

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

**BEFORE SHRI MANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 6273/MUM/2019
(Assessment Year: 2010-11)**

Income Tax Officer-28(3)(3),
Mumbai

Vs. M/s Sterling Equipments,
31-48, Shiv Centre,
Sector -17, Vashi
Navi Mumbai- 400705

PAN No. AAZFS3448R

(Revenue)

(Assessee)

Assessee by : None
Revenue by : Shri Sumit Kumar, D.R

Date of Hearing : 01/04/2021
Date of pronouncement : 07/04/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-26, Mumbai, dated 18.07.2019, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 17.03.2016 for A.Y. 2010-11. The revenue has assailed the impugned order on the following grounds of appeal before us:

"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

- 1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the A.O. to restrict the addition of bogus purchases to 12.5% as against 100% addition made by the Assessing Officer on account of bogus purchases without appreciating the fact that parties from whom these purchases were made proven

accommodation entry providers, as concluded by Sales tax Authorities pursuant to the investigation carried out by them'?

- 2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering the latest Apex Court decision in the case of N. K. Proteins Ltd. vs. DOT (769 of 2017), wherein the Hon'ble Supreme Court has confirmed 100% addition on account of bogus purchases?
- 3) The appellant prays that the order of the Ld. CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.
- 4) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

2. Briefly stated, the assessee firm which is engaged in the business of dealing in supplying window, split air-conditioners & water coolers etc. had filed its return of income for A.Y. 2010-11 on 30.10.2010, declaring a total income of Rs.10,45,792/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Maharashtra that the assessee has obtained bogus purchase bills from certain hawala parties its case was reopened under Sec. 147 of the Act.

3. In the course of the assessment proceedings it was observed by the A.O that the assessee during the year in question had claimed to have made purchases from certain parties which had been black listed by the Sales Tax Department, Maharashtra, as under:

| Sr. No. | A.Y. | Name of the party from whom bogus bill has been taken | Amount |
|---------|---------|---|-----------|
| 1. | 2010-11 | MIHIR SALES PRIVATE LIMITED | 14,55,449 |
| 2. | 2010-11 | SMARTLINK TRADEX PRIVATEEE LIMITED | 7,22,532 |
| 3. | 2010-11 | MOTION TRADERS PRIATE LIMITED | 28,06,747 |
| 4. | 2010-11 | ABHLASH SALES P. LTD. | 4,70,813 |
| 5. | 2010-11 | ASHLEY TRADES PRIVATE LIMITED | 2,46,038 |
| 6. | 2010-11 | MERIDIAN SALES AGENCY PVT. LTD. | 8,64,360 |

In order to verify the genuineness and veracity of the aforesaid purchase transactions the A.O issued notices under Sec. 133(6) of the Act to the aforementioned parties, which however were returned unserved by the postal authorities with the remarks "not known/left/not claimed". In the backdrop of the aforesaid facts, the A.O called upon the assessee to substantiate the genuineness on the aforesaid impugned purchases. In reply, the assessee placed on record the copies of the ledger accounts of the aforesaid supplier parties as appearing in its books of accounts; copies of the purchase bills; and copy of the bank statements evidencing the fact that the payments to the aforesaid parties were made through banking channels. In order to verify the authenticity of the purchase transactions the A.O directed the assessee to produce the aforementioned parties. However, the assessee failed to comply with the aforesaid direction of the A.O and expressed its inability to produce the aforementioned parties. After perusing the documents which were placed on record by the assessee to support the authenticity of the impugned purchase transactions, the A.O was of the view that in the absence of supporting documentary evidence viz. goods receipt notes; goods inspection notes; godown receipts; toll taxes paid receipts; loading and unloading expenses detaile etc., it could safely be concluded that no genuine purchases were made by the assessee from the aforementioned parties. On the basis of his exhaustive observations recorded in the assessment order, the A.O held a conviction that the assessee had not purchased any goods from the aforementioned parties and had only obtained accommodation bills from them. Backed by his aforesaid deliberations, the A.O disallowed the entire amount of the impugned purchase of Rs.65,65,939/- and added back the same to the returned income of the assessee firm. After inter alia making the aforesaid disallowance the income of the assessee was assessed by the A.O vide his order passed under Sec. 143(3) r.w.s 147, dated 17.03.2016 at an amount of Rs.76,96,490/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). Observing, that the assessee had accounted for the sales

corresponding to the impugned purchases, the CIT(A) was of the view that as the assessee had purchased the goods at a discounted value from the open/grey market and not from the aforementioned parties, thus, only the profit element embedded in procuring such goods at a discounted value was liable to be disallowed. Backed by his aforesaid observation, the CIT(A) restricted the addition to the extent of 12.5% of the aggregate value of purchases of Rs.65,65,939/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The assessee respondent despite having been put to notice about the date of hearing of the appeal had however failed to appear before us. Accordingly, we are herein constrained to proceed with the hearing of the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963, and therein dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities.

6. As is discernible from the records, it is a matter of fact born from the records that the assessee had failed to substantiate the authenticity of the impugned purchases claimed to have been made from the aforementioned parties on the basis of clinching documentary evidence to the satisfaction of the A.O. Apart from that, the notices issued by the A.O under Sec. 133(6) to the aforementioned parties were returned unserved by the postal authorities, which in the backdrop of the credentials of the said parties as was shared by the Sales Tax Department, Maharashtra thus raised serious doubts as regards the genuineness and veracity of the impugned purchases claimed by the assessee to have been made from them. But then, we also cannot remain oblivious of the fact that the assessee had placed on record sufficient documentary evidence to substantiate the authenticity of the impugned purchases, viz. purchase bills; ledger account of the parties; delivery challans; copies of bank statements etc. As observed by the CIT(A) the assessee had been able to correlate the sales corresponding to the impugned purchases. In our considered view, the CIT(A) had rightly concluded that as the sales could

not have been carried out de hors the corresponding purchases thus, it could safely be concluded that the assessee had purchased the goods in question though not from the aforementioned hawala parties, but at a discounted value from the open/grey market. As such, in the backdrop of his aforesaid conviction the CIT(A) in our considered view had rightly restricted the addition to the extent of the profit embedded in procuring of the impugned goods at a discounted value from the dealers operating in the open/grey market. We concur with the view taken by the CIT(A) that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element embedded in the impugned purchases in question. Also, we subscribe to the quantification of the said profit element by the CIT(A) at 12.5% of the aggregate value of the impugned purchases. Accordingly, finding no infirmity in the view taken by the CIT(A) we herein uphold the same.

7. The appeal of the revenue is dismissed.

Order pronounced in the open court on 07.04.2021

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 07.04.2021

PS: Rohit

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.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai