

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 103/MUM/2019
Assessment Year: 2011-12**

Asst. Commissioner of Income
Tax Circle -26(1),
Room No. 701, 7th Floor, C-11
Building, Pratyaksha Kar
Bhavan, Bandra-Kurla Complex.
Bandra (E), Mumbai-400051.

Appellant

Smt. Ashley Philip,
Vs. Prop. Of M/s New India Rubber
Co. A-1102, Birchood CHS,
Hiranandani Gardens, Powai,
Mumbai-400037.

**PAN No. AAHPP4588R
Respondent**

Revenue by : Mr. Dharm Veer Singh, DR
Assessee by : Mr. Subhash Kedia, AR

Date of Hearing : 13/01/2020
Date of pronouncement : 22/01/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-38, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed 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) has erred in deleting the disallowance made account of unexplained purchases u/s. 69C at 12.5% of the total amount of bogus purchases.
 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the addition was made on the basis of information received from DIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assesses from dealers without supply of actual goods.
 3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody.
 4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assesses could not prove the genuineness and creditworthiness of the purchase transactions during the course of assessment proceedings.
 5. The Ld. CIT(A) failed to uphold the decision of Hon'ble Apex Court in the case of *NK Proteins Ltd. vs. DCIT* in SLP (Civil) No.769/2017 dated 16.01.2017 where 100% of addition was confirmed by the Apex Court.
 6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that applicability of provisions of section 40A(3) attracts 100% bogus purchases to be held as profit.
3. Briefly stated, the facts of the case are that the assessee filed her return of income for the assessment year (AY) 2011-12 on 27.09.2011 declaring total income at Rs.20,77,216/-. The return was processed u/s 143(1) of the Act. After receipt of information from the Sales Tax Department, Government of

Maharashtra that the assessee has obtained accommodation entries by procuring bogus purchase bills amounting to Rs.40,46,683/- from three parties, the AO issued notice u/s 148 for re-opening the assessment. The details of such purchases are as under :

Sr. No.	Name of the Accommodation Bill Provider	PAN	TIN	Amount (Rs.)
1.	Real Traders	AMUPP6138L	27170626911V	3,88,080
2.	S S Enterprises	AWZPS2888R	27020710365V	10,29,210
3.	Venus Traders	AFMPP7878L	27940788429V	26,29,393
			Total	40,46,683

During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the three parties calling for information so that the genuineness of the purchases could be verified. However, those notices were returned unserved by the postal authorities. In view of the above facts, the AO asked the assessee to substantiate the transactions and to produce the parties before him for examination. In response to it, the assessee filed a reply dated 23.11.2016 stating that she has in fact purchased materials and taken the physical delivery and sold the same thereafter ; all the purchases and sales are verifiable from the documents filed ; at the time of transaction of purchase, none of the parties was declared as bogus dealer by the Sales Tax Authority and the assessee has no reason to believe that the said parties indulged into bogus billing activities ; all materials purchased and sold have been entered into stock register maintained by the assessee at its godown and have been highlighted before the AO for the purpose of verification.

Along with the above submissions, the assessee filed the details of purchases from the said parties, purchase order, tax invoice issued by the

assessee's proprietary concern M/s New India Rubber Co., ledger account of the parties in the books of the assessee, copies of goods receipt note of the M/s New India Rubber Co., receipt of labour charges etc.

However, the AO was not convinced with the above explanation of the assessee for the reason that the notices issued u/s 133(6) were returned unserved by the postal authorities and further, the assessee failed to produce before him the said parties or brokers. The AO further observed that the parties do not exist at the given address and the assessee failed to furnish the change in address of the parties.

Finally, stating that in a case like the present one, wherein quantitative details are maintained and sales are not in doubt, only part of such purchases, to the extent of profit embedded in such transactions can be disallowed, the AO followed the decision of the Hon'ble Gujarat High Court in the case of CIT v. *Simit P. Sheth* (2013) 356 ITR 451 and estimated the disallowance @ 12.5% of such disputed purchases of Rs.40,46,683/- which comes to Rs.5,05,835/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 17.07.2018, the Ld. CIT(A) observed that (i) the AO has not brought on record any cogent material to doubt the evidences produced by the assessee, (ii) no addition can be made by merely disbelieving the evidence without pointing out any defect in the evidence provided ; (iii) there is no justification to ignore the documentary evidence presented by the assessee in support of the facts of the case and treat the amount as bogus purchases on the basis of mere suspicion.

Further, finding that in assessee's own case for AYs 2009-10 and 2010-11 on identical facts, the appeal was allowed by her predecessor, the Ld. CIT(A) deleted the addition of Rs.5,05,835/- made by the AO.

5. Before us, the Ld. counsel for the assessee relies on the order of the Ld. CIT(A), whereas the Ld. Departmental Representative (DR) supports the order passed by the AO.

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the Ld. CIT(A) has stated at para 6.3.2 of her order that "the documentary evidence like copy of sale invoices, payments made by crossed account payee cheques, copy of bank statement from where payment has been made, copy of purchase bills, stock register, C-Form, delivery challan, transport receipt, godown receipt etc. which were placed before the AO suggest that the transactions were genuine".

Further, the Ld. CIT(A) has rightly stated that in the instant case neither the AO has rejected the books of account of the assessee nor it is his case that cash was withdrawn from the bank account of the supplier immediately after cheques were deposited.

Therefore, we agree with the Ld. CIT(A) that the assessee has discharged her burden of proving the genuineness of the purchases by furnishing the documentary evidence including PAN details of the said dealers.

In the instant case, the assessee has produced before the AO the stock register, wherein, the purchases from the said parties have been recorded

with corresponding sales. The assessee has also furnished the proof of delivery.

In view of the above facts, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 22/01/2020.

Sd/-

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 22/01/2020

Biswajit, Sr. P.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)
ITAT, Mumbai