

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

**BEFORE SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER  
&  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA Nos.5536 to 5538/Mum/2017  
(Assessment Year: 2008-09 to 2010-11)**

Dy. Commissioner of Income Tax, Central Circle-7(3), R. No. 655, 6 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai-400020.	Vs.	M/s K.Amishkumar Trading Pvt. Ltd., 316, Loha Bhavan,PD Mello Road, Cranc Bunder,Mumbai- 400009.
<b>PAN/GIR No.AACCK 7475 J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**C.O. No. 336 to 338/Mum/2018  
(Arising out of ITA Nos. 5536 to 5538/Mum/2017  
(Assessment Years: 2008-09 to 2010-11)**

M/s K.Amishkumar Trading Pvt. Ltd., 316, Loha Bhavan,PD Mello Road, Cranc Bunder,Mumbai- 400009.	Vs.	Dy. Commissioner of Income Tax, Central Circle-7(3), R. No. 655, 6 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai-400020.
<b>PAN/GIR No. AACCK 7475 J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by:	Shri B. Srinivas (CIT-DR)
प्रत्यर्थी की ओर से/Respondent by :	Shri Paresh Sapharia (A.R.)

सुनवाई की तारीख / Date of Hearing	26/08/2019
घोषणा की तारीख /Date of	18/09/2019

Pronouncement	
---------------	--

आदेश/O R D E R

**PER: R.C. SHARMA, AM:**

These are the appeals filed by the revenue and the Cross objections by the assessee directed against the composite order of the Id. CIT(A)-49, Mumbai dated 27/06/2017 for the A.Ys. 2008-09 to 2010-11 in the matter of order passed U/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short, the Act).

2. All these appeals are being head together and for the sake of convenience and brevity, a consolidated order is being passed.

3. Firstly we take Revenue's appeals.

In all the years under consideration, the revenue is aggrieved by the action of the Id. CIT(A) for restricting the addition on account of bogus purchases to the extent of 12.5% of such purchases.

4. Rival contentions have been heard and record perused. The brief facts of the case are that the assessee is in the business of trading of iron and steel, merchant and supplier. Assessee had filed return of income u/s.139 on 28.8.2008 declaring total income at Rs.454,76,9587- for A.Y. 2008-09, on 8.9.2009 at Rs.492,00,310/- for A.Y.2009-10 and on 14.9.2010 at Rs. 16,00,22,610/- for A.Y.2010-11. A search u/s 132(1) of

the Act was conducted in the Bharti Shipyard Group of cases by the Investigation Wing on 24.11.2011 and search was also conducted in the case of K. Amishkumar Trading Pvt Ltd as a connected case. Consequent to the search & seizure action, notice u/s.153A(1) of the Act was issued and duly served on the assessee in response to which the assessee filed its return on 06.06.2013 declaring total income of Rs. 4,54,79,0207- for A.Y. 2008-09, Rs.4,92,00,310/- for A.Y.2009-10 and Rs. 16,00,22,610/-for A.Y. 2010-11 respectively. Assessment U/s. 153A r.w.s 143(3) of the Act was completed on 31.3.2014 for all the three assessment years determining total income at Rs.19,52,47,410/-, Rs.16,56,00,750/- and Rs.26,15,78,450/- respectively.

5. By the impugned order, the Id. CIT(A) restricted the addition to the extent of 12.5% of such purchases less G.P. already declared by the assessee on such purchases. Precise observation of the Id. CIT(A) was as under:

*“8.3.5. Addition of entire bogus purchase to total income :*

*The A.O. has made an addition of Rs. 14,97,68,202/-, in A.Y. 2008-09, by treating the entire purchases from SCIL/KIL as bogus and unexplained. Similarly, addition of Rs.11,64,00,435/- has been made in A.Y. 2009-10 & of Rs.10,15,55,840/- in A.Y.2010-11 on account of bogus purchase from KIL. In this regard the appellant has submitted that the entire purchases cannot be added considering that its business is of trading of Iron & Steel and its sales have not been doubted nor the books of accounts have been rejected. It has been submitted that the appellant has maintained stock register and other necessary records to verify the purchase and sales. Although it has been alleged that the*

*amount received from KAPTL was deposited in the account of MIL and then transferred to the accounts of different parties from where they were further transferred to other bank accounts and thereafter cash was withdrawn, it is not the case that the cash withdrawn from those other bank accounts had been received by the appellant. The appellant has also filed additional evidence in the course of appeal proceedings, which include confirmation from Shri Rajesh Mehta, Director of KIL affirming the transactions with the appellant company in above said three assessment years, assessment order under MVAT in respect of KIL and affidavit of Shri P.C.Kapoor, MD of Bharti Shipyard Ltd. on which remand report have been submitted by the A.O. The appellant has also cited various decisions which have been considered. In respect of these issues, it is observed as under:*

- (i) The appellant company is a trader in Iron & Steel. In so far as the purchases from SCIL/ KIL are concerned, it has been noted in para 8.3.3 above that the purchases, which are supported by excise tax invoice of Kavi Commercial and Sanvijay Rolling, have been used to inflate the purchases and as noted in para 8.3.4 above, the balance purchase from KIL are not supported by proof of delivery to the appellant company. The confirmation from the director of KIL merely states the obvious that the purchases have been made by way of bills/invoices and payment have been made by way of cheque, but it does not explain the non-existence of proof of delivery or the reasons for price differential charged by it. Further, the MVAT assessment order and the income-tax assessment order in the case of KIL also confirms that the said company was making purchases from suspicious/bogus parties. In fact, in the assessment order in the case of KIL dated 26.3.2014, passed u/s.143(3) r.w.s. 153C of the Act it has been found that the percentage of bogus purchases made by the said company was 52% in A.Y.2008-09, 55% in A.Y.2009-10 and in A.Y.2010-11.*
- (ii) As regards the affidavit of Shri P.C.Kapoor dated 29.3.2014 it has been reiterated that the disclosure of Rs.36.76 crores in the case of Bharti*

*Shipyards Ltd, which was the purchases made by Mr. Ketan Kamdar from KIL/SCIL was subject to verification of averments made by Mr. Ketan Kamdar and pursuant to submission of all the documents by Mr. Ketan Kamdar, the genuineness of his purchases from KIL/SCIL stands well established. It has also been stated that the affidavit was given at the request of Mr. Ketan Kamdar for submission before the ACIT Central Circle 42 in the matter of K. Amishkumar Trading Pvt Ltd's ongoing block assessment. From above, it is clear that it is not a retraction of the statement given by him in the course of search on 24.11.2011, but only a reiteration of what was stated earlier. It does not establish the genuineness of the purchases made by the appellant company from KIL.*

- (iii) *In view of above discussion, I am of the considered opinion that although purchases and sales have been recorded in the books of account by the appellant, the correctness of the purchases made from KIL/SCIL is not established and therefore the books of account, to that extent, are found to be incorrect in terms of Section 145(3) of the Act. The A.O. has treated the entire such purchases as bogus and added the same to the income of the appellant and the rejection of the appellant's books of accounts in terms of Section 145(3) is found to be implicit in such action of the A.O. However, the rejection of books of account has to be followed by a reasonable estimate of the income based on the facts and circumstances of the case. In this case, the appellant is a trader whose purchases have been recorded in the books and the sales have not been doubted. The purchases of the appellant would go towards sales or towards the closing stock and in such circumstances adding the entire purchases of KIL, as bogus and unexplained purchases, to the total income of the appellant is not found to be correct and justified.*
- (iv) *The appellant has relied upon certain decisions noted in para 7.2 above which relate to cases where purchases were supported by bills, entries were made in books of account and payment was made by cheque and courts have held that such purchases could not be held as bogus. In this*

*regard, I find that the case of the appellant is on different facts since the actual delivery of goods received, as per the bills/invoice issued by KIL/SCIL to the appellant, was not proved to the extent of Rs. 1.21 crores (Rs.14.97 (-) Rs.13.76) in A.Y.2008-09, Rs.8.71 crores in A.Y.2009-10 and Rs.10.15 crores in A.Y.2010-11. The appellant has also cited case laws where addition is made on G.P. basis as noted in para 7.2.1. above. It has been found that there is element of price inflation in respect of purchases made from KIL/SCIL by way of buyer-consignee purchase from Kavi Commercial and Sanvijay Rolling which would result in lowering of the profit rate of the appellant. Further, as regards the purchases from KIL, which are not verifiable by way of proof of delivery, it would be reasonable to presume such purchases as made from unregistered dealers resulting in an element of profit/gains on such purchases on account of lower cost on cash purchases vis-a-vis the purchase price shown in the bills from KIL. Therefore, I am of the considered opinion that instead of making the addition of entire purchases from KIL/SCIL to the income of the appellant, it would be appropriate to make an addition considering the profit element in respect of such unverifiable purchases and/or in respect of buyer- consignee purchases.*

*In this regard, I find that in the case of Menui K Mehta I T.A. No.3227/Mum/2016 (ITAT Mumbai) (14-03-2017) and in the case of Ratnagiri Stainless Steel Pvt. Limited I.T.A. No. 4463/Mum/2016 (ITAT Mumbai) (04-04-2017) it has been held that estimating the G.P. ratio on such bogus purchases @12.5% subject to allowing credit of declared G.P. ratio would be fair. The above said two cases relate to the {business of trading in MS pipes and structures and metals wherein the issue of bogus purchases was involved. Following the above said decisions, it is held that the addition in respect of the purchases from SCIL/KIL, in the case of the appellant, is to be estimated @ 12.5% of such purchases after allowing credit of G.P. ratio on such purchases, as per the G.P ratio declared by the appellant, in all the three assessment years involved in this appeal. The appellant has submitted that the G.P. ratio of the appellant company, considering the entire*

*purchases and sales, is 6.46% for A.Y.2008-09, 8.04% for A.Y.2009-10 and 8.65% for AY 2010-11. The A.O. is directed to verify the G.P. ratio for the above said three assessment years and recompute the addition in respect of the total purchases from SCIL/KIL for the above said three assessment years by estimating the addition at the rate of 12.5% less the GP ratio declared by the appellant in the respective three assessment years. The A.O. is directed to allow appropriate relief accordingly, in all the three assessment years. Ground No. 1 is partly allowed for all the three assessment years.*

6. Against the said order of the Id. CIT(A), the revenue is in further appeals before the ITAT.

7. We have considered the rival submissions and carefully gone through the orders of the authorities below and found from the record that there was a search action U/s 132 on Bharti Shipyard Limited (BSL) Group on 24/11/2011. There were allegation that BSL has been inflating its expenses by taking accommodation entries of purchases from one M/s Karma Ispat Limited (KIL)/Scana Color (India) Limited (SCIL) and has also routed accommodation entries from KIL/SCIL through the assessee. Based on the above allegations there was search in the office premises of the assessee on 24/11/2011 and in the course of search proceedings, statement U/s 132(4) dated 24/11/2012 was recorded of Mr. Ketan P. Kamdar, director of the assessee company. The Assessing Officer alleged purchases from these parties as bogus. During the course of assessment proceedings, the assessee had furnished following details in connection with purchases, sales and stock :

- \* Item-wise - Quantity and Value wise details of Opening stock / inventory and closing stock / inventory.
- \* Copies of monthly stock statement furnished to bankers
- \* Party-wise details of purchases and sales during the year
- \* Month wise details of purchases & sales
- \* Detailed chart giving comparison of Current year's GP with the last three years
- \* Xerox copy of stock book for the Assessment Year 2008-09 to 2010-2011 depicting all the records of all inward and outward movement of the items of stock was also submitted to prove the genuineness of the purchase transaction.

Not convinced with the assessee's reply, the Assessing Officer added the entire amount of purchases in assessee's income. Against the said additions, assessee approached to CIT(A).

9. During the appellate proceedings, the Id. CIT(A) had also called a remand report and after considering the remand report, restricted the addition to the extent of 12.5% less the G.P already declared by assessee, after recording a detailed finding which has not been controverted by the Id DR by bringing any positive material on record. We also observe that CIT(A) has dealt with the issue threadbare and after considering all the facts and circumstances of case and after applying various judicial pronouncements to the facts of the case upheld additions of 12.5% and

also given further credit of G.P. already declared by assessee. The order passed by CIT(A) after considering the remand report is very reasoned order. Accordingly, we do not find any reason to interfere with the order of CIT(A) upholding the addition on account of bogus purchases to the extent of 12.5% less G.P. already declared by the assessee in the last purchase.

**10. In the result, all the appeals of the revenue and cross objections of assessee are dismissed.**

Order pronounced in the open court on 18/09/ 2019.

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

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

Mumbai; Dated 18/09/2019  
\*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**