

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 482/MUM/2019 (A.Y: 2009-10)

Income Tax Officer – 30(3)(4) R.No. 604, 6 th Floor, C-13 Pratyakshkar Bhavan, Bandra Kurla Complex Bandra (E), Mumbai – 400 051	v.	Tejinderpalsingh Pritamsingh Bath Monarch International 208, Vijay Industrial Estate Chincholi Bunder Link Road Nr. Shakti Mill, Malad(W) Mumbai – 400 064 PAN: ADOPB6680J
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Anoop Hiwase**

Date of Hearing : **28.01.2020**
Date of Pronouncement : **27.02.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 41, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.11.2018 for the Assessment Year 2009-10.

2. Revenue has raised the following grounds in its appeal: -

01. *"On the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs. 3,02,678/- being 100% to*

Rs. 37,835/- being 12.50% of the bogus purchases from hawala parties ignoring the fact that the assessee has failed to produce the parties."

02. "On the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs. 3,02,678/- being 100% to Rs. 37,835/- being 12.50% of the bogus purchases in view of the decision of the Hon'ble Supreme Court in the case of N.K. Proteins, wherein the Apex Court has dismissed the SLP filed against the High Court's decision of upholding the 100% addition made by the AO on account of Bogus Purchases."

03. "The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that the order of the Assessing Officer be restored."

04. "The appellant craves leave to amend or alter any ground or add new ground, which may be necessary."

3. Briefly stated the facts are that, the assessee filed its return of income for the A.Y.2009-10 on 27.09.2019 declaring income of ₹.8,96,590/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from DGIT(Inv.), Mumbai, that the assessee has availed accommodation entries from M/s. Sagar Enterprises, M/s. Naman Enterprises and M/s. Maruti Steel Traders who are said to be providing accommodation entries without there being transportation of any goods. In the re-assessment proceedings, the assessee was required to prove the genuineness of the purchases made from the above parties which are

referred to in the Assessment Order. However, the assessee failed to produce the parties and no explanation was offered.

4. The Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "unserved/unclaimed" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated purchases of ₹.3,02,678/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 12.5% of the non-genuine purchases.

5. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off this appeal on hearing the Ld. DR on merits.

6. Ld. DR vehemently supported the order of the Assessing Officer.

7. Heard Ld. DR on merits and perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the

Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the decision of Hon'ble Gujarat High Court in the case of the CIT v. Simit P. Sheth [356 ITR 451] restricted the disallowance to 12.5% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

“5.2.1 with regard to Ground No.2 wherein the addition on account of the purchases are concerned, it is found that the AO has formed his view about the bogus nature of the purchases made by the appellant from M/s Sagar Enterprises. M/s Naman Enterprises and M/s Maruti Steel Traders on the basis of statements recorded by the Sales Tax Authorities. wherein it was admitted that the sales made by these entities to various purchasers were bogus and involved in issuing bogus bills without actual delivery of the goods. Based on the information received from the DCIT(Inv), Mumbai and verification carried out the AO came to the conclusion that income has escaped assessment related to purchases made from the three bogus parties.

5.2.2. Relying on the above stated facts, the AO in the assessment order had disallowed the entire purchases of Rs.3,02,678/- from the above mentioned three entities treating the same to be bogus purchases.

5.2.3 The facts and circumstances as outlined above, clearly suggest a major Haw in (he transactions i.e., the unverifiable nature of transactions of the purchases from M/s Sagar Enterprises, M/s Naman Enterprises and M/s Maruti Steel Traders. The purchases prices shown on the invoices are not subjected to verification and as such it was difficult to establish the correctness of the purchase prices paid for the materials purchased from them. Such verification of the sale price shown on the invoices/bills was necessary to ascertain the correctness of the profits shown by the appellant for the period under consideration. This verification was also vital to determine as to whether the purchase prices shown on the bills/invoices, are as per prevailing market prices of the materials purchased and to ascertain that the price paid for the materials purchased from these three parties are not over invoiced In the

absence of any such verification of the correctness of the price paid for the materials purchased by the appellant, the purchase price paid as mentioned on the invoices/bills cannot be accepted as the correct price paid for the goods purchased from these parties. In view of the same, the possibility of over-invoicing of the materials purchased to reduce the profit cannot be ruled out. Therefore, the Gross Profit rate shown by the appellant for the year under consideration cannot be relied upon. In the circumstances, the AO has adopted a correct approach to estimate the additional benefit or profit eared on these purchases from the above mentioned three parties. As such, either the purchases from M/s Sagar Enterprises, Ms Naman Enterprises and M/s Maruti Steel Traders are over invoiced or the purchases were actually made but not from the said parties from which it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation.

5.2.4. As of now the issue of bogus purchases has been much discussed and debated by various courts and tribunals. In many judicial pronouncements on the issue, the Courts have taken a consistent view that in case of non-existent parties from whom the purchases are shown to have been made, part of such purchases can be disallowed, particularly in the cases where the corresponding sales are not doubted. Alternatively, the profit embedded in such sales against the alleged bogus purchase, can be brought to tax.

5.2.5 In the case of Vijay Protein Ltd. Vs. CIT (2015) 58 Taxmann.com 44 (Gujarat), while dealing upon the issue of bogus purchases, Hon'ble Gujarat High Court has held that “

“16. It is a matter of fact that the goods were not received from the parties from whom it is shown to have been purchased but, such material was received from a different source which is exclusively within the knowledge of the assessee and none else. Therefore, it is evident that the assessee had inflated the expenditure in question by showing higher amount of purchase price through the fictitious invoices in the names of 33 bogus suppliers. Considering the overall factual scenario, the Tribunal was justified in disallowing 25% of the purchase price.

(SLP filed by the assessee against the above order is dismissed by the Hon'ble Supreme Court vide order dated 06.04.2015).

5.2.6. In the case of CIT vs. Simit P. Sheth, ITA no. 553 of 2012, order dated 16/01/2013, while deciding a similar issue, the Hon'ble Gujarat High Court has again held that:

"We are broadly in agreement with the reasoning adopted by the Commissioner (Appeals) with respect to the nature of disputed purchases of steel. It may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales. However, vital question while considering whether the entire amount of purchases should be added back to the income of the assessee or only (the profit element embedded therein was to ascertain whether the purchases themselves were completely bogus and non-existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation.

In the present case, CIT believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence therefore, the Commissioner (Appeals) believed assessee theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of accounts.

That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of (the assessee. So much is clear by decision of this Court. In particular, Court has also taken a similar view in case of Commissioner of Income Tax-IV vs. Vijay M Mistry Construction Ltd, vide order dated 10.01.2011 passed in Tax Appeal No. 1090 of 2009 and in case of Commissioner of Income Tax-1 vs. Bholanath Poly Fab Pvt. Ltd. vide order doled 23.10.2012 passed in Tax Appeal No. 63 of 2012. The view taken by the Tribunal in case of Vijay Proteins Pvt. Ltd. Vs. CIT reported in 58 ITD 428 came to be approved. "

5.2.7 In view of the facts and circumstances and the judicial pronouncements cited above, disallowance in the instant case of the alleged bogus purchases can be resorted to the extent of excess profit element embedded in such purchases shown to have been made from these parties. Apart from that the yardstick laid down by Hon'ble Courts in the aforesaid judgments by disallowing G.P. related to the purchases, as approximate benefit garnered in such unverifiable purchases where sales are not disapproved, is a sound benchmark which needs to be adopted in the present case too.

5.2.8 Therefore in the instant case too, all the facts and circumstances outlined above leads to the conclusion that although the purchases made by the appellant from M/s Sagar Enterprises, M/s Naman Enterprises and M/s Maruti Steel Traders during the year under consideration cannot be summarily rejected but at the same time it is difficult to accept that the purchases shown on the invoices/bills issued by these parties are as per the prevailing market price of those materials or actually been made from the three parties and might have been purchased in the grey market. The appellant has not placed any evidence on record that the goods were purchased from the above parties at arms' length price. The appellant has also not placed on record any comparable bills/invoices for purchases of similar items made from other parties to establish that the purchases from these parties in question were at par with the purchases made from other parties during the period under consideration. The possibility of such purchases from unregistered dealers without invoices cannot be ruled out. In view of the above, the correctness of the purchase prices mentioned on such bills/invoices issued by the three parties in question cannot be accepted and some additional profit needs to be estimated on such purchases made from the above mentioned parties. As stated above, following the guidelines laid down in the judgments cited above and the contentions of the Assessing Officer in remand report wherein it is stated that the assessee has shown GP 19.20% and NP at 8.25% on the turnover of Rs.1,11,82,682/-, it would be in the interest of justice and in keeping with the judicial pronouncements aforementioned if 12.5% of the bogus purchases of Rs.3,02,678/- amounting to Rs.37,835/- is disallowed. Hence, ground of appeal no. 2 is partly allowed."

8. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the

Ld.CIT(A). None of the findings and observations of the Ld.CIT(A) have been rebutted with evidences by the revenue and thus we do not see any infirmity in the order passed by the Ld.CIT(A) in sustaining the addition/disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 27th February, 2020

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 27/02/2020
Giridhar, Sr.PS

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

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum