



ITA No.5415/Mum/2018
Machine & Controls
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5415/Mum/2018
(निर्धारण वर्ष / Assessment Year:2011-12)

ITO-Ward 1(2), Thane Room No.23, B Wing, 6 th Floor Ashar IT Park, Road No. 16Z Wagle Industrial Estate Thane (W) – 400 604	बनाम/ Vs.	M/s Machine & Controls Plot No. A/546, TTC Ind. Area Mahape, MIDC Navi Mumbai – 400 710
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAMFM-5708-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Ms. Jothilakshmi Nayak-Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	None

सुनवाईकीतारीख/ Date of Hearing	:	10/10/2019
घोषणाकीतारीख / Date of Pronouncement	:	10/10/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-3, Thane [in short referred to as ‘CIT(A)’], *Appeal No.724/17-18/NSK dated 10/07/2018* on following grounds of appeal: -



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1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been disallowed in entirety.
2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from non-existent vendors.
3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors.
4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law by ignoring the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register etc. to arrive at disallowance at 20% of the purchases from the non-existent vendors.
5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been disallowed in entirety particularly in view of the ratio of decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N.K.Proteins Ltd. against which the SLP was dismissed by Hon'ble Apex Court.

None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed with the matter ex-parte qua the assessee after perusal of material on record and after hearing the revenue.

2.1 Facts on record would reveal that the assessee being resident firm stated to be engaged in manufacturing of electrical cable machines, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 14/08/2014 wherein the income of the assessee was determined at Rs.16.15 Lacs, after sole addition of *alleged bogus purchases* for Rs.2.74 Lacs as against returned income of Rs.13.40 Lacs filed by the assessee on 28/09/2011 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 obtained bogus purchases bills amounting to Rs.2.74 Lacs from 4 entities, the details of which have already been extracted at para-2 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 10/05/2013 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

2.3 The assessee defended the purchases by furnishing various details viz. bank statements evidencing payment through banking channels, Tax Audit Report, Trends of GP/NP Rates etc. However, notices issued u/s 133(6) to all the suppliers remained un-responded to. The assessee submitted that purchases were genuine. However, not convinced, the said purchases were disallowed and added to the income of the assessee.

3. Before learned first appellate authority, the assessee pleaded for reasonable estimation. The Ld. CIT(A), after considering the factual matrix and *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Sanjay Oil Cake 316 ITR 274**, **CIT V/s Bholanath Poly Fab Pvt Ltd. 355 ITR 290** and **CIT V/s Simit P. Sheth 356 ITR 451** restricted the additions to 20% of disputed purchases. Aggrieved, the revenue is in further appeal before us.

4. After careful consideration, 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. Undisputedly the assessee was in



possession of primary purchase documents and the payments to the suppliers were through banking channels. The sales turnover achieved by the assessee has not been disputed by the revenue. However, at the same time, the assessee miserably failed to substantiate the delivery of material during assessment as well as appellate proceedings. The assessee failed to produce any of the suppliers to confirm the transactions and the onus casted upon assessee, in this regard, remained undischarged. Therefore, on the given facts and circumstances, disallowance of entire purchases, in our opinion, would not be justified rather the additions which could be sustained, would be to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which learned first appellate authority has rightly done so. Therefore, finding the estimation of 20% to be quite fair and reasonable, we dismiss the appeal.

5. So far as the decision of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs DCIT [72 Taxmann.com 289]** is concerned, we find that the facts of that case has already been distinguished by Hon'ble Bombay High Court in **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated 11/02/2019]** wherein Hon'ble Court has approved the estimation, on similar factual matrix, based on Gross Profit Rate. Therefore, concurring with the approach of Ld. CIT(A), we dismiss the appeal.



6. Finally, the appeal stands dismissed.

Order pronounced in the open court on 10th October, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 10/10/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ प्रेषित/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.