

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

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

**ITA No. 828/MUM/2019
Assessment Year: 2010-11**

Motion Drivetronics Pvt. Ltd.,
EL-108, Near Telco Electronic
Zone, TTC Industrial Area,
Mahape,
New Mumbai-400709.

**PAN No. AAECM 3508 N
Appellant**

Vs. Assistant Commissioner of
Income Tax-15(2)(3),
Room No. 360, Aayakar Bhavan,
Maharshi Karve Rd., New Marine
Lines, Churchgate,
Mumbai-400020.

Respondent

**ITA No. 1876/MUM/2019
Assessment Year: 2010-11**

Assistant Commissioner of
Income Tax-15(2)(3),
Room No. 360, Aayakar
Bhavan, Maharshi Karve Rd.,
New Marine Lines,
Churchgate,
Mumbai-400020.

Appellant

Vs. Motion Drivetronics Pvt. Ltd.,
EL-108, Electronic Zone, M.I.D.C.,
TTC Industrial Area, Mahape,
Navi Mumbai-400709.

**PAN No. AAECM 3508 N
Respondent**

Assessee by : Mr. Mehul Shah, AR
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 06/01/2021
Date of Pronouncement : 18/01/2021

ORDER

PER N.K. PRADHAN, A.M.

The captioned cross appeals- one by the Assessee and other by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) r.w.s. 147 the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. On the facts, and in circumstances of the case, and in law, the Ld. CIT(A) erred in passing ex-parte order alleging no submission made without appreciating that the compliance with respect to submission was made on the website of Income-tax Department.
2. On the facts, and in circumstances of the case, and in law. the Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer of purchases amounting of Rs.624,920/- being 12.5% of total alleged bogus purchases of Rs.4,999,365/- without making any independent inquiry by treating the purchases as bogus in nature on mere suspicion that the parties were listed on website of M-VAT Department as Suspicious dealers.
3. On the facts, and in circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating the fact that what could at the best be added was difference in applicable gross profit made on the purchases made, whereas in the present case, the Gross Profit ratio on total purchases was 43.530% which was larger than Gross profit estimated by the Ld. CIT(A), and thus no disallowance was called for.
4. On the facts, and in circumstances of the case, and in law. the Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer even of those alleged bogus purchases amounting to Rs.2,293,114/-which were towards fixed assets and were never debited to profit and loss account.

3. The grounds of appeal filed by the Revenue read as under :

- 1) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in computing Profit for the purpose of section 28 of the Act taking into consideration the bogus bills against which no goods have been received.
- 2) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in presuming that goods have been made from unknown parties where bills have been received from Hawala dealers.
- 3) On the facts and in the circumstances of the case and in law if the Ld. CIT(A) has made a presumption that purchases have been made from unknown parties, the Ld. CIT(A) has not clarified how the payment was made and whether action 69 of the Act will be applicable.
- 4) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the order of the Hon'ble Supreme Court in the case of N. K, Protien Ltd. dated 16.01.2017, which is on the similar issue of bogus purchases and when the apex court order was already the law of land, when the Ld. CIT(A) pronounced its order on 07.12.2018.
- 5) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred by not following the Hon'ble Gujarat High Court decision in the case of CIT vs N.K. Industries (in income tax appeal No. 240 of 2009 vide order dated 26.02.2016) wherein 100% of the bogus purchases was held liable to be added in the hands of the assessee reversing the order passed by the ITAT restricting addition to 25%
- 6) The appellant submits that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

4. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 27.09.2010 declaring total income of Rs.9,18,671/-. The return was processed u/s 143(1) of the Act. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from

Meredian Trading Co., Globe Impex (India) and Little World Trade Impex Pvt. Ltd., the AO re-opened the assessment by issuing notice u/s 148. During the course of re-assessment proceedings, the AO proceeded to verify the purchases of Rs.20,61,689/- from Meredian Trading Co., Rs.26,00,882/- from Globe Impex (India) and Rs.3,36,794/- from Little World Trade Impex Pvt. Ltd. For that purpose the AO issued notice u/s 133(6) to the said parties on the address made available by the assessee. As there was no cogent explanation by the assessee on the genuineness of purchases, the AO estimated the profit @ 25% embedded on the disputed purchases of Rs.49,99,365/- and thereby made an addition of Rs.12,49,841/-.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 07.12.2018, the Ld. CIT(A) restricted the disallowance to 12.5% of the disputed purchases mainly on the non-compliance by the assessee and also on facts of the case.

6. Before us, the Ld. counsel for the assessee submits that *vide* letter dated 30.11.2017 they had submitted before the AO the details of the said disputed purchases which are reproduced below:

Parties for which details received from the IT dept.	Total Amount	Bifurcation		Total
		Fixed Purchases (Balance Sheet)	Assets Other Purchases (P&L A/c)	
Meridian Trading Co.	20,61,689/-	16,05,749/-	4,55,940/-	20,61,689/-
Globe Impex	26,00,882/-	6,87,366/-	19,13,516/-	26,00,882/-
Littleworld Trade Impex Pvt. Ltd.	3,36,794/-	---	3,36,794/-	3,36,794/-
	49,99,35/-	22,93,114/-	27,06,250/-	49,99,365/-

Thus it is stated that the entire amount does not form part of purchases debited to the profit and loss account ; some portion pertains to fixed assets

purchases. It is thus explained that these fixed assets are physically lying at the factory and can be verified, therefore, these cannot be termed as bogus purchases.

On the other hand, the Ld. Department Representative (DR) submits that the order passed by the AO be restored.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We find that the Ld. CIT(A) has decided the appeal *ex-parte* by stating that :

“At the outset, it may be mentioned that the appellant does not appear to be serious in prosecuting its appeal as despite number of notices were given on the last available address as per Form 35, no compliance has been made on behalf of the appellant. Therefore, I consider it is a fit case to be disposed of *ex-parte* on the basis of material available on record.”

Nowhere it is mentioned in the impugned order, whether the notices sent by the Ld. CIT(A) were received by the assessee or not.

As mentioned earlier, the assessee has filed before the AO a letter dated 30.11.2017 received in the office of the AO on the same date stating that the entire amount of Rs.49,99,365/- does not form part of the purchases debited to the profit and loss account ; Rs.22,93,114/- relates to fixed assets purchases and Rs.27,06,250/- to other purchases.

Considering the above facts and circumstances of the case, we are of the considered view that the assessee deserves reasonable opportunity of being

heard by the Ld. CIT(A). Therefore, we set aside the impugned order and restore the matter to the file of the Ld. CIT(A) to make an order afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the Ld. CIT(A).

8. In the result, the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 18/01/2021.

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

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

Mumbai;

Dated: 18.01.2021

Alindra, 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