

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4999/Mum/2019
(Assessment Year :2010-11)**

Arif Khan 7,8,9, Stanly Compound Kherani Road Sakinaka, Mumbai – 400 072	Vs.	Income Tax Officer 26(1)(2), Income Tax Department Office Kautilya Bhavan C-41, C-43, G-Block BKC, Mumbai – 400 051
PAN/GIR No.AWYPK8579N		
(Appellant)	..	(Respondent)

Assessee by	Shri Bharat Kumar
Revenue by	Ms. Samatha Mullamudi
Date of Hearing	24/09/2019
Date of Pronouncement	04/10/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4999/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ITO-26(1)(2)/IT-600/2015-16 dated 17/01/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19/02/2016 by the Id. Income Tax Officer – 26(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made by the Id. AO in the sum of Rs.17,30,838/- on account of alleged bogus purchases in the facts and circumstances of the case.

3. We have heard rival submissions. We find that assessee is a Proprietor of M/s. H K Engineering Works engaged in the business of manufacturing of Pressure Die Casting in non-ferrous metals. During the year under consideration, the assessee made purchases from the following three parties.

1.	Omkar Trading Corporation	-	Rs.6,16,242/-
2.	Premier Enterprises	-	Rs.4,11,060/-
3.	M/s. Aryen Sales Corporation	-	Rs.7,03,536/-

	Total		Rs.17,30,838/-
			=====

3.1. The Id. AO based on the information collected from Maharashtra Sales Tax Department alleged that these parties had merely supplied bogus bills to the assessee on account of purchases and that no movement of goods had actually happened from the end of the suppliers to the assessee. The Id. AO observed that assessee could not establish the identity of the said parties and proved that the purchases made from the said parties were genuine and accordingly, proceeded to disallow the entire purchases in the sum of Rs.17,30,838/- in the assessment. The assessee before the Id. CIT(A) submitted that the transactions during the year under consideration were carried out by his father who was running the business at the relevant point in time and that he is not aware of the business activities carried on during that time. It was also submitted by the assessee that his father had subsequently expired and all the records

and details were lying in the custody of the Chartered Accountant who also expired in the year 2010. Hence, the assessee could not produce all the relevant details before the Id. AO. We find that assessee had filed petition for admission of additional evidence comprising of (i) Income Tax Return Acknowledgement with the Audit report (ii) Profit and Loss Account and Balance Sheet with annexures (iii) sample copies of invoice (iv) copy of bank statement of the assessee for the period 01/04/2009 to 31/03/2011.

3.2. The Id. CIT(A) admitted this additional evidence and called for a remand report from the Id. AO. The Id. AO in his remand report observed that notices issued u/s.133(6) of the Act to these parties returned unserved by the Postal authorities and thereafter, the Ward Inspector was deputed to serve the notices thereon. The report of the Ward Inspector reveals that he was unable to serve notices as these purchase parties remain untraceable. The Id. AO also reported in the remand report that assessee neither filed any written submissions nor appeared before him during the remand proceedings also. We find that the Id. CIT(A) based on these observations made by the Id. AO in the remand report upheld the findings of the Id. AO.

3.3. We find that the assessee was a student at the relevant point in time and was only 20 years old. The assessee was admittedly not aware of the business activities carried on by his father who later died. Thus, the assessee from the available details with him had produced evidences before the Id. CIT(A) to justify the fact of consumption of those materials purchased by him from the alleged suppliers. Since the materials are consumed in the manufacturing process of the assessee and finished goods thereon have been sold later on, which has not been disputed by

the revenue before us, we hold that only profit percentage of those alleged purchases should be brought to tax. We find that this Tribunal has been consistently holding that adoption of 12.5% profit on alleged purchases would meet the ends of justice. Accordingly, we direct the Id. AO to tax only profit of 12.5% on alleged bogus purchases in the peculiar facts and circumstances of the instant case. No arguments were advanced by the Id. AR on the validity of reopening, hence, they are dismissed as not pressed. Accordingly, the grounds raised by the assessee are partly allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 04/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/10/2019
KARUNA, *sr.ps*

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	24/09/2019		Sr.PS
2.	Draft placed before author	26/09/2019		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		