

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5567/MUM/2018
(ASSESSMENT YEAR: 2009-10)

Assistant Commissioner of Income Tax,
Range-9(1)(1),
Room No. 260A, 2nd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

..... Appellant

M/s Abhishek Millennium Contracts Pvt.
Ltd.,
A-206, Oberoi Chambers,
Opp. SAB TV Off., New Link Road,
Andheri (West), Mumbai - 400053
[PAN:AAECA70004P]

Vs

..... Respondent

Appearances

For the Appellant/Department : Shri Mehul Jain
For the Respondent/ Assessee : Shri Sashi Tulsiyan

Date of conclusion of hearing : 23.02.2022
Date of pronouncement of order : 23.05.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Department has challenged the order, dated 26.07.2018, passed by the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [CIT(A)-16/IT-398/DCIT-9(1)(1)/2015-16] for the Assessment Year 2009-10, whereby the CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 30.03.2015 passed under section 143(3) read with section 147 of the Act.

2. Revenue has raised the following grounds of appeal:

“1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition at Rs. 31,55,075/- which is @ 12.5% of disputed purchases of Rs. 2,52,40,603/- and giving relief amounting to Rs. 2,20,85,528/- to the assessee?”

2. 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 Nos. 769 of 2017 dated 16.01.2017 wherein the entire income on account of bogus purchase has been confirmed.”

3. Brief facts pertaining to the present appeal are that the Assessee is private limited company engaged, at the relevant time, in the business of contracting for plumbing and fire fighting systems. The Assessee filed its return of income for the Assessment Year 2009-10 on 29.09.2009 declaring total income of INR 87,84,956/- which was processed under Section 143(1) of the Act. Thereafter, reassessment proceedings were initiated based upon the information received from Sales Tax (VAT) Department, State of Maharashtra under Section 147 of the Act. The Assessing Officer (AO) framed assessment under Section 143(3) read with section 147 of the Act vide order, dated 30.03.2015 assessing total income at INR 4,15,25,560/- after making, inter alia, an addition of INR 2,52,40,603/-, being total purchases made during the relevant previous year, holding the same to be bogus purchases.

4. The Assessee carried this issue in appeal before the CIT(A) who partly allowed the appeal of the Assessee on this issue by restricting the disallowance on account of bogus purchases to INR 31,55,075/- being 12.5% of the disputed purchases of INR 2,52,40,603/-.

5. Being aggrieved, the Revenue is in appeal before us.

6. The Ld. Departmental Representative appearing before us relied upon the Assessment Order to contend that the entire amount of bogus purchases should be treated as unexplained expenditure and the AO was correct in making addition of INR 2,52,40,603/-. In this regard, he relied upon the judgment of Hon'ble Supreme Court in the case of N.K. Proteins vs. DCIT: SLP No. 769 of 2017, dated 16.01.2017.
7. The Ld. Authorised Representative of the Assessee while responding to the submissions advanced by the Ld. Departmental Representative, relied upon written submissions dated 17.01.2022, and submitted that identical issue had come up before the Tribunal in the case of the Assessee for the Assessment Year 2010-11 in ITA No. 7197/Mum/2017 wherein appeal preferred by the Revenue on identical facts and grounds was dismissed.
8. We note that in Assessee's own case for the Assessment Year 2011-12 the Tribunal has in ITA No. 7197/Mum/2017, after noting identical facts and grounds, held as under:

"5. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in restricting the addition at Rs. 9,85,338/- which is @12.5% of disputed purchase of Rs. 78,82,704/- and giving relief amounting to Rs. 68,97,366/- to the assessee.

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7. After having gone through the facts of the present case and hearing the parties at length, we find that although the Ld. CIT(A) had considered all the judgments referred by both the parties, but as per the facts of the present case, the AO had shown the parties from whom the assessee had purchased material as 'non-existence'. At the same time, the AO after examining the evidences produced by the assessee could not give any adverse finding that the assessee had not shown

consumption/sales of the goods and that it had not offered the income on such sale of goods.

8. In our view, once the AO had not doubted the genuineness of sales, then in that eventuality, AO could not have gone ahead and made addition in respect of the entire purchases as it would lead to absurd profits. Ld. DR although had specifically argued that Ld. CIT(A) had failed to appreciate the judgment of Hon'ble Apex Court in the case of N. K. Proteins Vrs. DCIT, wherein addition on account of bogus purchase has been enhanced to 25%. But at the same time, after considering the facts of the present case, we find that Ld. CIT(A) had discussed and relied upon all the judgments which are on the identical grounds containing similar circumstances. Since in the present case, Ld. CIT(A) had held that since the purchases were made from the parties other than those mentioned in books of accounts, therefore in such circumstances, only the profit element embedded in such purchases could be added to the assessee's income. On this proposition, we draw strength from the judgment in the case of CIT vrs. Simit Shet (2013) 38 taxmann.com 385 (Guj). We have also considered the judgment of Hon'ble Apex Court in the case of N. K. Proteins Vrs. DCIT, but the facts of that case was altogether different. We have also considered the judgment in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj) and in that case also, the facts of the case are different from the facts of the present case. In that case, A.O 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. Further, as per the facts of that case, the money deposited in that account was withdrawn in cash almost on the same day. Therefore, in the said case, it was 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. Hence keeping all these factors in mind, the court estimated an element of profit percentage of the overall purchase price accounted for in the

books of accounts through fictitious invoices, therefore all the facts in that case are also distinguishable.

9. The AO in this case had held that the parties from whom the purchases were made by the assessee were found to be bogus, but at the same time the AO had not doubted the consumption/sales. Therefore under such circumstances, Ld. CIT(A) had rightly concluded that motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Hence Ld. CIT(A) had rightly estimated 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.

10. Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the revenue stands dismissed.” (Emphasis Supplied)

9. In paragraph 6.1.28 of the order impugned herein, the CIT(A) took note of the fact that the AO had neither doubted the genuineness of sales nor given any adverse finding that the Assessee had not shown consumption/sales of the goods and/or that the Assessee had not offered the income on such sales of goods. Therefore, the CIT(A) concluded that the AO could not have gone ahead to make additions in respect of entire purchases as the same would lead to absurd profits. Accordingly, the CIT(A) restricted the disallowance on account of bogus purchases to INR 31,55,075/- being 12.5% of the disputed purchases of INR 2,52,40,603/- holding as under:

“6.1.31 As narrated earlier, the Ld. A.O. in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus and that is the reason from

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."

10. There is nothing on record to controvert the findings recorded by the CIT(A). We are in agreement with the decisions of the Tribunal in the case of the Assessee for Assessment Year 2011-12 (ITA No. 7197/Mum/2017). We are not persuaded to interfere with the order passed by the CIT(A) on this issue.
11. In view of the above, the Appeal of the Revenue is dismissed

Order pronounced on 23.05.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.05.2022
Alindra, PS

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.

ITA. No. 5567/Mum/2018
Assessment Year: 2009-10

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai