

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

Before Shri Mahavir Singh, Vice-President

ITA No.1216/Mum/2020
Assessment Year : 2009-10

Asst.CIT Cir 6(1)(1), Mumbai.	Vs	M/s. All Wave A V Systems Pvt. Ltd., 420/A, Shah & Bahar Industrial Estate, Lower Parel, Mumbai 400 013. PAN : AADCA3704H
(Appellant)		(Respondent)

Appellant By : Shri Vaibhav Jain
Respondent By : Ms Komal Trivedi

Date of Hearing :26.10.2021	Date of Pronouncement : 26.10.2021
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ORDER

This appeal by assessee is arising out of the order of the CIT(A) – 12, Mumbai, in appeal No.CIT(A) Mumbai-12/10594/2015-16, dated 26.11.2019. The assessment was framed by the DCIT Circle 6(1)(1), Mumbai, for A.Y. 2009-10, vide his order dated 18.03.2015, u/s. 143(3) 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 as regard to the order of CIT(A) in restricting the profit rate of bogus purchases @12.5% as against 100% disallowed by the Assessing Officer. For this the Revenue has raised the following two grounds:-

"1. On the facts and in the circumstances of case and in law, the Id. CIT(A) erred in restricting the disallowance on account of bogus purchases @12.5% as against 100% made by the AO since there was no compliance from the two parties from whom the assessee company has made purchases amounting to Rs 3,67,848/-.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has failed to appreciate the fact that the issue involved is of the nature of organised tax evasion as per board circular no.23/2019 dated 06.09.2019 which has not been appreciated with regard to disallowance made by the AO in respect of the two entities amounting to Rs.3,67,848/- and restricted the disallowance made to 12.5% of such purchases."

3. I have heard both the sides and gone through the facts and circumstances of the case. I noted that the Assessing Officer received information from DGIT (Inv), Mumbai, that as per the information from the Maharashtra Sales Tax Department, the assessee during the year under consideration has obtained accommodation bills from M/s. Jasmine Enterprises and M/s. Vaibhav Sales Corp. The Assessing Officer treated these purchases as bogus. He also noted that the assessee has made purchases from eleven other parties to the tune of Rs.15,57,758/-. As regards the bogus purchases from M/s. Jasmine Enterprises for Rs 3,49,440/- and M/s. Vaibhav Sales Corp for Rs.18,408/-, the Assessing Officer added the entire bogus purchase amounting to Rs 3,67,848/- and in regard to other bogus purchases of Rs.15,57,758/- the AO applied the profit rate of 12.5% and thereby made addition of Rs 1,94,720/-. Aggrieved the assessee preferred appeal before the CIT(A).

4. The learned CIT(A) restricted the profit rate of 12.5% with regard to both the additions by observing as under:

"3.4. Keeping in view the totality of facts and circumstances of the case and respectfully following the decisions, the addition in respect of purchase of Rs.3,67,848 made from M/s. Jasmine Enterprise and M/s. Vaibhav Sales Corp is restricted to 12.5% of bogus purchases.

Accordingly, the additions in this regard to the extent of 12.5% of bogus purchases of Rs 3,67,848 which comes to Rs 45,981 is sustained. The AO is directed to modify the addition accordingly.

3.5 As regard to addition of Rs.1,94,720 being 12.5% of the purchases as non-genuine purchases in respect of other nine parties out of 11 parties, it is seen that A.O has duly considered the submission of the assessee and accordingly relied in the case of CIT vs. Simit P Sheth, 356 ITR 451, Hon'ble Gujarat High Court has made estimation @12.5% of alleged bogus purchases as non-genuine and added the same as suppressed profit to the income returned.

3.6 Keeping in view the totality of facts and circumstances of the case and respectfully following the decisions, the addition made by the A.O. in respect of purchase of Rs.15,57,758 from 9 parties to the extent of Rs 1,94,72 being 12.5% of bogus purchase is confirmed. The appellant gets part relief. This ground is partly allowed."

Aggrieved the Revenue is in appeal.

5. After hearing the rival contentions and going through the facts and circumstances of the case, I note that the assessee has produced complete details and vouchers of sales/purchases, registers, books of account, proof of payments made through account payee cheques to selling party and receipt from the other party. The assessee has accounted for these purchases and Assessing Officer has not doubted the sales made out of the same. As this is the position, I have no reason to interfere with the order of the CIT(A) and the same is confirmed.

6. 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.
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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