

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.6356/MUM/2018(A.Y.2010-11)

Income Tax Officer -27(2)(1)
Tower No.6, Vashi Railway Station Complex,
Vashi, Navi Mumbai

..... Appellant

Vs.

M/s. KVK Engineering Works,
301/B Wing, Ganga Estate,
Sion Trombay Road,
Behind Atur Park Chember,
Mumbai 400 071
PAN:AAAFK 2044C

..... Respondent

Appellant by : Shri Kumar Padmapani Bora
Respondent by : None

Date of hearing : 03/12/2019
Date of pronouncement : 15/01/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order Commissioner of Income Tax (Appeals)-25, Mumbai (in short 'the CIT(A)') dated 02/08/2018 for the assessment year 2010-11.

2. Brief facts of the case as emanating from records are: The assessee is engaged in business of manufacturing Automobile and machinery spares. On the basis of information received from Sales Tax Department that the assessee has indulged in procuring bogus purchase bills aggregating to Rs.12,64,172/- from hawala dealers

the Assessing Officer reopened the assessment. In reassessment proceedings, the Assessing Officer held that the assessee has made bogus purchases from following parties:-

Name of the party	Amount (In Rs.)
Niddish Impex P.Ltd.	384020
Mahavir Sales Corporation	182624
Rohit Enterprises	235508
Tulsiani Trading Pvt. Ltd.	371280
Kumar Enterprises	907740
Total	12,64,172

The Assessing Officer made addition of the entire aforesaid bogus purchases. Aggrieved by the assessment order dated 25/01/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') the assessee filed appeal before the CIT(A). The first appellate authority after examining the facts and various decisions restricted the addition to 12.5% of the alleged bogus purchases. Against the findings of CIT(A), the Revenue is in appeal before the Tribunal.

3. Notice of the appeal was sent to the assessee through RPAD, which was duly served. Despite service of notice none appeared to represent the assessee before the Tribunal on the date of hearing. Hence, the appeal was taken up for hearing on the basis of the material available on record and with the assistance of Id. Departmental Representative.

4. Shri Kumar Padmapani Bora representing the Department vehemently defended the assessment order. The Id. Departmental Representative submitted that during assessment proceedings, the assessee failed to produce the suppliers and transporters. The assessee failed to discharge his onus in proving genuineness

of the transactions. The assessee has obtained bogus purchase bills from the declared hawala dealers.

5. We have heard the submissions made by Id. Departmental Representative and have perused the orders of authorities below. The assessee has purportedly obtained bogus purchases bills aggregating to Rs.12,64,172/- from suspicious dealers. The assessee is engaged in the business of manufacturing automobile machinery spares. The Revenue has not raised any doubt over sales declared by the assessee. Without inputs there cannot be manufacture/sales. Thus, the entire purchases cannot be held to be bogus. Apparently, assessee has made purchases from grey market and has procured bogus purchase bills from hawala dealers. Under such circumstances only the profit embedded in such sales against the alleged bogus purchases should be brought to tax. We find that the CIT(A) has estimated profit @12.5% of the alleged bogus purchases. The CIT(A) has based his estimation by placing reliance on the decisions rendered by the Hon'ble Gujarat High Court in the case of Simit P. Sheth in Income Tax Appeal No.533 of 2012 decided on 16/11/2016 and in the case of CIT vs. Bholanath Poly Fab (P) Ltd in Income Tax Appeal No.63 of 2012 decided on 23/10/2012. We do not find any infirmity in the impugned order, hence, the same is upheld.

6. In the result, the appeal of Revenue is dismissed being devoid of any merit.

Order pronounced in the open court on Wednesday, the 15th day of January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 15 /01/2020
Vm, Sr. PS(O/S)

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
Mumbai

ITAT,