

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6183/MUM/2018
Assessment Year: 2011-12**

The Income Tax Officer, Ward
3(2), Kalyan, 2nd floor, Rani
Mansion, Murbad Road,
Kalyan (W), 421301.

Vs. Shri Dinesh Madhabhai Dhebbhi,
Prop. Shreeram Switchgear, B-
10, Shree Gurudatt Tower,
PandurangWadi, Manpada
Road, Dombivali (E)-421201

PAN No. AOKPD4634D

Appellant

Respondent

Revenue by : Smt. Jothilakshmi Nayak, Sr. DR
Assessee by : None

Date of Hearing : 25/11/2019
Date of pronouncement : 28/11/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-1, Thane [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 25.11.2019, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-compliance on the part of the assessee, we are

proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the revenue read as under :

1. Whether on the facts and in the 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 in the 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 the non-existent vendors?
3. Whether on the facts and in the 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 in the 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 lower than 100% of the purchases from the non-existent vendors?
5. Whether on the facts and in the 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 the 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 the Hon'ble Apex Court and also decision of Hon'ble Supreme Court in case of Kanchwala Gems V/s JCIT 288 ITR 10 (SC)?

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2011-12 on 21.09.2011 declaring total income of Rs.2,71,641/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills amounting to Rs.6,78,766/- from two hawala dealers, the AO issued notice u/s 148 to the assessee to re-open the assessment. In response to it, the assessee submitted that the return filed on 21.09.2011 be treated as return filed in response to notice u/s 148 of the Act.

During the course of re-assessment proceedings, the assessee produced before the AO bank book, cash book, ledger, sales register, purchase register and financial statements. On verification of the documents filed, the AO noted that further purchases of Rs.11,62,306/- from other two parties were also suspicious.

In order to verify the genuineness of purchases, the AO issued notices u/s 133(6) to the hawala operators from whom the assessee had made purchases. Through the said notices, the AO had called for information such as copies of ledger accounts, bank statements, income tax documents etc. However, those notices were returned un-served by the postal authorities with the remarks "left place". Therefore, he asked the assessee to produce the said hawala parties for examination. However, *vide* submission dated 17.07.2014, the assessee expressed inability to produce those parties before the AO for examination. In view of the above facts, the AO relying on the findings of the Sales Tax Department, Government of Maharashtra made an addition of Rs.18,41,072/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 27.08.2018, the Ld. CIT(A) observed that the quantum of GP of Rs.5,90,340/- is higher than the 25% i.e. Rs.4,60,268/- of bogus purchases of Rs.18,41,072/-. Therefore, he sustained the disallowance to the extent of suppressed GP of Rs.5,90,340/- and deleted the balance amount of Rs.12,50,732/- (Rs.18,41,072/- minus Rs.5,90,340/-).

5. Before us, the Ld. Departmental Representative (DR) submits that the notices issued u/s 133(6) by the AO calling for information such as copies of ledger accounts, bank statements, income tax documents were returned unserved by the postal authorities with the remarks "left place". Though the assessee was requested by the AO to produce the said parties for examination, he failed to produce them. Considering the findings of the Sales Tax Department, Government of Maharashtra and the inquiries conducted by the AO, the Ld. DR submits that the order passed by the AO by making an addition of Rs.18,41,072/- be confirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. In the case of *N.K Proteins Ltd.* (supra), there was search proceedings conducted by the Revenue at the office premises of the assessee wherein blank signed cheque books and voucher of number of concerns were found. Accordingly, the purchases made from these concerns were treated as bogus by the AO and the entire deposits in bank accounts of these parties were treated as assessee's income on protective basis. On appeal, the ITAT restricted the addition on account of alleged bogus purchases at 25% i.e. Rs.73,23,322/- of the total purchases amounting to Rs.2,92,93,288/-. On further appeal, the Hon'ble High Court modified the order of the Tribunal and

directed for addition of entire bogus purchases. After hearing the counsels, the Hon'ble Supreme Court dismissed the SLP filed by the assessee and confirmed the decision of the High Court for addition of entire income on account of bogus purchases.

In the instant case, as mentioned earlier the assessee produced before the AO bank book, cash book, ledger, sales register, purchase register and financial statement. In such a situation, the AO could have made certain inquiry to verify the genuineness of the transaction. We find that the AO has not made even a preliminary inquiry in this regard and thus the instant case is distinguishable from the decision in *N.K Proteins Ltd.* (supra). Therefore, considering the facts and circumstances of the case, we are of the considered view that the Ld. CIT(A) has rightly sustained the disallowance of Rs.5,90,340/- and deleted the balance amount of Rs.12,50,732/- (Rs.18,41,072/- minus Rs.5,90,340/-). Thus we affirm the order of the Ld. CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 28/11/2019.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 28/11/2019

Rahul Sharma, Sr. P.S.

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

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.

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai