



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.2580 & 2581/Mum./2018  
(Assessment Year : 2010-11 & 2011-12)

Navnidhi Steel And  
Engineering Co. P. Ltd.  
297, Tardeo Road  
Wille Mansion, Opp. Gank of India  
Nana Chowk, Mumbai 400 007  
PAN – AACCN2748R

..... Appellant

v/s

Principal Commissioner of  
Income Tax, Circle-5, Mumbai

..... Respondent

Assessee by : Shri Raj Kumar Singh  
Revenue by : Shri K. Madhusudhan

Date of Hearing – 30.09.2019

Date of Order – 25.10.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeals by the assessee arise out of two separate orders, both dated 26<sup>th</sup> March 2018, passed under section 263 of the Income-tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax-5, Mumbai, pertaining to the assessment years 2010-11 and 2011-12.

2. Brief facts leading to filing of the present appeals are, the assessee company is engaged in the business of trading in ferrous and non-ferrous metals. For the assessment year 2010-11, the assessee filed its return of income on 29<sup>th</sup> September 2010, declaring total income of ₹ 61,47,739. Similarly, for the assessment year 2011-12, the assessee filed its return of income on 18<sup>th</sup> September 2011, declaring total income of ₹ 91,95,059. The returns of income filed by the assessee were initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of Maharashtra, the Assessing Officer found that the purchases worth ₹ 16,78,983, from four parties in the assessment year 2010-11 and purchases worth ₹ 31,74,652, claimed to have been made from two parties in the assessment year 2011-12, were non-genuine as the concerned parties were identified as hawala operators providing accommodation bills. Thus, on the basis of such information, the Assessing Officer re-opened the assessments under section 147 of the Act for both the assessment years. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases made through supporting evidence. In response, the assessee filed copy of the ledger account of the selling dealers appearing in its books, copy of purchase bills, copy of bank

statement showing payments made for the material purchased, stock statement showing movement of stock, quantitative details of purchases and sales, etc. After verifying the evidences furnished by the assessee, the Assessing Officer was of the view that the assessee was not able to establish on record that purchases were made from the declared source. Thus, he held that purchases made by the assessee cannot be accepted as genuine. However, he also observed that the assessee must have effected the purchases from some other sources as the entire quantity of stock was sold by the assessee. Thus, he observed, in such circumstances only the profit margin embedded in such purchases has to be brought to tax. Accordingly, relying upon certain judicial precedents including the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.), he estimated the profit margin on the non-genuine purchases @ 12.5% and added back to the income of the assessee in both the assessment years. After completion of the assessments as aforesaid, the learned Principal CIT called for the assessment records for examination. After examining the assessment records, he was of the view that the assessment orders passed estimating the income on non-genuine purchases @ 12.5% is erroneous and prejudicial to the interests of Revenue, because, once the Assessing Officer has concluded that the purchases are bogus, he could not have estimated the income on such

purchases by applying the rate of 12.5%. Further, he observed, the Assessing Officer has not examined the applicability of section 40A(3) of the Act to the cash purchases made in the grey market. Accordingly, he issued notices under section 263 of the Act directing the assessee to explain why the assessment orders should not be revised. In response to the show cause notices, though, the assessee furnished its reply objecting to the initiation of proceedings under section 263 of the Act, however, learned Principal CIT was not convinced with the submissions of the assessee. Learned Principal CIT observed, the Assessing Officer having received specific information in respect of the non-genuine purchases made by the assessee did not carry out the necessary enquiry which was required to be done. While coming to such conclusion, he specifically referred to the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. v/s DCIT, [2017] 250 taxmann.com 22 (SC), wherein, the Hon'ble Supreme Court confirmed the decision of the lower authorities in making 100% addition on account of non-genuine purchases. Thus, ultimately, learned PCIT concluded that the assessment orders passed by the Assessing Officer are erroneous and prejudicial to the interests of Revenue and set them aside with a direction to the Assessing Officer to make fresh assessment after conducting enquiries in the light of the decision

which may be available before him including the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. (supra).

3. The learned Authorised Representative submitted, in course of assessment proceedings, the Assessing Officer had specifically enquired into genuineness of purchases made by the assessee. He submitted, during the assessment proceedings, the assessee had produced all supporting evidences including stock register and quantitative details of purchases and sales to not only prove the genuineness of purchases, but also to co-relate the purchases with sales. He submitted, the payments made towards purchases were through banking channel and corresponding bank statement was also furnished before the Assessing Officer to demonstrate such fact. He submitted, the Assessing Officer had also conducted enquiry independently by issuing notices under section 133(6) of the Act to ascertain the genuineness of purchases. Thus, he submitted, the allegation made by the learned Principal CIT that the Assessing Officer had not made any enquiry is without any basis. He submitted, merely because the concerned selling dealers did not come forward to confirm the transaction or they did not participate in the enquiry, the purchases were treated as non-genuine in spite of the primary documents filed by the assessee. He submitted, since the assessee had furnished the details of movement of stock through stock register

as well as quantitative details, there cannot be any doubt regarding the purchase of goods, as, in absence of such purchases, the assessee could not have sold the goods. That being the case, the entire purchases could not have been disallowed, but only the profit element embedded therein could have been brought to tax to prevent leakage of revenue on account of non-payment of VAT and suppression of profit due to possibility of purchases having been made from grey market. He submitted, this view has not only been held by different High Courts but also has been consistently expressed by the Tribunal. He submitted, only because the decision of the Assessing Officer in estimating the profit element at 12.5% of the non-genuine purchases is not acceptable to learned Principal CIT, the assessment orders cannot be held to be erroneous and prejudicial to the interest of Revenue. Further, he submitted, reliance placed by learned Principal CIT on the decision of N.K. Proteins Ltd. (supra) is totally misplaced as the facts are completely distinguishable. Thus, he submitted, the assessment orders cannot be held to be erroneous and prejudicial to the interest of Revenue. Consequently, the orders passed under section 263 of the Act have to be declared as invalid. In support of such contention, the learned Authorised Representative relied upon the following decisions:—

- i) *Malabar Industrial Co. Ltd. v/s CIT, [2000] 243 ITR 083 (SC);*
- ii) *CIT v/s Greenworld Corporation, [2009] 314 ITR 081 (SC);*
- iii) *CIT v/s Gabriel India Ltd., [1993] 203 ITR 108 (Bom.);*
- iv) *CIT & Anr. v/s Gokuldas Exports & Ors., [2011] 333 ITR 214 (Kar.);*
- v) *CIT v/s Sohana Woollen Mills, [2008] 296 ITR 238 (P&H);*
- vi) *Venkata Krishna Rice Co. v/s CIT, [1987] 163 ITR 129 (Mad.); and*
- vii) *Shri Ganesh Rice Mills v/s CIT, [2007] 294 ITR 316 (All.).*

4. The learned Departmental Representative strongly relying upon the observations of learned Principal CIT submitted that once the Assessing Officer came to the conclusion that the purchases made by the assessee were bogus, the entire purchases should have been added to the income of the assessee instead of restricting the addition to the profit margin of 12.5%. He submitted, the Assessing Officer fell into error by restricting the addition to the profit element. In support of his contention, the learned Departmental Representative relied upon the following decisions:-

- viii) *Shoreline Hotel Pvt. Ltd. v/s CIT, [2018] 98 taxmann.com 234 (Bom.);*
- ix) *Shoreline Hotel Pvt. Ltd. v/s CIT, ITA no.964/Mum./2015;*

- x) *Horizon Investment Co. Ltd. v/s ITA no.1593/Mum./2013;*  
*and*
- xi) *Arvee International v/s ACIT, ITA no.3543/Mum./2003.*

5. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. Undisputedly, on the basis of information received by the Department from the Sales Tax Authorities indicating that certain parties from whom the assessee claimed to have made purchases have been identified as hawala operator by the Sales Tax Department, the Assessing Officer re-opened the assessment under section 147 of the Act. During the re-assessment proceedings, the Assessing Officer called upon the assessee to furnish supporting evidences to prove the purchases. It is evident, in response to the query raised by the Assessing Officer, the assessee did produce some evidences which of-course was not enough to satisfy the Assessing Officer regarding the genuineness of the transactions. Therefore, the Assessing Officer himself conducted enquiry by issuing notices under section 133(6) of the Act to the concerned parties. Thus, from the aforesaid facts it is very much clear that the Assessing Officer has not overlooked the information/material available on record. Therefore, allegation of learned Principal Commissioner that while completing the assessment the Assessing Officer overlooked the materials on record or has not

made enquiry is without any basis. A reading of the impugned order of learned Principal Commissioner certainly gives an impression that certain judicial precedents including the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. (supra) have triggered the exercise of power under section 263 of the Act. In our view, the decisions referred to by learned Principal Commissioner have been rendered in the context of specific facts involved therein, hence, cannot apply uniformly to all the cases. Pertinently, in the decision of N.K. Proteins Ltd. (supra), in course of search conducted in the premises of the assessee incriminating material such as various cheque books in the name of different parties were recovered. Thus, on the basis of such facts the Hon'ble Supreme Court upheld the addition of the entire purchases. However, the facts involved in the present appeal are different as the basis of addition is the information received from outside source i.e., the Sales Tax Department. Even otherwise also, no fault can be found with the Assessing Officer in making addition by estimating profit on the non-genuine purchases, as the assessee was able to co relate the purchases with sales and the doubt, if any was only with regard to the source of purchases. It is relevant to observe, the decision of the Assessing Officer in making disallowance @ 12.5% is in tune with the view expressed in various judicial precedents rendered in similar nature of dispute including the

decisions of the Tribunal and the Hon'ble Jurisdictional High Court. In fact, the Hon'ble Jurisdictional High Court in Mohommad Haji Adam & Co. (supra) has held that even if the purchases are found to be bogus, however, the entire purchases cannot be added if the sales are not doubted or disputed. The Hon'ble Jurisdictional High Court held that in such circumstances, the addition can be made by applying the gross profit rate of normal purchases. Thus, in our considered opinion, the decision of the Assessing Officer in making addition applying the profit rate is in consonance with various judicial precedents available on the issue. Therefore, it cannot be considered to be an erroneous view as it is a possible view. Moreover, the allegation of learned Principal Commissioner that the Assessing Officer has overlooked the material on record and has not made any enquiry which ought to have been made, appears to be on wrong assumption of facts, hence, not tenable. In view of the aforesaid, we hold that in the given facts and circumstances of the case, the assessment orders passed cannot be held as erroneous and prejudicial to the interests of Revenue. That being the case, exercise of power under section 263 of the Act to revise the assessment orders is neither justified nor valid. Accordingly, we are inclined to quash the impugned orders passed by learned Principal Commissioner under section 263 of the Act. Ground raised by the assessee are allowed.

6. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 25.10.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25.10.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai