

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA NO.5104/MUM/2018(A.Y. 2009-10)

ITA NO.5105/MUM/2018(A.Y. 2010-11)

ITO-WD-3(4)

2<sup>nd</sup> Floor, Rani Mansion,  
Murbad Road, Kalyan(W)- 421301  
Maharashtra

..... Appellant

Vs.

Siddhi Corporation,  
12A,3<sup>rd</sup> Floor, Swastik Bldg.,  
Samale Wadad, Savarkar Road,  
Dombivali, Maharashtra.  
PAN:ABFFS3228N

..... Respondent

Appellant by : Shri R.Bhoopathi  
Respondent by : Ms. Neha Paranjpe

Date of hearing : 18/09/2019

Date of pronouncement : 30/10/2019

ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-1(in short 'the CIT(A))Thane dated 25/06/2018 common for the assessment years 2009-10 and 2010-11. Since the facts giving rise to these appeals are similar and both appeals are directed against the single order of CIT(A) for two different assessment years, these appeals are taken up together for adjudication and are disposed of by this composite order.

2. The brief facts common for both assessment years are as under:-

The assessee is a dealer in electrical, hardware and iron and steel items. On the basis of information received from the Sales Tax Department, Maharashtra regarding assessee's dealings with hawala dealers, the Revenue reopened assessment of the assessee for assessment years 2009-10 and 2010-11. During assessment proceedings, the Assessing Officer concluded that the assessee had indulged in bogus purchases from the following parties:-

Sr.No.	Name of Purchase Party	A.Y 2009-10	A.Y. 2010-11
1.	M/s. Sampark Steels	Rs. 3,80,505/-	Rs. 4,19,235/-
2.	M/s.Prayan Trading Co.	Rs. 6,50,880/-	Rs. 2,87,498/-
3.	M/s. Vitrag Trading Co.	Rs. 4,32,667/-	Rs. 3,84,067/-
4.	Raj Tools Corporation	Rs. 51,665/-	Rs. 35,521/-
	Total	Rs. 15,15,705/-	Rs.11,26,321/-

The Assessing Officer made addition of the entire aforesaid alleged bogus purchases in the hands of the assessee in the respective assessment years.

2.1 Aggrieved against the assessment orders passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') for assessment years 2009-10 and 2010-11, the assessee filed appeals before the CIT(A). The first appellate authority after examining the facts and placing reliance on various decisions confirmed the disallowance in respect of alleged bogus purchases to the extent of 25% of such

purchases. Thus, for the assessment year 2009-10, the CIT(A) confirmed addition of Rs.3,78,926/- and for assessment year 2010-11, the addition confirmed on account of bogus purchases was Rs.2,81,580/-. Against these findings of the CIT(A), the Revenue is in appeal for both assessment years.

3. Shri R. Bhoopathi representing the Department vehemently defended the assessment order and prayed for reversing the finding of CIT(A). The Id.Departmental Representative submitted that CIT(A) has erred in not appreciating the fact that the assessee could neither establish genuineness of the purchases nor the assessee could produce vendors before the authorities below. The assessee has failed to discharge his onus of proving genuineness of the purchases. The Id.Departmental Representative further placed reliance on the decision of Hon'ble Supreme Court of India in the case of **NK Proteins Ltd vs DCIT (2017) 292 CTR 354 (SC)** to contend that 100% addition of the bogus purchases should be made.

4. On the other hand, Ms. Neha Paranjpe appearing on behalf of the assessee vehemently defended the impugned order. The Id.Authorized Representative of the assessee submitted that sales made by the assessee were not disputed by the department, without purchases, there cannot be sales. The first appellate authority, after appreciating the facts and after analysing various decisions has restricted the disallowance to the extent of 25% gross profit, and the same has been accepted by the assessee.

5. We have heard the submissions made by representatives of rival sides and have perused orders of authorities below. The Revenue in its appeal has assailed the findings of CIT(A) in restricting disallowance on account of alleged bogus purchases to 25% gross profit. It is an undisputed fact that in reassessment proceedings while making addition on account of bogus purchases Assessing Officer has not raised any doubt on the sales declared by the assessee. Without purchases there cannot be sales. Thus, the entire alleged bogus purchases cannot be disallowed. The disallowance can only be made to the extent of gross profit not declared by the assessee. The CIT(A) has estimated gross profit of 25% on the alleged bogus purchases and the same has been accepted by the assessee. We do not find any infirmity in the impugned order. Accordingly, the same is upheld. The appeals by the Revenue are without merit, hence, are dismissed.

6. In the result, appeals by the Revenue for assessment year 2009-10 and 2010-11 are dismissed.

Order pronounced in the open court on Wednesday the 30<sup>th</sup> day of October, 2019.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 30/10/2019  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**