

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai**

**Before Shri Rajesh Kumar, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.6231/Mum/2018
(Assessment Year: 2009-10)**

ACIT Circle -27(2),
Room No. 420, 4th Floor,
Tower No. 6, Vashi Railway
Station complex, Vashi,
Navi Mumbai – 400 708

M/s Pratik Construction
B/515, Kanara Business Centre,
Off. Ghatkopar Andheri Lane,
Ghatkopar West,
Mumbai - 400086

PAN – AAIFP9716A

(Appellant)

(Respondent)

Appellant by: Shri Ashim Kumar Modi, D.R

Respondent by: Shri M. Subramanian, A.R

Date of Hearing: 09.09.2019

Date of Pronouncement: 13.09.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-25, Mumbai, dated 17.08.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2009-10, dated 16.03.2015. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,63,814/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee has failed to produce bills, vouchers and other documentary evidences in support of its claim and without considering the latest Apex Court decision. in the case of N.K. Protein Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.
2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.23,402/-, being

12.5% of the bogus purchases as even the basic onus of producing transport bills, delivery challans etc. were not fulfilled by the assessee.

3. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated, the assessee had e-filed its return of income for A.Y. 2009-10 on 17.08.2009, declaring total income at Rs. 31,51,040/-. The return of income was processed as such under Sec.143(1) of the Act. Subsequently, on the basis of information received from the investigation wing of the Income Tax Department, Mumbai, that the assessee as a beneficiary had obtained accommodation bills, the case of the assessee was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from certain parties viz.(i). M/s Rahul Traders: Rs.65,234/-; (ii) M/s S.M. Trading: Rs.36,556/-; and (iii) M/s Mairu Enterprises: Rs.85,426/-. In order to verify the authenticity of the aforesaid purchase transactions the A.O issued notice under Sec. 133(6) to the aforementioned parties. In case of two of the concerns viz. (i) M/s Rahul Traders; and (ii) M/s Mairu Enterprises the aforesaid notices issued by the A.O remained unserved. In case of M/s S.M. Trading Company, no reply was received by the A.O. The A.O brought the aforesaid factual position to the notice of the assessee and directed it to place on record the copies of the purchase orders, bills, details as regards the nature of expenditure etc. in support of the authenticity of the aforesaid purchase transactions. Also, the assessee was directed by the A.O to produce the aforementioned parties along with supporting documentary evidence in order to establish the genuineness of purchases which were claimed to have been made from them. The assessee in order to substantiate the genuineness of the purchase transactions therein placed on record certain documentary evidence viz. copies of purchase bills, ledger accounts of the parties, and the bank statements showing payment to the aforesaid parties etc. It was the claim of the assessee that the material purchased from the aforementioned parties was consumed in execution of contract works in the normal course of its business. In sum and substance, it was the claim of the assessee that the aforesaid material purchased from the abovementioned parties, through a known person, was received at site and was consumed in execution of the contract works during the year itself. The assessee tried to

impress upon the A.O that though it had made genuine purchases from the aforementioned parties, but on account of paucity of time it was difficult on its part to irrefutably substantiate on the basis of supporting documents the authenticity of the purchase transactions under consideration. Accordingly, the assessee in order to buy peace of mind and avoid protracted litigation offered a total addition of Rs.23,402/- to its returned income for the year under consideration i.e @ 12.5% of the aggregate purchases of Rs.1,87,216/-. However, the A.O declined to confine the addition to the extent as was proposed by the assessee. The A.O being of the view that the assessee had failed to discharge the 'onus' as was cast upon it to prove the genuineness of the purchases claimed to have been made from the aforementioned parties, therefore, disallowed the aggregate value of purchases of Rs.1,87,216/- by characterising the same as 'bogus purchases'.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee was of the considered view that the total purchases claimed by the assessee to have been made from the aforementioned parties could not be held to be entirely bogus. The CIT(A) was of the view that though it was not possible for the assessee to establish one to one nexus/link between the purchases and sales, however, the fact that the material purchased had thereafter been sold by the assessee was not in doubt. In sum and substance, the CIT(A) was of the view that the fact that the material was purchased by the assessee from the aforementioned parties had remained unverified. On the basis of his aforesaid observations, the CIT(A) held a conviction that as the source of purchase of the material/goods could not be verified, therefore, the fact that the assessee might have over invoiced its purchases could not be ruled out. Also, the CIT(A) was of the view that it may also be possible that the assessee might have purchased the goods from the open/grey market and not from the aforementioned parties. Accordingly, the CIT(A) held a conviction that the addition in respect of the aforesaid unverified purchases made by the assessee was liable to be restricted only to the extent of the additional profit which the assessee would have earned by making such purchases and the entire value of such purchases could not be disallowed. As such, the CIT(A) after relying on certain judicial pronouncements restricted the addition in the hands of the assessee to Rs. 23,402/- i.e 12.5% of the aggregate value of the purchases of Rs.1,87,216/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Departmental Representative (for short 'D.R') that the CIT(A) has erred in confining the addition in respect of bogus purchases of Rs.1,87,216/- only to the extent of Rs.23,402/- i.e 12.5% of the aggregate value of such purchases. It was submitted by the Id. D.R that as the assessee had failed to prove the authenticity of the purchase transactions, therefore, the A.O had rightly disallowed the entire value of such purchases. Also, the Id. D.R had drawn support from the judgment of the Hon'ble Supreme Court in the case of N.K Proteins Limited Vs. DCIT (2017) 292CTR354 (SC). Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee relied on the order passed by the CIT(A).

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, and the judicial pronouncements relied upon by them. Admittedly, as observed by the CIT(A) the sales of the material corresponding to the aforesaid purchases claimed by the assessee to have been made from the aforementioned parties had not been conclusively disproved or dislodged in the course of the assessment proceedings. Apart there from, it is not even the case of the revenue that the G.P rate of the assessee had witnessed a steep decline as in comparison to the preceding years, which fact would evidence that no sales corresponding to the purchases under consideration were accounted for in the books of accounts by the assessee. We are persuaded to subscribe to the view taken by the CIT(A) that as the fact that the assessee had purchased the material (though from unidentified source) had not been disproved, therefore, it would not be justified to disallow the entire value of such purchases. In our considered view, the CIT(A) had rightly concluded that as the purchase of material by the assessee had not been disproved by the revenue, therefore, it could safely be concluded that either the assessee in the backdrop of such unverified purchases had over invoiced the same in its books of account or procured the same at a discounted value from the open/grey market. Also, as the judgment of the Hon'ble Supreme Court in the case of N.K Proteins Limited Vs. DCIT (2017) 292 CTR 354 (SC) relied upon by the Id. D.R is distinguishable on facts, therefore, the same would also not assist the case of the revenue. We have given a thoughtful consideration to the facts of the case before us and finding ourselves to be in agreement with the view taken by the CIT(A) that the

addition in the hands of the assessee was liable to be restricted only to the extent of profit element i.e 12.5% of the aggregate value of such purchases, therefore, uphold his order.

7. The appeal of the revenue is dismissed.

Order pronounced in the open court on 13.09.2019

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 13.09.2019
PS. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai