

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI  
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1927/Mum/2020

(A.Y: 2009-10)

ACIT – 3(1)(1) Room No. 607, 6 <sup>th</sup> Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s Bhoir Offshore Co. Pvt Ltd., 318, Maker Chambers V, Nariman Point, Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACB5167A		
Appellant	..	Respondent

Appellant by :	Shri. Sanjiv K Jain. DR
Respondent by :	Shri. Y.P.Trivedi. AR

Date of Hearing	17.11.2021
Date of Pronouncement	22.11.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-8 Mumbai, passed u/s 143(3) and 250 of the Income Tax Act, 1961.

The revenue has raised the following grounds of appeal.

- Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting addition of Rs. 65,75,879/- on account of bogus purchases of the assessee to Rs. 8,21,985/- without appreciating that the onus was on the assessee to establish the genuineness of such purchases and the assessee failed to discharge its onus.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not following the decision of Hon'ble Supreme Court in the case of N.K. Proteins Ltd. vs DCIT in SLP (Civil) No. 769 of 2017 dt. 16.01.2017 where the decision of Hon'ble Gujarat High Court in upholding the addition of 100% of such bogus purchases has been confirmed.*

3. *Whether on the facts and circumstances and in law, the CIT(A) has erred in deleting the addition made u/s 36(1)(va) on account of employee's contribution to provident fund made after due date, without appreciating that where an employer has not credited sum received by it as employees contribution to employees account in relevant fund on or before due date as prescribed in explanation to section 36(1)(va), assessee shall not be entitled to deduction of such amount through the deposits same before due date prescribed under section 43B i.e prior to filing of return under section 139(1) as held by the Gujarat High Court in the case of Gujarat State Road Transport Corporation [2014] taxmann.com 100 (Gujarat).*

4. *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.*

5. *The appellant craves leave to amend, alter, delete or add grounds which may be necessary*

2. The Brief facts of the case are that the assessee is engaged in the business of manufacturing and production of sand, crane and tug hiding. The assessee has filed the return of income originally on 21.09.2009 with a total income of Rs.4,39,77,24/- and the return of income was processed u/s 143(1) of the Act dated 30.08.2010. Subsequently the Assessing officer (A.O.) has received

information that the assessee is the beneficiary in obtaining the accommodation entries from the bogus parties as per the information from Sales Tax Department Maharashtra. The A.O. has observed that the assessee has obtained the purchase bills from five parties aggregating to Rs. 65,75,879/-. Therefore, the A.O has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance, the assessee has filed a letter dated 08.04.2014 to treat the return of income filed for the A.Y 2009-10 as due compliance to notice u/s 148 of the Act. Further, the A.O. has issued notice u/s 143(2) and 142(1) of the Act and called for the information. In compliance, the Ld. AR of the assessee appeared from time to time and the case was discussed. The A.O in order to check the transactions of the purchases has called for the information and documents to be produced. The assessee has submitted the details and the information, whereas, the A.O to test check the genuineness of the transactions has called for the additional information. The A.O was not satisfied with the evidences with respect to purchases and made addition u/s 69C of the Act of Rs. 65,75,879/-. The second disputed issue that the assessee has received dividend income of Rs.60,000/- and has claimed exempt

u/s 10(34) & 10(35) of the Act. The A.O. has issued show cause notice for applying the provisions of Sec. 14A r.w.r 8D of the Act. The assessee has furnished the explanations on the claim of dividend income. Whereas, the A.O was not satisfied with the explanations and observed that the provisions of Sec. 14A r.w.r 8D will be applicable and worked out the disallowance u/s 14A r.w.r 8D of Rs. 5,043/-. On third disputed issue, the A.O. found that the assessee has not paid the statutory dues of employees contribution within the stipulated time of Rs. 35,020/-and applied the provisions u/sec36(1)(va) of the Act. Finally the A.O. has assessed the total income of Rs.5,05,93,180/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 25-02-2015.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) in the appellate proceedings considered the grounds of appeal, findings of the A.O in the scrutiny assessment, submissions of the assessee on the disputed issue. Finally the CIT(A) considered the judicial decisions of the Honble High Court and Honble Tribunal and restricted the addition to the extent of 12.5% of bogus purchases and granted the relief in other grounds of appeal and partly allowed

the appeal. The CIT(A) has observed at Para 7.2.8 & 7.2.9 of the order, which is read as under:

*7.2.8 In view of the above, it is clear that it is a established fact beyond doubt that the appellant company has utilized accommodation entry from parties mentioned above, without actually receiving the goods. During the course of re-assessment proceeding, the fact of procurement of bills of suspicious dealer was communicated to the appellant company. The appellant company was asked to substantiate the genuineness of purchases made from such party. The assessee could not produce the Hawala parties nor was unable to substantiate its purchases from the claim of suppliers who are already established hawala dealers by the Sales Tax Department and Investigation wing of the Income Tax Department. Accordingly the AO proceeded to complete the assessment considering the purchases made from such parties as bogus and disallowed the entire purchases from the said dealers and added it back to the total income. However, this is also a fact that the AO has accepted that purchases under reference have actually been made from grey market and bills from such suspicious hawala dealers have been utilised. The AO has also not questioned the sales claimed by the appellant. In such a situation, the various courts/tribunal have held that there cannot be total disallowance of purchase, rather the disallowance should be restricted to the benefit received by the appellant in term of VAT charge, transportation etc.*

*7.2.9 Now, / find that the AO has disallowed 100% of alleged bogus purchases of Rs. 34,93,041/-, which I restrict to 12.5% of alleged bogus purchases relying upon the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj. HC) and High Court of Bombay in the case of Pooja Paper Trading Co (P) Ltd (Supra) which, in my opinion, is just and fair in given circumstances to take care of any leakage of revenue. Hence, the disallowance*

*in principle is upheld but restricted to 12.5% of the purchases from suspicious hawala dealers. Therefore these grounds of appeal are partly allowed.*

4. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in restricting the addition to 12.5% irrespective of facts that no proper information was filed in the Assessment proceedings. Contra the Ld.AR supported the order of CIT(A) and relied on the judicial decisions.

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has restricted the addition to the extent of 12.5% of the bogus purchases considering profit element embedded. We found that the CIT(A) has dealt on the facts and considered the Hon'ble High Court decision and took a view. Further, We find the Jurisdictional Honble High Court in the case of Pooja Paper Trading Co. Vs. ITO, (104 taxmann.com 95) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451) has upheld the disallowance @ 12.5% on such purchases.

7. We find that the Ld.CIT(A) took a reasonable view that the only profit percentage has to be added and estimated @ 12.5% of bogus purchases. The Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material but relied only on the A.O order. We are of the opinion that the CIT(A) dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales. The Ld.CIT(A) has relied on the decisions of Hon'ble High Court and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22.11.2021.

Sd/-  
(M BALAGANESH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 22.11.2021

KRK, PS

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

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

( Asst. Registrar)

ITAT, Mumba