

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

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1853/MUM/2019
Assessment Year: 2009-10**

Shri Hasmukh J. Ruparelia,
13, Hari Vallabh Co. Op.
Society, J.K. Mehta Road,
Green Street, Santacruz
(West),
Mumbai-400054.

**PAN No. AACPR1816P
Appellant**

Vs. Income Tax Officer Ward,
22(1)(5),
Piramal Chambers, Lalbaug,
Parel, Mumbai-400012.

Respondent

**ITA No. 2248/MUM/2019
Assessment Year: 2009-10**

Income Tax Officer Ward,
22(1)(5),
323, 3rd floor, Piramal Chambers,
Lalbaug, Parel, Mumbai-400012.

Appellant

Vs. Shri Hasmukh J. Ruparelia,
13, Hari Vallabh Co. Op. Society,
J.K. Mehta Road, Green Street,
Santacruz (West),
Mumbai-400054.

**PAN No. AACPR1816P
Respondent**

Assessee by : Mr. Ketan Vajani, AR
Revenue by : Mr. R. Bhoopathi, DR

Date of Hearing : 21/10/2020
Date of pronouncement : 02/11/2020

ORDER

PER N.K. PRADHAN, A.M.

The captioned cross appeals- one by the assessee and the other by the Revenue – are directed against the order of the Commissioner of Income Tax (Appeals)-34, Mumbai and [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off by this consolidated order for the sake of convenience.

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2. The grounds of appeal filed by the assessee read as under :
 1. On the facts and in the circumstances of the case, the CIT(A), has erred in confirming the disallowance on account of purchases from alleged suspicious dealers to the extent of Rs.7,59,122/- being 12.5% of the purchases made from the said dealers.
 2. The CIT (A) has failed to appreciate that the impugned disallowance is not justified for various reasons and the purchases are duly supported by various details furnished by the appellant including the stock records and corresponding sales reflected in the books of accounts of the appellant.
 3. The CIT(A) has failed to appreciate that the impugned disallowance is in violation of principle of natural justice since the appellant has not been provided with the material used against him and also cross examination of the alleged suspicious dealers.
 4. Without prejudice to the above, the CIT (A) has erred in estimating the profit marginal 12.5% and thereby continuing the disallowance to that extent in the case of the appellant.

ITA No. 2248/MUM/2019
Assessment Year: 2009-10

3. 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) is correct in allowing the appeals of the assessee on account of bogus purchases ignoring the latest decision of the Supreme Court in the case of M/s N.K.Protiens Ltd. vs CIT No. 769 of 2017 dated 16.01.2017 (SC) wherein the Hon'ble Supreme Court has decided the issue of bogus purchases with a direction of making addition amounting to entire bogus purchase as assessee's income.
 2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is right in allowing the expenses claimed on account of purchases made from M/s Maulik Corporation, however assessee did not furnish details of payment made to the said party even in subsequent years.
 3. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) failed to appreciate the fact that onus is one the assessee to explain and substantiate the genuineness and true nature of purchase transactions in which the assessee failed during original assessment proceedings.
 4. The appellant prays that appeal is being filed because it is covered under the exception provided in para 10(e) of the amended instruction no.3 of 2018 dated 20.08.2018.
4. Briefly stated the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 03.10.2009 declaring total income of Rs.9,83,250/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from the hawala parties amounting to Rs.60,72,978/- (Vaishali Enterprises Rs.30,74,342/- and Maulik Steel Corporation Rs.29,98,636/-), the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 dated 08.03.2014. In response to it, the assessee filed a

reply *vide* letter dated 21.07.2014 stating that the return filed on 03.10.2009 may be treated as return filed in response to the notice u/s 148 of the Act. During the course of re-assessment proceedings, in response to the query raised by the AO, the assessee filed various details e.g. copy of purchase bills of the alleged hawala parties and a chart showing corresponding sale details. To verify the genuineness of the transaction, the AO issued notice u/s 133(6) to the said two parties. However, no reply was received by the AO from them. Considering the facts of the case, the AO made an addition of Rs.33,82,929/- with the following observations :

“8.9 It is further seen that no payment was made to Maulik Steel Corporation in subsequent years also, from which the assessee claimed to have made purchase of Rs. 29,98,636/-. The assessee was specifically asked to explain why payment was not made to this party, but no response in this regard was received. During the course of scrutiny proceedings, assessee was unable to substantiate the payment to this party, even in the subsequent years. The question asked *vide* order sheet noting dt. 24.03.2015 is placed on records. It is further pertinent to mention here that the same party was kept in Balance Sheet as creditors till A.Y. 2011-12.

In view of this fact, the entire claim of purchase from M/s. Maulik Steel Corporation of Rs.29,98,636/-and 12.5% of claim of purchase from M/s. Vaishali Enterprises i.e. 12.5% of 30,74,342/-, which works out to Rs.3,84,293/- is disallowed and added back to the total income of the assessee. The total disallowance, therefore, works out to Rs.33,82,929/- (Rs.29,98,636 + Rs.3,84,293), which is added back to the total income of the assessee.”

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 11.12.2018, the Ld. CIT(A) by following the judgment of the Hon'ble Gujarat High Court in the case of *Simit*

P. Seth 356 ITR 461 (Guj) confirmed the disallowance @ 12.5% made by the AO in the case of purchases of Rs. 30,74,342/- from M/s Vaishali Enterprises which comes to Rs.3,84,293/-. However, he restricted the disallowance in the case of purchases from M/s Maulik Steel Corporation to 12.5% of the disputed purchases of Rs. 29,98,636/-. Thus the Ld. CIT(A) restricted the total disallowance to Rs.7,59,122/-.

6. Before us, the Ld. counsel for the assessee relies on the order of the Tribunal in assessee's own case for the AYs 2010-11 & 2011-12 and submits that facts being identical, the profit be restricted to 8% of the disputed purchases of Rs.60,72,978/-. On the other hand, the Ld. Departmental Representative (DR), relying on the decision in *M/s N.K. Protiens Ltd.* (supra), supports the order of the AO and explains that the addition originally made at Rs.33,82,929/- be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reliance placed by the Ld. DR on the decision in *M/s N.K. Protiens Ltd.* (supra) is misplaced. In that case, there was search proceedings conducted by the Revenue at the office premises of the assessee wherein blank signed cheque books and voucher of number of concerns were found. Accordingly, the purchases made from these concerns were treated as bogus by the AO and the entire deposits in bank accounts of these parties were treated as assessee's income on protective basis. On appeal, the ITAT restricted the addition on account of alleged bogus purchases at 25% i.e. Rs.73,23,322/- of the total purchases amounting to Rs.2,92,93,288/-. On further appeal, the Hon'ble High Court modified the order of the Tribunal and directed for addition of entire bogus purchases. After hearing the counsels, the

Hon'ble Supreme Court dismissed the SLP filed by the assessee and confirmed the decision of the High Court for addition of entire income on account of bogus purchases.

In the instant case, there was information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills of Rs.60,72,978/- from two hawala parties. During the course of assessment proceedings, the assessee filed before the AO copy of purchase bills of the said two parties and a chart showing corresponding sales details. In view of the above facts, the instant case is distinguishable from the decision in *N.K. Proteins Ltd.* (supra) relied on by the Ld. DR.

As mentioned earlier, on similar facts, similar issue arose before the ITAT "SMC-II" Bench, Mumbai in assessee's own case for AYs 2010-11 & 2011-12. The Tribunal *vide* its order dated 15.06.2020 held that :

"5. I have gone through the facts and circumstances of the case. I noted that assessee has filed detailed evidences such as purchase bills, books of account, bank statement proving that the purchases are made through account payee cheques but the assessee could not produce genuineness of purchase as he was not having any evidence like transportation of goods, entry of goods in the stock register as one to one consumption pattern of alleged purchases item wise and confirmation from the parties/ concerns etc. I noted that in view of the above, the CIT(A) has rightly estimated the profit rate of alleged bogus purchase. But, I am of the view that the profit rate can be estimated on some basis as in the state of Gujart VAT is at 8%, whereas in Maharashtra it is 4 to 6% varies from item to item. Going by the fact that this material might have been purchased by assessee from grey market at a lower purchase price some element of profit is earned. Hence, a reasonable estimate can

be made. Hence, I estimate the profit rate at the rate of 8% of the bogus purchases and direct the Assessing Officer to recompute the income accordingly.

6. Similarly, in ITA NOs. 1855 & 1856/Mum/2019 for Assessment Year 2011-12 & 2010-11 respectively, wherein the facts and circumstances are exactly identical and hence, taking a consistent view in these two appeals also, I estimate the profit rate at the rate of 8% and Assessing Officer is directed accordingly. The appeals of assessee are partly allowed as indicated above.”

7.1 Facts being identical, we follow the above order of the Co-ordinate Bench and direct the AO to restrict the estimation of profit to 8% of the disputed purchases of Rs.60,72,978/-.

8. In the result, the appeal filed by the assessee is partly allowed whereas the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 02/11/2020.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

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

Mumbai;
Dated: 02/11/2020
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./Assistant Registrar)
ITAT, Mumbai