

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1738/PUN/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Technip Engineering Works
Private Limited,
Plot No.W-153(E),
Near Deepak Fertilizer, MIDC,
Taloja, Dist.-Raigad-410208.

PAN : AABCT7434M

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-3,
Panvel.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare,
Revenue by : Shri Deepak Kumar

सुनवाई की तारीख / Date of Hearing : 27.01.2020
घोषणा की तारीख / Date of Pronouncement : 04.02.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-2, Nashik dated 11.09.2019 for the Assessment Year 2009-10.

2. The grounds raised by the assessee are as under :-

“1. On the facts and circumstances of the case, the reassessment proceedings u/s 147 being initiated in absence of material showing escapement of income in the hands of the appellant is void and may kindly be cancelled. The **material based for reopening is vague and has no live link** with escapement of income in the hands of the appellant.

2. The learned CIT(A) erred in law and on facts in confirming addition of Rs.7,71,563/- at 25% on account of inflated purchases alleged to be from bogus parties.

3. The learned CIT(A) erred in law and on facts in confirming the addition inspite of holding that the ld. A.O. has not brought on record any evidence to prove that the purchases were bogus and further ignoring the evidence produced in support of the purchases.

4. *The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

3. Before me, at the outset, ld. Counsel for the assessee demonstrated that this is a case of bogus purchases where the trail of goods were demonstrated. Further, bringing our attention to the order of the Assessing Officer and the CIT(A), ld. Counsel submitted that both the officers i.e. Assessing Officer and CIT(A), resorted to make the addition applying the ad-hoc rate of 25% of the said bogus purchases for the assessment year under consideration and made the addition of Rs.7,71,563/-.

4. In this background, ld. Counsel mentioned that in this case the decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, decided on 28-04-2017 should apply and the disallowance should be restricted only @ 10% of the bogus purchases.

5. The ld. DR for the Revenue, on the other hand, relied heavily on the orders of the Assessing Officer and the CIT(A).

6. On hearing both the parties, I find this is a case of bogus purchases reassessed by reopening the completed assessment. The assessee raised the issue of violation to the principle of natural justice raised in the grounds on the basis of “change of opinion”. Deviating from the above legal issue, referring to the merits of addition, the assessee relied heavily on the order of the Co-ordinate Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra). The assessee pleaded for restricting

the disallowance @ 10% of the bogus purchases. Meanwhile, I find the Jurisdictional High Court has decided similar issue in the case of Pr.CIT vs. M/s. Mohommad Haji Adam & Co. vide Income Tax Appeal No.1004 of 2016 dated 11.02.2019. In para 8 of this judgement (supra), I find the Hon'ble Jurisdictional High Court dismissed the appeals filed by the Revenue with the following observations :-

“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. I (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“ So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

7. Following the above said ratio of the judgment (supra), the Co-ordinate Bench of the Tribunal remanded the issue to the file of the Assessing Officer in the case of Shri Nandkishore Kishanrao Dilerao vs. ITO

vide ITA No.1851/PUN/2018 for the assessment year 2010-11 dated 30.04.2019 as per the discussion given in para 4 of the order of the Tribunal. In this case also, the CIT(A) restricted the disallowance @ 10% of the bogus purchases. For the sake of completeness of this order, the relevant para 4 of the order of the Tribunal (supra) is extracted hereunder :-

“4. I have heard both the sides and gone through the relevant material on record. The issue of bogus purchases has recently come up for consideration before the Hon’ble Bombay High Court in Pr.CIT Vs. Mohommad Haji Adam & Co. Vide its judgment dated 11-02-2019 in ITA No.1004 of 2016 and others, the Hon’ble jurisdictional High Court has held that no ad hoc addition at the rate of 10% of bogus purchases is warranted. Rather the addition should be made to the extent of difference between the gross profit rate on genuine purchases and gross profit rate of hawala purchases. Such details are not readily available with the ld. AR as well to facilitate the calculation of gross profit rates of genuine and hawala purchases. Under these circumstances, I set-aside the impugned and remit the matter to the file of AO for applying the ratio laid down by the Hon’ble Jurisdictional High Court in the above noted case and recompute the amount of addition, if any, after allowing a reasonable opportunity of hearing to the assessee.”

8. From the above, it is evident that restricting the disallowance @ 10% of the bogus purchases on ad-hoc basis is not approved by the Hon’ble Jurisdictional High Court (supra). Rather, the addition should be restricted to the extent of difference between the “gross profit rate on genuine purchases” and “gross profit rate of hawala purchases”. For these purposes, the matter stands remanded to the file of the Assessing Officer. Considering the commonality of the facts, I am of the opinion the issue under consideration should also be remanded to the file of the Assessing Officer with similar direction as given in para 4 of the order of the Tribunal (supra). The Assessing Officer is also directed to examine the arguments relating to the change of opinion argument while passing a speaking order on the ground after granting reasonable opportunity of being heard to the

assessee. Accordingly, the issues raised by the assessee in the present appeal on legal as well as on merits are allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 04th day of February, 2020.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 04th February, 2020.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Nashik;
4. The Pr. CIT-2, Thane;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune