

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1913/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT, Circle-1 1 st Floor, Mohan Plaza Wayle Nagar, Khadakpada, Kalyan-West-421301	बनाम/ Vs.	Bhave Engineering Pvt. Ltd. C/o. D. C. Bothra & Co. LLP (CA) (formerly known as D. C 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp Bank of India, nana Chowk, Mumbai.
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आयकर अपील सं/ I.T.A. No.1818/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

Bhave Engineering Pvt. Ltd. C/o. D. C. Bothra & Co. LLP (CA) (formerly known as D. C 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp Bank of India, nana Chowk, Mumbai.	बनाम/ Vs.	ACIT, Circle-1 1 st Floor, Mohan Plaza Wayle Nagar, Khadakpada, Kalyan-West-421301
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACB7065K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rajkumar Singh
Revenue by:	Shri Rajendra Joshi (DR)

सुनवाई की तारीख / Date of Hearing: 07/12/2020

घोषणा की तारीख /Date of Pronouncement: 01/03/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue as well as assessee has filed the above mentioned appeals against the order dated 16.01.2019 passed by the Commissioner of



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Income Tax (Appeals) -02, Thane [hereinafter referred to as the “CIT(A)”]
relevant to the A.Y.2010-11.

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2. The revenue has raised the following grounds:-

“1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors as per information received from Law enforcement agency of State Govt. of Maharashtra i.e. Sales Tax Department, and established by the Assessing Officer.

2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors.

3. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement of goods, stock register, etc. to restrict the addition to 12.5% of bogus purchases from the non-existent vendors.

4. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the



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ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court.

5. It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11.07.2018 amended vide letter dtd. 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.

6. The appellant craves leave to add, amend, alter or delete any ground of appeal.”

3. The assessee has raised the following grounds: -

- “1. *That on facts and circumstances of the case and in law the Id. CIT(A) has erred in retaining the disallowance of Rs.1,38,99,219/- being 12.50 percentage of alleged hawala purchase of Rs.11,11,93,789/-. Appellant humbly prays that adhoc disallowance retained by Id. CIT(A) wrong on facts and bad in law therefore, may be deleted.*
2. *That appellant craves the leave to amend, alter, substitute and or to raise new or additional grounds of appeal at the time of hearing.”*

4. The brief facts of the case are that the assessee filed its return of income on 14.10.2010 declaring total loss to the tune of Rs.14,04,418/- for the A.Y. 2010-11. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case of the assessee was reopened and notice u/s 148 of the Act dated 09.12.2013 was issued and served upon the assessee. Notices u/s 143(2) & 142(1) of the Act dated 16.07.2014 were issued and



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served upon the assessee. The case of the assessee was reopened on the basis of information received from the Sales Tax Department, Maharashtra in which it was conveyed that the assessee has taken the bogus accommodation entries of purchase in sum of Rs.11,11,93,749/- from the following six parties.

Party Name	TIN	Amount (Rs.)
Rexon Impex/Vedanta Enterprises	27070729398V	29635804
Goodluck Metal Drashti Overseas	27200639456V	38322963
Shree Ganesh Steel	27280401083V	10266921
Ace International	27470504332V	11476774
Deep Enterprises	27710298366V	10778664
Total	27750595164V	111193749

5. After the reply of the assessee, the AO raised the addition to the extent of 100% of the bogus purchase. The CIT(A) has restricted the addition to the extent of 12.5% of the bogus purchase. Feeling aggrieved, the assessee as well as revenue has filed the above mentioned appeals before us.

6. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We noticed that the assessee failed to substantiate his claim, therefore, the AO raised the addition to the extent of 100% of the bogus purchase. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 12.5% of the bogus purchase. Both the parties are in appeal before us. In the instant case, sale is not doubted. It is settled law that when the sale is not



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doubted then the 100% disallowance for the bogus purchase cannot be done. This proposition was supported from the decision of Hon'ble Jurisdictional High Court in the case of **Nikunj Eximp Enterprises (in writ petition no.2860 dated 18.06.2014)**. The facts of the present case indicate that the assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expenses of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that the proposition as held by Hon'ble Jurisdictional High Court in the case of **PCIT Vs. M. Haji Adam & Co. (ITA. No. 1004 of 2016 dated 11.02.2019)** is liable to be applied. The relevant para no. 8 is hereby reproduced as under: -

“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a



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trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.I. rate on purchases at the same rate of other genuine purchases.

The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same judgment the Court held and observed as under

“So far the question regarding addition of Rs.3,70,78,125/- as gross profit on sale of Rs.37.08 crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during F.Y. 1997-98 is concerned; we are of the view that the assessee be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125% which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and made necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

7. We respectfully following the aforesaid judgement of the Hon'ble Jurisdictional High Court set aside the finding of the CIT(A) and restore the matter to the file of the AO with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless



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to say that an opportunity of being heard is required to be given to the assessee in accordance with law.

8. In the result, the appeal filed by the assessee is hereby allowed and appeal filed by the revenue is hereby dismissed accordingly.

Order pronounced in the open court on 01/03/2021

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/03/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai