

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'E' BENCH MUMBAI**

BEFORE SHRI C.N. PRASAD, JM

&

SHRI M.BALAGANESH, AM

**ITA No.6188/Mum/2017
(Assessment Year :2009-10)**

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| M/s. ESP (Asia) Pvt. Ltd., 10, 1 st Floor, NECO Chambers, Plot No.48, CBD Belapur Road, Navi Mumbai-400615 | Vs. | ACIT-15(1)(1) Room No.470, 4 th Floor Aayakar Bhavan M.K.Road, New Marine Lines Mumbai – 400 020 |
| PAN/GIR No. AABCE6484C | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|------------------------|
| Assessee by | None |
| Revenue by | Shri Vijay Kumar Menon |
| Date of Hearing | 17/12/2020 |
| Date of Pronouncement | 18/12/2020 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6188/Mum/2017 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24, Mumbai dated 20/01/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2015 by the Id. Asst. Commissioner of Income Tax-15(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset we find that there is a delay of 104 days in filing of appeal by the assessee. We find that assessee had filed an affidavit together with a delay of condonation petition stating that the said company was under liquidation by the order of Hon'ble High Court and the Ex-Director of the assessee company had duly affirmed that his mother was seriously ill and had ultimately passed away on 21/06/2017, because of which the Director had to stay in his native place alongwith his wife for completing post death rituals and pujas, which had eventually led to the delay in filing of appeal before this Tribunal. We find the reason adduced in the affidavit to be very reasonable and we find that assessee had brought sufficient cause for its delay and accordingly, we deem it fit to condone the delay in the instant case and admit the appeal for our adjudication.

3. None appeared on behalf of the assessee. We find that the notice issued to the assessee in the address mentioned in form 36 had returned six times and the hearing practically commenced on 27/11/2018 from which date, none had appeared on behalf of the assessee. Accordingly, we deem it fit not to keep this appeal pending at this stage due to continuous non-co-operation from the side of the assessee and we proceed to hear the Id. DR and dispose off the appeal on perusal of the materials available on record.

4. The ground No.1 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

5. The ground Nos.2 & 3 raised by the assessee are with regard to disallowance made on account of bogus purchases.

5.1. We have heard the Id. DR and perused the materials available on record. We find that assessee is a company registered under the

Companies Act engaged in the business of repairs and maintenance of oil and gas refineries and had filed its return of income for the A.Y.2009-10 declaring total income of Rs.1,96,39,816/-. It is not in dispute that assessee had made purchases from five parties listed in page 2 of assessment order totaling to Rs.24,02,060/- whose names appeared to be tainted dealers in the website of Sales Tax department of Government of Maharashtra, which information was passed on by the Sales Tax department to the DGIT Investigation which ultimately triggered the re-assessment proceedings in the assessee's case. Admittedly, the validity of reopening of assessment is not under challenge before us. We find that the assessee to substantiate its genuineness of purchases had filed copies of purchase invoices from the alleged parties, copy of ledger accounts and copy of bank statements showing payments made to them through account payee cheque as proof of transactions entered into with the parties. The Id. AO observed that assessee did not file any evidences in the form of transportation bills etc., to justify the proof of delivery of goods to the assessee. The Id. AO also observed that assessee failed to establish, without any reasonable doubt that these materials were delivered at its premises and were indeed consumed for business activities. Accordingly, the Id. AO disputed the consumption of materials purchased from the alleged suppliers and proceeded to disallow 100% of value of purchases made from those parties to the tune of Rs.24,02,060/- as unverifiable and completed the assessment.

5.2. We find that the Id. CIT(A) however, observed that assessee had duly consumed / sold the materials purchased from the aforesaid suppliers for the purposes of its business and hence only the profit element should be brought to tax thereon. For this purpose, he estimated the suppressed profit to the extent of 32.07% of the value of disputed purchases and granted partial relief to the assessee.

6. Aggrieved, the assessee is in appeal before us.

7. We find that the revenue has not preferred any appeal against the order of the Id. CIT(A). It is not in dispute that the assessee should have made purchases from the grey market in order to have some savings in indirect taxes and incidental profits thereon. We find that this Tribunal in series of decisions by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth reported in 356 ITR 451 had categorically held that profit percentage of disputed purchases for the persons engaged in similar line of industry in which assessee is engaged in should be reasonably estimated at 12.5% of value of disputed purchases. Respectfully following the same, we direct the Id. AO to restrict the disallowance made on account of bogus purchases to 12.5% of value thereon. Accordingly, the ground Nos. 2 & 3 raised by the assessee are partly allowed.

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

Order pronounced on 18/12/2020 by way of proper mentioning in the notice board.

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

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 18/12/2020
KARUNA, *sr.ps*

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, Mumbai