



ITA Nos.5959 & 6326/Mum/2018
M/s. B. Arvindkumar & Co.
Assessment Year :2010-11

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No 5959/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. B. Arvindkumar & Co. DC-3165, Bharat Diamond Bourse Bandra Kurla Complex Bandra East, Mumbai – 400051.	बनाम/ Vs.	ACIT-19(1), Matru Mandir, Tardeo Road Mumbai – 400 007.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAAFB-1069-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ I.T.A. No 6326/Mum/2018
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ACIT-19(1), Matru Mandir, Tardeo Road Mumbai – 400 007.	बनाम/ Vs.	M/s. B. Arvindkumar & Co. DC-3165, Bharat Diamond Bourse Bandra Kurla Complex Bandra East, Mumbai – 400051
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAAFB-1069-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mr. Rahul Sarda- Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29/01/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross appeals for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax



(Appeals)-30, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-30/19(1)/10342/2017-18 dated 08/08/2018* on certain grounds.

1.2 The grounds raised by the assessee read as under: -

The CIT(Appeals) has erred by treating 3% of the alleged bogus purchases amounting to Rs. 2,62,05,220/- and disallowing the same and adding it to the taxable income of your appellant.

1.3 The grounds raised 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 restricting the addition made by the AO on account of bogus purchases to 3% of Rs. 2,62,05,220/- notwithstanding that the addition made on the basis of credible information from DGIT(Inv.) Mumbai based on the search and seizure action u/s 132 of the Rajendra Jain Group?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition made by the AO on account of accommodation entries of purchases ignoring that the assessee had not discharged its onus of proving the genuineness of the purchases and had failed to furnish crucial substantiating documents in the nature of delivery challans, transport receipt and exit gat pass etc.?
3. Whether on the facts and in the circumstances of the case and in law, if the CIT(A) has made a presumption that purchases have been made from unknown parties, the Ld. CIT(A) has not clarified how the payment was made and whether section 69 of the Income Tax Act, 1961 will be applicable?
4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the order of Hon'ble Supreme Court in the case of N.K. Protein Ltd. dated 16.01.2017 which is on the similar issue of bogus purchases and when the apex court was already the law of the land when the CIT(A) has pronounced its order on 08.08.2018?
5. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

As evident from grounds of appeal, the sole subject matter of the appeal is estimated additions on account of *alleged bogus purchases*.

2. We have carefully heard the submissions made by both the representatives. We have also perused relevant material on record. Our adjudication to issue raised in the cross-appeal would be as given in succeeding paragraphs.



3.1 Facts on record would reveal that the assessee being resident firm stated to be engaged in import-export of diamonds, was assessed for year under consideration 143(3) r.w.s. 147 on 29/12/2017 wherein the assessee was saddled with additions of Rs.262.05 Lacs on account of *alleged bogus purchases*. The original return of income was filed by the assessee on 29/09/2010 at Rs.111.60 Lacs which was processed u/s 143(1).

3.2 Pursuant to receipt of certain information from DGIT (Inv.) gathered during the course of search operation u/s 132 in the vase of *Shri Rajendra Jain Group*, it transpired that the assessee obtained bogus accommodation purchases bills aggregating to Rs.262.05 Lacs from 2 entities of the said group. The details of the same has already been extracted at para-4 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 30/03/2017 which was followed by statutory notices wherein the assessee was directed to substantiate the purchase transactions.

3.3 After appreciating the modus operandi adopted by the said group for issuance of fake bills, the assessee was show-caused as to why the stated purchases were not to be disallowed. In defense, the assessee produced books of accounts, sale purchase register and invoices and submitted that the payments were through banking channels and therefore, the purchases were genuine. However, finding the submissions to be not plausible, Ld. AO disallowed entire purchases and added the same to the income of the assessee.

4. Aggrieved, the assessee contested the additions by way of elaborate written submissions, which have been extracted on page nos.



3 to 5 of the impugned order. The assessee, *inter-alia*, distinguished the case laws being relied upon by Ld. AO and submitted that the purchases were genuine. After appreciating the same, Ld. CIT(A) formed an opinion that Ld. AO had not made any independent verifications of the transactions. No notices u/s 133(6) / 131 were ever issued to the suppliers to test the veracity of the transactions. However, it was also observed that the primary onus was on assessee to prove the genuineness of the purchases particularly in view of the fact that suppliers admitted that they were merely name lenders and never carried out any genuine business activities. It was further observed in para 6.10 that the quantitative details were maintained by the appellant and Ld. AO did not doubted the genuineness of sales turnover and therefore the issue would boil down to finding out the correct element of profit embedded in such bogus purchases which assessee would have earned by making purchases from unknown parties. Relying upon the decision of Hon'ble Gujarat High Court in **Bholanath Polyfab Pvt. Ltd. (355 ITR 290)**, **Simit P.Sheth (38 Taxmann.com 385)** and **Sanjay Oil Cake Ind. (316 ITR 274)**, Ld. CIT(A) finally came to a conclusion that a reasonable estimation of profit was to be made against these purchases. Finding that the task force group for diamond industry constituted by the Government of India, after considering the BAP scheme, has recommended presumptive tax of 3% for manufacturing activity, Ld. CIT(A) estimated the additions @3% of total purchases of Rs.262.05 Lacs. The adjudication by Ld. CIT(A) has given rise to cross-appeal before us.



5. After careful consideration of factual matrix as enumerated by us in the preceding paragraphs, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The sale turnover has been accepted by the revenue. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The assessee was maintaining its books of accounts with quantitative details of sale and purchase. However, at the same time, the assessee miserably failed to substantiate the purchases and failed to produce any of the suppliers to confirm the transactions. Therefore, the primary onus casted upon assessee, to prove the transactions, remained undischarged. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which learned first appellate authority has rightly done so. Therefore, finding that Ld. CIT(A) has clinched the issue in correct perspective and made reasonable estimation, we see no reason to interfere with the same.

6. Resultantly, both the appeals stands dismissed.

Order pronounced in the open court on 05th February, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**



ITA Nos.5959 & 6326/Mum/2018
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Assessment Year :2010-11

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**