

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI WASEEM AHMED (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6032/MUM/2018
Assessment Year: 2010-2011**

Bentex Engineering Pvt. Ltd.,Khalai Village, Karol, Vidhyavihar (E), Mumbai 400086 PAN: AAACB4317N	Vs.	DCIT-14(1)(1) Mumbai, Maharashtra.
(Appellant)		(Respondent)

Assessee by : Ms. Asifa Khan (AR)
Revenue by : Ms. Kavita P Kaushik (DR)

Date of Hearing: 07/11/2019
Date of Pronouncement: 14/11/2019

ORDER

PER RAM LAL NEGI, JM

The assessee has filed the present appeal against the order dated 26.07.2018 passed by the Commissioner of Income Tax (Appeals)-21 (for short 'the CIT(A), Mumbai, for the assessment years 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s 147 of the Income Tax Act, 1961 (for short the 'Act'). The brief facts of the case are that the assessee company engaged in the business of manufacturing of tractor parts, filed its return of income for the assessment year under consideration declaring the total income of Rs. 73,61,153/-. The return was processed u/s 143 (1) of the Act. Subsequently, the AO received information from sales tax department Maharashtra through DGIT (Investigation) to the effect that the assessee during the year relevant to the assessment year under consideration obtained bogus purchase bills amounting to Rs. 12,89,523/- from Bhagwati Trading Company, a bogus company, which was appearing in the list of 'hawala' parties prepared by the Maharashtra sales tax department, which issued bogus bills to various

assessee including the assessee in the present case during the relevant period. On the basis of the said information, the AO reopened the assessment u/s 147 of the Act after issuing notice u/s 148 of the Act. Thereafter, the AO issued notices u/s 143 (2) and 142(1) of the Act. In response thereof the authorized representative of the assessee appeared before the AO, submitted the details called for and contended that the assessee had made genuine purchases from the said party. The AO rejected the claim of the assessee and treating the purchases as bogus made addition of the total amount of questioned purchases. In the first appeal, the Ld. CIT(A) dismissed the appeal of the assessee and confirmed the addition made by the AO. Against the said findings, the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

“1.Re.: No Proper Opportunity:

1.1 The Deputy Commissioner of Income tax – 14(1)(1), Mumbai (“the Assessing Officer”) erred in passing order under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (“the Act”) without giving sufficient, proper and adequate opportunity of being heard to the Appellant while framing the assessment.

1.2 The Appellant prays that the order passed is in breach of the principles of natural justice and without application of mind and deserves to be held bad, illegal and void and is liable to be quashed.

1.3 Without Prejudice to the above

2. Re.: Reassessment under section 147 of the Act:

2.1 The Assessing Officer erred in framing the assessment under section 143(3) read with section 147 of the Act.

2.2 It is submitted that the reassessment so framed by the assessing Officer is bad, illegal and void.

Without further prejudice to the above:

3. Re.: Disallowance of purchases – Rs. 12,89,523/-

3.1 The assessing officer erred in disallowing purchase made by the Appellant amount to Rs. 12,89,523/- treating the same to be non-genuine.

3.2 The assessing office failed to appreciate that:

(a) *the purchase was made in regular/normal course of its business;*

(b) *the material purchase is consumed by the appellant in goods manufactured and sold during the year.*

© *the amount has been paid to the purchaser through account payee cheques through proper banking channel.*

3.3 *While doing so, the assessing officer erred in not providing the material/documents to the assessee on the basis of which, he treated the purchase as non-genuine.*

3.4 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

3.5 *the appellant prays that he disallowance of Rs. 12,89,523/- be deleted in toto.*

3.6 *Without prejudice to the above, and in alternative it is submitted that he disallowance of entire purchase of Rs. 12,89,523/- was not called for.*

4. *Liberty:*

The appellant craves leave to refer to and rely upon all or any of the above grounds of appeal and add to, delete, modify and/or alter the grounds of appeal on or before the date of hearing.

3. The Ld. counsel for the assessee submitted before us that the assessee does not want to press ground No.1 of the appeal. Accordingly, we dismiss ground No. 1 of the appeal as not pressed.

4. The remaining grounds pertain to the addition made by the AO u/s 68 of the Act, on account of alleged bogus purchases made by the assessee. The Ld. counsel submitted before us that since the action of the AO was bad in law, the Ld. CIT(A) ought to have set aside the assessment order. The Ld. counsel contended that AO had made addition of the total amount of alleged bogus purchases without taking into consideration the submissions made by the assessee in the light of the documentary evidence placed on record, including ledger account of the supplier in the books of the assessee, purchase invoices and copy of bank statement reflecting the payment made to the part, produced by the assessee to prove the genuineness of the purchases in question, the Ld. CIT(A) ought to have deleted the addition. The Ld. counsel further pointed out that AO has not rejected the sales made by the assessee but, rejected the

purchases ignoring that there cannot be any sale without purchases. The Ld. counsel further submitted that in view of the aforesaid facts, the addition confirmed by the Ld. CIT(A) may be deleted and in alternative a reasonable percentage of addition may be made in the light of the GP shown by the assessee.

4. On the other hand, the Ld. departmental representative (DR) relying on the concurrent findings of the authorities below submitted that since the assessee has failed to discharge the onus of proving genuineness of the transaction, the Ld. CIT(A) has rightly confirmed the addition of total amount of bogus purchases shown by the assessee. The Ld. DR further submitted that the findings of the Ld. CIT(A) are based on the evidence on record and in accordance with the settled principles of law, hence the appeal of the assessee deserves dismissal being devoid of any merit.

5. We have heard the rival submissions of the parties and carefully gone through the relevant material on record in the light of the contentions of the parties. We further notice that the AO has afforded a reasonable opportunity to the assessee to establish the genuineness of the transactions. However, we are of considered view that the evidence on record is not sufficient to conclude that the goods were purchased by the assessee from the parties as per the bills and other documents produced by the assessee. Hence, the AO has rightly concluded that the assessee has not made the questioned purchases from the parties mentioned in the books of account of the assessee. However, since, the AO has not rejected the sale of the goods so purchased, Under these circumstances, the AO had no option but to make an addition on estimation basis considering the applicable rate of VAT or other taxes and the profit embedded in the said transaction. But, he instead of doing so, made addition of the entire amount in question to the income of the assessee. In the first appeal, the Ld. CIT(A) confirmed the same.

6. The Hon'ble Gujarat High Court in the case *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, while dealing with the similar issue, has upheld the decision of the Tribunal and sustained the addition 12.5% of the total amount of bogus

purchases determined by the Tribunal, holding that only profit element embedded in such purchases can be added to income of the assessee. The Tribunal estimated the addition keeping in view the existing rate of VAT and the estimated profit from the questioned transaction. Hence, we find merit in the contention of the Ld. counsel that the addition of the entire amount of the questioned purchases is not justified and contrary to the ratio laid down by the Hon'ble Gujarat High Court. Hence, following the principles of law laid down by the Hon'ble Gujarat High Court in the above referred case, we estimate the addition at 12.5% of the total amount of bogus purchases. We therefore, modify the impugned order passed by the Ld. CIT (A) and restrict the addition to 12.5% of the total amount of bogus purchases determined by the AO.

In the result, appeal filed by the assessee for assessment years 2010-11 is partly allowed.

Order pronounced in the open court on 14th November, 2019.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 14/11/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai