

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4983/MUM/2018  
Assessment Year: 2012-13**

M/s Green Field India Heavy  
Fabrication Pvt. Ltd.,  
401, Viswajeevan Prakash  
Tower, MIDC Road, Thakurli  
(E), Dombivali (E)-421201

**PAN No. AAECG0054D**

**Appellant**

ACIT Circle-1 Kalyan.  
Vs.

**Respondent**

Assessee by : Mr. Rakesh P. Patel, AR  
Revenue by : Mr. V. Vinod Kumar, DR

Date of Hearing : 18/02/2020  
Date of pronouncement : 26/02/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Pune [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 assessee read as under :

1. The contention of the Ld. CIT(A) is contrary to law and facts of the case. The Ld. CIT(A) had erred in not appreciating the facts of the case.

2. The Ld. CIT(A) has erred in confirming the disallowance made by the Assessing officer for the purchases amounting to Rs.1,08,732/- terming it as bogus without considering the fact that the purchases made from the party are accounted in the books of the appellant and the payment for the same have been made through account payee cheque.
3. The Ld. CIT(A) has not considered the fact that the appellant has produced proper invoices and delivery challans for the purchases made from M/s Ambika Sales Corporation,
4. The non-traceable of the hawala dealer inspite of issuing notice u/s 133(6) of the Act,1961 cannot be the reason to treat the purchases as bogus in nature.
5. The Ld. CIT(A) has erred in disallowing the purchases alone terming it as bogus without effectuating the turnover. When the purchases are disallowed terming it as bogus, then the corresponding turnover need not be offered as income.
6. The Ld. CIT(A) mentioned that the appellant was involved in hawala transaction and just produced accommodation bills without actual delivery is not valid in case of the appellant.
7. The Ld. CIT(A) confirmed the ad-hoc disallowance to the extent of 10% of total expenditure is not justifiable as there is no basis for such calculation.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 28.09.2011 declaring total loss of Rs.32,56,980/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills of Rs.1,08,732/- from Ambika Sales Corporation, the Assessing Officer (AO) re-opened the return processed by issuing notice u/s 148 dated 15.05.2013 to the assessee. During the course of re-assessment proceedings, the AO issued notice u/s 142(1) and 143(2) dated 09.07.2013 to the assessee along with questionnaire calling for details. However, the

assessee failed to file the details called for by the AO. Further, there was no compliance by the assessee to the notice u/s 142(1) dated 06.01.2015 issued by the AO.

In view of the above facts, the AO came to a finding that the assessee had made purchases from M/s Ambika Sales Corporation without any genuine bills. Therefore, he made an addition of Rs.1,08,732/-.

3.1 Further, observing that the claim of expenses made by the AO under various heads in profit and loss account are not verifiable as there is no documentary evidence to substantiate the genuineness of these expenses, the AO made an ad-hoc disallowance of 10% of such expenses which comes to Rs.7,67,162/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 11.05.2018, the Ld. CIT(A), observing that the assessee was involved in hawala transactions confirmed the disallowance of Rs.1,08,732/- made towards the purchases. Further observing that the assessee failed to file documentary evidence in support of its claim of expenses, the Ld. CIT(A) sustained the disallowance of Rs.7,67,162/-.

5. Before us, the Ld. counsel for the assessee submits that the assessee had made purchases of Rs.1,04,550/- on which VAT was charged @ 4% of Rs.4,182/- totaling to Rs.1,08,732/-. The payment was made from Federal Bank on 30.03.2011 vide cheque No. 10023971 of Rs.1,08,732/-. It is stated that there is a copy of weighbridge, transport bill and challan from the broker. The Ld. counsel explains that weigh bridge copy proves the material has come

to the factory. It is further stated that non-traceability of the supplier does not make the purchase bogus.

The Ld. counsel relies on the decision in of the Tribunal in the case of *Simit P. Sheth v. ITO* (ITA No. 3238 & 3239/Ahd/2009) for AY 2006-07; *DCIT v. M/s Nitin Impex* (ITA No. 6178/Mum/2007) for AY 2004-05 and *M/s Esvee Steel Enterprise v. ACIT* (ITA No. 28/Mum/2007).

5.1 Regarding the disallowance of Rs.7,67,162/- affirmed by the Ld. CIT(A), the Ld. counsel submits that the same consists *inter alia* electricity charges of Rs.1,08,940/-; bank charges of Rs.5,330/- ; interest on bank OD of Rs.90,895/- ; interest on term loan of Rs.11,96,995/-.

Explaining that this being the first year of operation of the company, the said expenses were required for running of the business and there is no scientific basis to disallow on ad-hoc basis a sum of Rs.7,67,162/-.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the assessee failed to file the supporting documents such as transportation bills, delivery challans, goods receiving note, octroi receipt before the AO. Further, the notice issued by the AO u/s 133(6) to Ambika Sales Corporation has been returned by the postal authorities. Thus it is submitted by him that considering the facts and circumstances of the case, the Ld. CIT(A) has rightly sustained the disallowance of purchases of Rs.1,08,732/- made by the AO.

Further, the Ld. DR supports the order passed by the Ld. CIT(A) in respect of disallowance of expenses of Rs.7,67,162/- on the ground that the assessee failed to file before the AO the relevant documents/evidence.

7. We have heard the rival submissions and perused the relevant materials on record. The 1<sup>st</sup> ground of appeal is general in nature. We deal with the remaining grounds of appeal below.

As mentioned earlier, the notice issue by the AO u/s 133(6) of the Act was returned un-served by the postal authorities. The notice was issued in the address given by the assessee. The purpose of issuing the notice was to verify the genuineness of the purchase. Further, the assessee failed to file before the AO the relevant documents such as transportation bills, delivery challans, goods receiving note, octroi receipt etc.

In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

Having regard to the facts and circumstances of the case, we set aside the order of the Ld. CIT(A) and direct the AO to estimate the profit @ 12.5% on the disputed amount of Rs.1,08,732/- and bring to tax Rs.13,590/- only. Thus the 2<sup>nd</sup> to 6<sup>th</sup> ground of appeals are partly allowed.

7.1 Regarding the disallowance of expenses, we find that the AO has made it on an ad-hoc basis i.e. @ 10%. There is no mention in the assessment order, whether the assessee was asked to file the relevant documents/evidence. Before resorting to such an ad-hoc disallowance, the AO should have mentioned the details called for and the failure on the part of the assessee to file those details. In the absence of such a narration, we are constrained to delete the ad-hoc disallowance of Rs.7,67,162/- made by the AO. The 7<sup>th</sup> ground of appeal is allowed.

8. In the result, the appeal is partly allowed.

**Order pronounced in the open Court on 26/02/2020.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/02/2020

Rahul Sharma, 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**