



ITA No.4723/Mum/2018 & 4739/Mum/2018  
Assessment Year :2010-11  
M/s. Nivedita Chemicals P.Ltd.

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.4723/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>DCIT-10(3)(1)</b> Room No.212, Aaykar Bhavan, M.K. Road Mumbai- 400 020.	<b>बनाम/ Vs.</b>	<b>Nivedita Chemicals Pvt. Ltd.</b> G-32 Gems and Jewellery Complex-III Seepz, Andheri (E) Mumbai- 400 096.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAACN-1799-L</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

**&**

आयकर अपील सं./ I.T.A. No.4739/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Nivedita Chemicals Pvt. Ltd.</b> G-32 Gems and Jewellery Complex-III Seepz, Andheri (E) Mumbai- 400 096.	<b>बनाम/ Vs.</b>	<b>DCIT-10(3)(1)</b> Room No.212, Aaykar Bhavan, M.K. Road Mumbai- 400 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAACN-1799-L</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Anil Vishwakarma- Ld. AR
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	28/11/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	28/11/2019



## **आदेश / O R D E R**

### **Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid cross-appeals for Assessment Year [in short referred to as 'AY'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-17, Mumbai, [in short referred to as 'CIT(A)'] Appeal No. CIT(A)-17/IT-19710780/16-17 dated 18/05/2018. It is evident from grounds of appeal that the sole issue that arises for our consideration is addition on account of alleged bogus purchases.

2. We have carefully heard rival submissions, perused relevant material on record and deliberated on various judicial pronouncements being relied upon by both the representatives.

3.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in trading of chemicals, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 23/12/2016 wherein the income of the assessee was determined at Rs.225.09 Lacs, after sole addition of alleged bogus purchases for Rs.102.57 Lacs as against returned income of Rs.122.52 Lacs e-filed by the assessee on 24/09/2010 which was processed u/s.143(1).

3.2 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.102.57 Lacs from 3 suspicious entities, the details of which have already been extracted on Page-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



30/03/2016 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

3.3 The assessee defended the purchases by furnishing copies of purchase invoices, delivery challans, bank statements showing payment to suppliers through banking channels. However, it was noted by Ld. AO that the assessee was not following any standard operating procedure to make the purchases and failed to substantiate the delivery of material. Notices issues u/s 133(6) to 3 suppliers, to confirm the transactions, were returned undelivered by the postal authorities. The assessee failed to produce any of the suppliers but relied on the documents furnished in support of the purchase transactions. Finally, not satisfied with assessee's submissions / explanations, the stated purchases were treated as bogus transactions and added to the income of the assessee.

4. The learned CIT(A), after weighing the factual matrix in terms of ratio of various judicial pronouncements, came to a conclusion that assessee had inflated expenses by taking bogus bills from hawala dealers. However, entire additions would not be justified rather the additions were to be estimated @25% of these purchases. The adjudication by learned first appellate authority has given rise to cross-appeals before us.

5. After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. Undisputedly the assessee was in possession of primary



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purchase documents and the payments to the suppliers were through banking channels. The assessee was a corporate entity and its books of accounts were subjected to audit under various statutes. However, at the same time, the assessee miserably failed to substantiate the delivery of material and also failed to produce any of the suppliers to confirm the transactions. The onus casted upon assessee, in this regard, remained undischarged.

6. The stated factual matrix, in our considered opinion, would make it a fit case not to disallow entire purchases but the addition, 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. However, the estimation of 25%, in our opinion, would be on the higher side. Therefore, we restrict the same to 12.5% of alleged bogus purchases of Rs.1,02,57,688/- which comes to Rs.12,82,211/-. The impugned order stand modified to that extent.

7. Resultantly, the assessee's appeal stands partly allowed whereas the revenue's appeal stands dismissed.

*Order pronounced in the open court on 28<sup>th</sup> November, 2019.*

**Sd/-**

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28/11/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**



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M/s. Nivedita Chemicals P.Ltd.

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.