

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

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No.2405/Mum/2021
(Assessment year : 2009-10)

ITO-20(3)(1), Mumbai	vs	M/s Volga Innovations (Formerly known as M/s VMI Enterprises) Plot No.3, Post Office Lane Dr. Ambedkar Road, Near Dena Bank, Parel, Mumbai-400 012 PAN : AAGFV1165R
APPELLANT		RESPONDENT

Assessee represented by	None
Department represented by	Shri Himanshu Sharma

Date of hearing	24/05/2022
Date of pronouncement	11/08/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue as against the order of Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25/10/2021 passed under section 250 of the Income-tax Act, 1961 which emanates from the order of Assessing Officer under section 143(3) r.w.s. 147 of the Act pertaining to assessment year 2009-10.

2. The grounds of appeal are as follows:-

1. *Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) was correct in restricting the addition to Rs. 2,71,4547- on account of bogus purchase ignoring the fact that the Sales Tax*

Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase.

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the ratio of the decision of Gujarat High Court in the case of N. K. Proteins Ltd wherein it was confirmed that in the event of bogus purchases, the addition on the whole of such purchases was required to be made and this particular ratio was confirmed by Hon'ble Supreme Court in SLP No. CC No. 769 of 2017 dated 16.01.2017 by dismissing the SLP of the assessee.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee failed to produce the parties for verification in spite of opportunity provided by the Assessing Officer.*
4. *This case is filed because it is covered under the exception provided in para 10(e) of the CBDT Circular No.3 of 2018 dated 11.07.2018 as amended vide F. No. 279/Misc.142/2007-ITJ(Pt) dated 20-08-2018.*
5. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored."*

2. As there was no representation on behalf of the assessee, we proceed to decide the appeal after hearing the Ld.DR and on the basis of materials available on record.

3. The brief facts are that the assessee is into the business of manufacturing of signage and is not having any branches. The assessee filed its return of income on 30/09/2009 declaring total income of Rs.1,46,650/-. The return was processed under section 143(1) of the I.T. Act and subsequently, the assessee's case was reopened under section 147 of the I.T. Act, 1961 and notice under section 148 dated 21/03/2014 was issued, in response to which the assessee stated that the return filed under section

139(1) may be treated as the return filed in response to notice under section 148. It has to be noted that the Assessing Officer had made addition of Rs.3,73,478/- being hawala purchases out of total purchases of Rs.21,47,688/- wherein the assessee was said to be unable to produce any supporting evidence such as bills, transport bills, lorry receipts, etc. to substantiate that the purchases were genuine and also the Assessing Officer had disallowed an amount of Rs.4,43,552/- as being 25% of the balance amount of Rs.17,74,210/- as quantum of profit element on account of inflation of purchases. Aggrieved by this, the assessee was in appeal before the Ld.CIT(A), who deleted the addition of Rs.3,73,478/- on the ground that there was no evidence against the assessee having incurred unexplained investment or unexplained expenditure of the impugned amount except in the information received from the sales-tax department. The Ld.CIT(A) has also reduced / restricted the addition to Rs.2,71,454/- as being estimated GP ratio at 15.30% being assessee's previous year's GP ratio on the ground that there was no evidence against the assessee contrary to the allegation of the Assessing Officer. The Revenue is in appeal before us on the ground of restricting the addition to Rs.2,71,454/- on account of bogus purchases.

4. The Id.DR contended that the Ld.CIT(A) had failed to appreciate the fact that the sales-tax department has proved the assessee had transaction with alleged hawala traders involved in providing accommodation entry and that the assessee was one of the beneficiaries. The Ld.DR further stated that the Ld.CIT(A) has failed to consider the decision of Hon'ble Gujarat High Court in the case of N.K. Proteins Ltd which was affirmed by the Hon'ble Apex Court in SLP No.CC 769 of 2017 dated 16/01/2017. The Ld.DR stated that the order of the Assessing Officer be sustained.

5. Having heard the Ld.DR and perused the materials on record before us, we find that the Ld.CIT(A) has stated that the alleged bogus purchases of Rs.21,47,688/- was reduced to Rs.3,73,478/- on the pretext that the assessee was unable to produce bills or any other material evidence to substantiate the same as genuine purchases. Further to this, it is observed that the Assessing Officer has arrived at the estimated profit of 25% on the residual sum of Rs.17,74,210/- on the reason that the assessee should have obtained the goods from grey market by evading tax resulting in lesser rate of purchases and with higher profit margin. It is also evident from the record that the department has received information from Maharashtra Sales-tax department wherein various parties have issued sales bills without actual delivery of goods whereby out of two such parties, the assessee was found to have shown purchases. It was also observed that the assessee has furnished documentary evidence and bank statements showing purchases which are reflected in the books of account. Though notices under section 133(6) were issued to the said parties, they were returned unserved and the assessee was unable to produce the parties before the lower authorities. The Assessing Officer proceeded to make addition taking adverse inference that the assessee failed to prove the genuineness of the purchases. Though the Ld.CIT(A) has deleted the addition on account of bogus purchases from Siddhi Enterprises on the ground that there was no evidence against the assessee except information received from sales-tax department, the Revenue has preferred an appeal before us only on the issue of reduction of higher profit margin @25% to 15.30%. The Ld.CIT(A) has not objected to the contention of the assessee that 25% of profit margin will raise the GP ratio to be high compared to previous year's GP ratio as it is seen that the assessee has already offered previous year's GP ratio at 15.30%

which was again sustained by the Ld.CIT(A) to be the estimated ratio on taxable profit of Rs. 17,74,210/-. The Ld.Assessing Officer relied on the decision of Gujarat High Court in the case of N.K. Proteins Ltd (supra) which was confirmed by the Apex Court on the ground that in the case of bogus purchases, the whole of such purchase was to be added does not hold good in the assessee's case as it differs in facts. On the other hand, we would place reliance on the decision of Hon'ble jurisdictional Bombay High Court in the case of M/s Mohammad Haji Adam & Co I.T.A No.1095 of 2016 dated February 11, 2019 which held that purchase cannot be rejected without disturbing the sale and addition was restricted to the extent of bringing the G.P. rate on purchase at the same rate of other genuine purchase. In the present case as the assessee has already showed G.P. ratio at the rate of 15.30% for last year, we think it fit to consider the same to be reasonable for the impugned year for the quantum of alleged bogus purchases. We thereby hold that the Ld.CIT(A)'s finding on the same is justified. Resultantly, we uphold the order of Ld.CIT(A) in restricting the addition to Rs.2,71,454/-.

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 11th August, 2022.

Sd/-

Sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMEBR

Mumbai, Dated: 11/08/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	03/08		Sr.PS
2.	Draft placed before author	03/08		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		