

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO. 2558/MUM/2019 (A.Y:2011-12)**

Shri Urvil Dhankumar Vakharia 201, Ossia Elegance Jain Mandir Road, Daulat Nagar Borivali (E), Mumbai - 400 066  <b>PAN: ABNPV2817J</b>	v.	Pr. Commissioner of Income-tax-32 C-11, 2 <sup>nd</sup> Floor Pratyakshakar Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400 51
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Shefali Garg</b>
<b>Department by</b>	:	<b>Shri Sushilkumar Poddar</b>
<b>Date of Hearing</b>	:	<b>18.09.2019</b>
<b>Date of Pronouncement</b>	:	<b>28.11.2019</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Principal Commissioner of Income-tax-32, Mumbai [hereinafter for short "Ld.Pr.CIT"] dated 26.03.2019 passed U/s. 263 of the Act.

2. The assessee in its appeal mainly challenged the order of the Ld.Pr.CIT in passing revision order U/s. 263 of the Act holding that the assessment order passed by the Assessing Officer U/s. 143(3) r.w.s 147 of the Act is erroneous and prejudicial to the interest of the Revenue. Ld.Counsel for the assessee submitted that revision order was passed merely relying on the decision of the Hon'ble Supreme Court in the case

of N.K. Proteins Ltd., in SLP (C) CC No. 769 of 2017 to treat 100% of the purchases of ₹.4,12,213/- made by the assessee as bogus. Ld. Counsel for the assessee submits that while completing the assessment U/s.143(3) r.w.s 147 of the Act the Assessing Officer estimated the profit element @12.5% of the bogus purchases relying on the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth [356 ITR 451] and completed the assessment. However, by way of revision the Ld. Pr.CIT directed the Assessing Officer to pass a fresh order based on the decision of the Hon'ble Supreme Court and ratio of N.K. Proteins Ltd., (supra). Ld. Counsel for the assessee submitted that order passed by the Assessing Officer U/s. 143 r.w.s. 147 of the Act is not erroneous and prejudicial to the interest of the Revenue and there is no finding by the Ld. Pr. CIT to that effect.

3. On the other hand, Ld. DR strongly supported the orders of the Ld.Pr.CIT.

4. We have heard the rival submissions and perused the orders of the authorities below. We observe from the order of the Ld. Pr. CIT that the order passed by the Assessing Officer U/s. 143 r.w.s. 147 of the Act was held to be erroneous and prejudicial to the interest of the Revenue based on the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., (supra). On a perusal of the order of the Ld. Pr.CIT we find that the

Ld. Pr.CIT has not recorded any finding as to how this decision of N.K. Proteins Ltd., (supra) is applicable to the facts of the assessee's case and there is no finding by the Ld. Pr.CIT as to how the order passed by the Assessing Officer U/s. 143 r.w.s. 147 of the Act is erroneous and prejudicial to the interest of the Revenue. Ld. Pr. CIT in the order passed U/s. 263 of the Act merely stated that the order passed by the Assessing Officer is contrary to the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., (supra). Except saying that it is contrary to the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., (supra) the Ld. Pr. CIT has not explained how the decision is applicable and how the assessment order passed in this case is contrary to the decision of the Hon'ble Supreme Court. In the circumstances, we are not able to agree with the view of the Ld. Pr.CIT that order passed U/s. 143 r.w.s. 147 of the Act is erroneous and prejudicial to the interest of the Revenue. Thus, we quash the order passed by the Ld. Pr.CIT U/s. 263 of the Act.

5. In the result, appeal of the assessee is allowed.

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

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 28/11/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**