by delivery challans / transportation details etc. Another observation was the fact that the payment of such purchases was outstanding at year-end to the extent of Rs.58.62 Lacs out of total purchases of Rs.73.34 Lacs.



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2.5 Finding that the primary onus to establish the genuineness of the purchases remained undischarged by the assessee, learned AO treated the purchases of Rs.73.34 Lacs as bogus purchases and added the same to the income of the assessee.

3. Aggrieved the assessee agitated the stand of Ld. AO before first appellate authority with partial success vide impugned order dated 04/04/2017 wherein the assessee, by way of elaborate written submissions opposed the additions made by Ld. AO. The Ld. CIT(A), after due consideration of factual matrix and *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Bholanath Poly Fabs Ltd. [355 ITR 290]** & **CIT V/s Simit P. Sheth [356 ITR 451]** restricted the impugned additions to 30% of alleged bogus purchases. Aggrieved, the assessee is in further appeal before us. It transpires that the revenue has not agitated the stand of Ld. first appellate authority any further.

4. The Ld. AR, drawing our attention to the documents placed in the paper-book, submitted that there was no basis for restricting the additions to 30%. It has been pleaded that impugned additions may be restricted to the extent of VAT embedded in the transactions of *alleged bogus purchases*. Alternatively, reliance has been placed on the decision of Mumbai Tribunal in *Asian Chemtech Pvt. Ltd. V/s ITO [ITA No.283/Mum/2019 order dated 12/04/2019]* to submit that a reasonable estimation may be made against the purchases under consideration. The Ld. DR submitted that the estimation was quite fair and the same would not warrant any interference on our part.



5. Upon careful consideration of factual matrix as well as rival submissions, we do not find any substance in the legal grounds raised by Ld. AR before us since the original return of income was processed u/s 143(1) and the reassessment proceedings were triggered pursuant to receipt of specific information that the assessee obtained accommodation bills from certain suspicious dealers. The said material, in our opinion, was quite sufficient to form a reasonable belief that certain income escaped assessment. Nothing more was required at this stage. Nothing on record suggest any infirmity in triggering reassessment proceedings against the assessee. The legal grounds raised by the assessee stand dismissed.

6. So far as the issue on merits is concerned, we are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The assessee was in possession of primary purchase documents. However, at the same time, notice issued u/s 133(6) to all the entities remained unserved and the assessee failed to produce even a single party to confirm the transactions despite enjoying healthy credit terms from those suppliers. Therefore, the primary onus casted upon assessee, to substantiate the purchase transactions, remained un-discharged. Therefore, Ld. CIT(A), in our opinion, has clinched the issue in the right perspective. However, considering the factual matrix, we find the estimation to be on the higher side. Therefore, keeping in view assessee's nature of business, we restrict the impugned additions to 8% of alleged



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bogus purchases of Rs.73,34,858/-. The same comes to Rs.5,86,788/-. The impugned order stand modified to that extent.

7. Resultantly, the appeal stands partly allowed.

*Order pronounced in the open court on 16<sup>th</sup> September, 2019.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :16/09/2019  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**