

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

**BEFORE SHRIMAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA NO. 5016/MUM/2018

A.Y : 2011-12

Meenaxi Kothari
204, Neelkanth Royale, Joshi Lane,
Ghatkopar (E), Mumbai 400 077.
PAN : AAHPK2324E (Appellant)

vs. Dy. Commissioner of Income
Tax-22(1), Mumbai. (Respondent)

ITA NO. 5485/MUM/2018

A.Y : 2011-12

Asstt. Commissioner of Income Tax,
Circle-27(2), Mumbai. (Appellant)

vs. Meenaxi Kothari
204, Neelkanth Royale, Joshi Lane,
Ghatkopar (E), Mumbai 400 077.
PAN : AAHPK2324E (Respondent)

Appellant by : Shri Bhadresh K. Doshi
Respondent by : Shri Akhtar H. Ansari

Date of Hearing : 16/10/2019
Date of Pronouncement: 16/10/2019

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER

These appeals filed by the assessee and Revenue. The assessee has filed the appeal against the order of CIT(A)-26, Mumbai dated 08.06.2018 for assessment year 2011-12 which in turn has arisen from order of Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated

29.01.2014 whereas the Revenue has filed appeal against order of CIT(A)-25, Mumbai dated 03.07.2018 which in turn has arisen from order of Assessing Officer passed under Section 147 r.w.s. 143(3) of the Act dated 18.10.2016.

2. The only issue in this appeal of assessee in ITA No. 5016/Mum/2018 is against the order of CIT(A) confirming the action of the AO in making addition of ₹3,19,500/- under section 69C of the Act by treating the purchase as not genuine.

3. Briefly stated facts are that the assessee is an individual and engaged in the business of manufacturing electronic motion control devices. During the course of assessment proceedings, the AO required the assessee to furnish the details of purchases made during the year. The AO noted that in three of the parties, from whom the assessee had made purchased, no verification could be carried out as notices issued under section 133(6) of the Act returned unserved by the postal authorities. Following are the three parties: -

Name of the party	Amount (In Rs.)
Ambika Trade Impex	1,01,840/-
Vaishali Enterprises	1,06,937/-
Niddish Impex Pvt. Ltd.	1,10,723/-
Total	3,19,500/-

As the assessee did not produce these parties before the AO and did not produce stock register to show how these purchases have been entered into the stock register and were issued for manufacture of various dates, the AO treated these purchases as bogus amounting to ₹ 3,19,500/- and added the unexplained expenditure under

section 69C of the Act. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved, now assessee is in appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee produce the following details: -

"a. ledger copies of the alleged parties from whom purchases have been effected during the year under consideration.

b. Copies of purchase bills from the alleged parties.

c. Copy of bank statement reflecting payment made to the alleged parties in respect of the purchases made.

d. Bank Certificate for payment done to alleged parties."

5. Before us, the assessee contended that the assessee could not furnish the evidences like delivery challans, transport documents, stock register and even could not produce these parties and accordingly, both the authorities below have treated the purchases as bogus. We noted from the above details of evidences filed, which were not controverted. In our view, once the sales are not doubted i.e. consumption of material, we are of the view that a reasonable profit can be estimated. Hence, we estimate the profit at the rate of



12.5% of the alleged bogus purchases and direct the AO accordingly. This issue of the assessee's appeal is partly allowed.

6. The next issue in Revenue's appeal in ITA No. 5485/Mum/2018 is as regards to the order of CIT(A) restricting the addition made by the AO by treating the same as bogus purchases.

7. Briefly stated facts are that the assessee is an individual and engaged in the business of manufacturing electronic motion control devices. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs.1,10,938/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

S.No.	Name of the seller	Amount
1.	Vihol Enterprises	9,959/-
2.	Power Tech Trading Co.	1,00,979/-
		1,10,938/-

8. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase

bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of whole amount as unproved purchase at Rs.1,10,938/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in para 5.2.7 as under: -

"5.2.7 In view of the above discussed factual matrix and precedents, I am of the view that estimation of 12.5% as profit embedded in impugned purchases shown from the alleged hawala party and adding the same to the total income returned, would meet the ends of justice. Therefore, I direct the AO to estimate profit @ 12.5% of the alleged bogus purchase, which works out to ₹ 13,867/- (@12.5% of ₹ 1,10,968/-) and restrict the addition to ₹ 13,867/-. The appellant gets a relief for the balance amount of ₹ 97,071/-.

Thus, the grounds of appeal No 1 to 3 of the appellant are partly allowed."



9. We have considered the issue and gone through the facts and circumstances of the case. We find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% for the reason that the sales are not doubted by the revenue. Further even the assessee has paid VAT on these sales made out of these purchases. Hence, we confirm the same. This issue of Revenue's appeal is dismissed.

10. In the result, the appeal of the assessee is partly allowed and appeal of Revenue is dismissed.

Order pronounced in the open court on 16th October, 2019.

Sd/-

(जी. मंजुनाथ / G MANJUNATHA)

(लेखासदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीरसिंह / MAHAVIR SINGH)

(न्यायिकसदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16-10-2019.

सुदीप सरकार, व. निजी सचिव / Sudip Sarkar, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति // True Copy //

उप/सहायकपंजीकार (Asstt. Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai