

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

BEFORE SHRI G. MANJUNATHA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5526/MUM/2018
Assessment Year: 2011-12**

The ACIT, Cir- 4(2)(2), Room No. 640, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Kiashar Interiors Pvt. Ltd., Pandya House, 10, Navjeevan Wadi, Dhobi Talao, Mumbai - 400003 PAN: AAACK1477A
(Appellant)		(Respondent)

Revenue by : Shri Sachchidanand Dube (DR)
Assessee by : Ms. Vasanti B. Patel (AR)

Date of Hearing: 09/01/2020
Date of Pronouncement: 09/01/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 16.07.2018 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A))-9, Mumbai, for the assessment year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in execution interior works including civil & Plumbing and other related works on contract basis, filed its return of income for the assessment year under consideration declaring total income of Rs.72,61,769/- The case was selected for scrutiny and the AO issued notice u/s 143 (2) and 142 (1) of the Act. In response to the said notices, the authorized representative (AR) of the assessee appeared before the AO and furnished the details as asked by the AO. During the assessment proceedings, it came to the notice that the assessee had shown purchases amounting to Rs. 7,31,725/- from four bogus parties declared by

the Sales Tax Department, Maharashtra which used to provide accommodation entries/bills without supplying any goods. Accordingly, the AO asked the assessee to submit ledger copy, bills, payments details, and delivery challans etc. In response thereof, the authorized representative submitted the details. In order to verify the genuineness of transactions the AO issued notice u/s 133 (6) of the Act to the concerned parties, however, the notices were received un-served with the remarks 'not known or unclaimed'. The AO treated the said transactions as bogus holding that merely because the funds have moved through banking channel and entries have been made in the books of accounts, the transactions cannot be held to be genuine. Accordingly, the AO determined the total income of the assessee at Rs. 80,09,280/- *inter alia* making the addition of Rs. 7,31,725/- to the income of the assessee. In the first appeal, the Ld. CIT (A) restricted the addition to 12.5% of the total amount of bogus purchases determined by the AO. The revenue is in appeal against the said findings of the Ld. CIT (A).

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:

1. *"On the facts and in the circumstances of the case the learned CIT (A) erred in restricting the disallowance on account of bogus purchase to the extent of 12.50% and has not considered the principle laid out in the D.D Kochher and Sons vs ITO (ITA No. 804 & 3192/Delhi/194) by the Hon'ble ITAT wherein it was held to make the addition of entire amount of inflation of purchases and AO shall not bother about gross profit."*
2. *The information was generated by Maharashtra Sales Tax Department and received through the Investigation Wing of the Income Tax Department. As such, the case squarely falls under the exception 10(e) of Circular no. 03/2018 dated 11.07.2018 and amendment thereto dated 20.08.2018."*

4. The Ld. departmental representative (DR) submitted before us that since the assessee had failed to discharge the onus of proving genuineness of the transaction of purchase by adducing cogent evidence, the Ld. CIT(A) ought to

have confirmed the addition made by the AO in accordance with the decision of the Delhi Bench of the Tribunal in the case of D.D. Kochher & Sons vs. ITO, ITA No. 804 and 3192/Del/194. The Ld. DR further submitted that since the action of the Ld. CIT (A) is not in accordance with the principle of law laid down by the Delhi Bench of the ITAT, the same is liable to set aside.

5. On the other hand the Ld. counsel for the assessee relying on the decision of the Ld. CIT(A) submitted that since the assessee has discharged the primary onus of establishing genuineness of the purchases by submitting the documentary evidence, the AO had wrongly made 100% addition of the alleged bogus purchases. Placing reliance on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Nikunj Eximp Enterprises Pvt. Ltd.*, the Ld. counsel submitted that merely because the assessee could not produce the parties before the authorities below, it could not be concluded that the goods were not purchased. The Ld. counsel further submitted that in any case the Ld. CIT (A) has rightly restricted the addition to 12.5% of the total amount of the alleged bogus purchases and there is no merit in the revenue's appeal.

6. We have carefully gone through the relevant record including the cases relied upon by the authorities below. We are convinced from the material on record that the assessee has failed to establish the genuineness of the purchases in question by adducing cogent and convincing evidence. The notices issued by the AO were received back un-served. The assessee also failed to produce the parties before the AO for verification. Hence, in our considered view, the AO has rightly concluded that the assessee has not made the questioned purchases from the parties mentioned in the books of account. We further notice that, the AO has not rejected the sale of the goods so purchased. The above-mentioned facts give rise to the conclusion that the assessee had purchased the goods in question from grey market and evaded the tax applicable during the relevant period. 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. In the first appeal the Ld. CIT(A) has restricted the addition to

12.5%, holding that the estimate reached at by the AO is on much higher side. The operative part of the decision of the Ld. CIT (A) reads as under:-

“5.3.1 I find in this case, the appellant has submitted copies of ledger, bills, & delivery challans to prove the material delivered at site. The payment of bills has been made by account payee cheques. In my opinion, in normal circumstances, these evidences would have been sufficient proof of existence of the party, and a purchaser cannot be expected to keep track of the whereabouts of counter party after the transaction is concluded. However, in present case, the AO was in possession of information from Sales Tax Department that the said parties are issuing accommodation bills. This fact certainly gives rise to suspicion about the genuineness of said purchases. Hence, it looks like a case of the appellant purchasing goods from the grey market and to cover such purchases, the invoices are procured from alleged bogus parties. In such types of cases, the addition on account of GP has been sustained in several judicial pronouncements, such as CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj. HC) and other judicial pronouncements as also relied upon by the appellant in written submissions. The AO has disallowed the full amount of alleged bogus purchases, which needs to be restricted to 12.5% which in my opinion is far in given circumstances to take care of any leakage of revenue.”

7. The Ld CIT(A) has restricted the addition to 12.5%, basically on the ground that the addition of total amount of bogus purchases is on much higher side. In the case of *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, the Hon'ble Gujrat High Court has upheld the decision of the Tribunal and sustained the addition of 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. Hence, in our considered view, the order passed by the Ld. CIT(A) is based on the principles of law laid down by the Hon'ble Gujarat High Court in the said case. On the other hand, the law relied upon by the Ld. DR is distinguishable on facts. Hence, we do not find any infirmity in the order of the Ld. CIT (A) to interfere with. Accordingly, we uphold the order of the Ld.

CIT (A) and dismiss the sole ground of the revenue's appeal and direct the AO to make addition of 12.5% of the total amount of questioned purchases.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court on 9th January, 2020.

Sd/-

(G. MANJUNATHA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 09/01/2020

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

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