

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1050/MUM/2020 : A.Y : 2010-11

Income Tax Officer – 9(3)(2),
Mumbai. (Appellant)

Vs. M/s. DVM Engineering Pvt. Ltd.,
303, UPAHAR – 2, Off J.P. Road,
Seven Bunglows, Versova,
Andheri (W), Mumbai 400 061.
PAN : AACCD1036C (Respondent)

Appellant by : Shri Vivek Perampurna

Respondent by : None

Date of Hearing : 25/10/2021

Date of Pronouncement : 25/10/2021

ORDER

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-16, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-16/IT-10082/ITO-9(3)(2)/2016-17 dated 29.11.2019. The assessment was framed by Income Tax Officer - 9(3)(2), Mumbai for Assessment Year 2010-11 vide his order dated 29.02.2016 under Section 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 Revenue is against the order of CIT(A) estimating the profit rate at 12.5% of the bogus purchases. For this, Revenue has raised the following two Grounds of appeal :-

“i. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition at Rs.1,23,937/- which is 12.5% of disputed purchase of Rs.9,91,493/- and giving relief amounting to Rs.8,67,556/- to the assessee ?

ii. Whether the Ld. CIT(A) has failed to appreciate the judgment of the Hon'ble Apex Court in the case of N.K. Proteins Vs. DCIT SLP No. 769 of 2017 dated 16.01.2017 wherein the Supreme Court has dismissed the SLP filed by the assessee and confirmed the decision of High Court for addition of entire income on account of bogus purchases against the ITAT's decision restricting it to 25%?”

3. I have heard the learned Sr. DR and gone through the facts and circumstances of the case. The assessee-company is engaged in the business of manufacturing and trading of rubber gaskets. The Assessing Officer during the course of assessment proceedings noticed that information is received from Maharashtra Sales Tax Department that the assessee is a beneficiary of obtaining bogus bills of purchase from one, M/s. Seva Enterprises for an amount of Rs.9,91,493/-. According to the Maharashtra Sales Tax Department, M/s. Seva Enterprises has issued bogus bills to various beneficiaries and assessee is one of them. The Assessing Officer added the entire bogus purchases made from M/s. Seva Enterprises treating the same as non-genuine purchases amounting to Rs.9,91,493/-. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) considered the submissions and evidences produced by the assessee viz. complete sale and purchase bills, stock register, payments made through account payee cheques to the seller parties and noted that the assessee could not produce the delivery challans or the parties for examination. The CIT(A) considering the judgment of Hon'ble Gujarat High

Court in the case of *CIT vs. Simit P. Sheth, 356 ITR 451 (Guj.)* and the order of ITAT, Mumbai Bench in the case of *ACIT vs Haware Construction (P.) Ltd. [2019] 101 taxmann.com 168 (Mumbai Trib.)* restricted the profit rate at 12% by observing in paragraph 4.1.6 as under :-

“4.1.6 Taking into account all the relevant facts of the case I hold that being the gross profit 12% over and above the GP declared would be a reasonable amount to be confirmed, to cover the profits of the appellant. Hence the addition of Rs.1,23,936.62/- is confirmed and balance be deleted.”

Aggrieved, Revenue is in appeal before the Tribunal.

5. Before me, the learned Sr. DR relied on the assessment order. I have considered the case records and the arguments of learned Sr. DR. I noted that no doubt the assessee might have obtained bogus bills, but the actual sale has happened as noted by CIT(A). Even the Assessing Officer has not doubted the sales made out of the bogus purchases. It means that the assessee has purchased the goods from grey market and obtained bogus bills and, in turn, might have saved some tax. Hence, I find no infirmity in the order of CIT(A) in estimating the profit rate at 12% and I confirm the same.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25th October, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 25th October, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai