

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

Before Shri Mahavir Singh, Vice-President

ITA No.1164/Mum/2020
Assessment Year : 2010-11

ITO 9(2)(3), Mumbai.	vs	M/s. Contech Machines P Ltd., 22/C, Vaibhav Industrial Estate, Saki Vihar Road, Powai, Mumbai 400 072.
(Appellant)		PAN AWUPS3619P (Respondent)

Appellant By : Shri Vaibhav Jain
Respondent By : None

Date of Hearing :26.10.2021	Date of Pronouncement : 26.10.2021
-----------------------------	------------------------------------

ORDER

This appeal by assessee is arising out of the order of the CIT(A) – 16, Mumbai, in appeal No.CIT(A)-16/ITO-9(2)(3)/IT-10087/2016-17, dated 29.11.2019. The assessment was framed by the ITO 9(2)(3), Mumbai, for A.Y. 2010-11, vide his order dated 02.03.2016, u/s. 144 r.w.s. 147 of the Income tax Act, 1961 (hereinafter referred to as "the Act").

2. The only issue in this appeal of the Revenue is against the order of the CIT(A) restricting the profit @ 12.5% of the bogus purchases as against the addition made by Assessing Officer @100%. For this Revenue has raised following two grounds:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in restricting the suppressed profit to the extent of 12.5% of bogus purchases, when the assessee could not produce any parties or evidence that the said goods were purchased and the onus of providing genuineness of purchases was not discharged by the assessee?

2. Whether the Ld.CIT(A) has ignored the judgement of the Hon'ble Apex Court in the case of N K Proteins Vs. DCIT SLP Nos 769 of 2017 dated 16.01.2017, wherein the Hon'ble Supreme Court had dismissed the SLP filed by the tax payer and confirmed the decision of the Hon'ble High Court for addition of entire income is to be made on account of bogus purchases as against the ITAT's decision restricting it to 25%."

3. None appeared on behalf of the assessee.

4. I have heard the learned DR and have gone through the orders of the lower authorities. The AO noted that the assessee is engaged in the business of manufacturing and trading in resistance welding and allied equipments. He noted that the assessee is one of the beneficiaries of the accommodation entries as per the information received from Sales Tax Department through the office of DGIT (Inv), Mumbai in respect of bogus purchases. According to the Assessing Officer, the assessee has obtained bogus bills from the following parties for an amount of Rs 5,88,215/-

Sr. No.	TIN No. of the Hawala Party	Hawala Party	Amount
1	27860346638V	Asian Steel	Rs. 5,923/-
2	27170384799V	Chandranand Trading Pvt. Ltd.	Rs. 56,202/-
3	27320573915V	Jindal Metal Corporation	Rs.1,63,754/-
4	27240659707V	Rema Trading Co.	Rs.3,62,336/-
		Total	Rs.5,88,215/-

With no response from the assessee the Assessing Officer passed ex parte order and framed assessment u/s. 144 of the Act. Aggrieved the assessee preferred appeal before the first appellate authority.

5. The learned CIT(A) after considering the decision of Ahmedbad Bench of the Tribunal in the case of Vijay Proteins Ltd. Vs. ACIT [1996] 58 ITD 428 (Ahd) and the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 taxmann.com 385 (Guj), restricted the disallowance to the extent of the profit element embedded in such purchases @12.5%. The learned CIT(A) has observed as under:

"6.1.30 In the case of Vijay Proteins (supra), the Hon'ble ITAT was seized with a case of bogus suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from open market without insisting for genuine bills, the suppliers may be willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Tribunal estimated an element of profit percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.

6.1.31 As narrated earlier, the Ld. A.O. in this case has held that the parties from which the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/ sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellant. Accordingly, this ground of appeal is partly allowed."

6. I noted from the order of the CIT(A) as well as the assessment order that admittedly, the assessee has obtained bills from hawala parties but it is not disputed

that the sales met out of these purchases are not considered. Once the sales are not doubted, I find that the CIT(A) has rightly applied the profit rate. I find no reason to interfere with his findings and confirm the same.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 26th October 2021.

Sd/-
(Mahavir Singh)
VICE - PRESIDENT

Mumbai, Dated : 26th October, 2021.
SA

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Sr. Private Secretary/Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai