

IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR REHMAN, ACCOUNTANT MEMBER
ITA No. 6446/Mum/2018 (Assessment Year 2010-11)

DCIT 12(2)(2) Room No. 262/245, 1 st Floor, Aayakar Bhavan, Churchgate, Mumbai-400029.	Vs.	M/s Growel Projects Limited CTS No. 151, Growel House, Akurli Road, Kandivali East, Mumbai. PAN: AACCG2638M
--	-----	--

Appellant

Respondent

Appellant by : Shri V. Vinod Kumar (Sr. DR)

Respondent by : Shri P.P. Bhandari (CA)

Date of Hearing : 13.01.2020

Date of Pronouncement : 13.01.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue is directed against the order of Id. CIT(A)-20, Mumbai dated 12.06.2018 for Assessment Year 2010-11. The revenue has raised the following grounds of appeal:

1. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in restricting the addition on account of bogus purchases to 12.5% of such bogus purchases without appreciating that the onus was on the assessee to establish genuineness of such purchase especially when the suppliers were found to be hawala parties providing accommodation entries?"

2. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in restricting the addition on account of bogus purchases to 12.5% of such bogus purchases without giving any reasonable justification for the same?"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the addition to 12.5% on bogus purchases of such bogus purchases without taking into consideration the decision of the Hon'ble Supreme Court in the case of M/s N.K. Proteins Ltd. Vs. Dy.CIT No.769 of 2017 dated 16.01.2017(SC) wherein the 100% disallowance on bogus purchases was upheld ?"
 4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not relying on the judgment of Hon 'ble Allahabad High Court in the case of CIT Vs. Shri Ganesh Rice Mills (294 ITR316) without appreciating that the facts of the case are similar to those of the assessee ?"
 5. "The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the A.O. be restored."
2. Brief facts of the case are that the assessee is a firm, engaged in the business of project contractor and consultant, filed its return of income for Assessment Year 2010-11 on 04.10.2010 declaring total income of Rs. 78,89,650/-. Initially, the return was processed under section 143(1) on 21.05.2011. Subsequently, the case was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra through Director General (Investigation) that certain hawala dealers were indulging in providing accommodation bills without actual delivery of goods. On perusal of such information the assessing officer took his views that the assessee is one of the beneficiaries of purchases of Rs. 1.29 lakhs from those two hawala parties. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-

opened the assessment under section 147. Notice under section 148 was issued to the assessee on 20.03.2015. The assessee filed its reply dated 06.04.2015 to the notice under section 148 and stated that the return that the return filed under copy of return filed on 4.10.2010. The assessing officer after serving notice under section 143(2) and 142(1) proceeded to complete the assessment. During the re-assessment proceeding, the Assessing Officer asked the assessee to substantiate the purchases. The assessee filed its reply dated 05.01.2016. In the reply, the assessee submitted that they have purchased the material from Jaisalmer Marble from these two entities. The material was dispatched from Rajasthan was received by assessee and was consumed that construction site at Kandivali (East), Mumbai, the said material was used in shopping mall building as per the drawing and specification of contract. The assessee also furnished the copy of ledger account. The assessee also stated that no disallowance of purchases can be made solely on the basis of information of Sale Tax Department, Government of Maharashtra. The submission of the assessee was not accepted. The Assessing Officer recorded that notice sent to both the parties under section 133(6) were returned back unserved. It was also noted that assessee failed to produce the parties for verification. The Assessing Officer noted that the assessee failed to prove the parties and its identity. The Assessing Officer disallowed the 100% purchases

shown from both the alleged hawala parties. On appeal before the Id. CIT(A), the addition was restricted to 12.5% of the said bogus purchases. The Id. CIT(A) restricted the disallowance of alleged bogus purchases by relying upon the decision of Hon'ble Gujarat High Court in case of Simith P. Seth (356 ITR 451). Thus, further aggrieved, the revenue has filed the present appeal before us.

3. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR further submits that the Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The Id. DR for the revenue submits that the Assessing Officer has brought sufficient material on record to prove that the purchases shown by assessee were bogus. The assessee is not entitled for any relief. The Id. DR for the revenue prayed for setting-aside the order of Id. CIT(A) and to restore the order of Assessing Officer.
4. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the Id. CIT(A) reasonably restricted the disallowance on account of bogus purchases

keeping in view the possibility of revenue leakage. The Id. AR of the assessee prayed for dismissal of the appeal.

5. We have considered the submissions of both the representatives and perused the record. During the re-assessment proceeding, the Assessing Officer disallowed the entire purchases shown from two parties on taking view that the assessee is one of the beneficiaries from the hawala dealers. The Assessing Officer disallowed the 100% purchases shown from the alleged hawala parties. On appeal before the Id. CIT(A), the assessee made detailed submission to substantiate the purchases. The assessee also contended that they have furnished the evidence of delivery of the material. The Id. CIT(A) after considering the submission of the assessee concluded that the Assessing Officer heavily relied on the fact that assessee could not produce Ajay Stone and Karni Granimarmo Pvt. Ltd. The Assessing Officer failed to appreciate that assessee has no authority to enforce the attendance of parties before him. The Assessing Officer has not clearly established that goods were not actually delivered to the assessee. The Id. CIT(A) after considering the other factor that the assessee has furnished delivery challans and goods receipt memo and applying the ratio of the decision of Hon'ble Gujarat High Court in Simith P. Seth (supra) restricted the addition to 12.5% of the total addition on account of business profit on such purchases.

6. We are also of the considered view that under the Income-tax Act, the revenue is not entitled to make the addition of entire transaction, rather to tax the business profit. Further keeping in view the possibility of revenue leakage in such transaction a reasonable disallowance of purchases is sufficient to meet the ends of justice. Considering the fact that Id. CIT (A) has already restricted the addition to the extent of 12.5%, which is reasonable in the present case. Hence, we do not find any merit in the grounds of appeal raised by revenue.
7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 13/01/2020.

Sd/-
S.RIFAUR REHMAN
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 13.01.2020

SK

Copy of the Order forwarded to :

- | | |
|--------------------------------------|-----------------------------|
| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "G" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai