

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3199/Mum/2022  
(A.Y.2017-18)**

|   |     |   |
|---|-----|---|
| Kundan Industries Ltd.<br>Kundan House,<br>Harisiddhi Industrial<br>Estate, Goraipada,<br>Vasai East,<br>Maharashtra - 401208 | Vs. | ACIT, Circle -4<br>Ashar IT Park, 6 <sup>th</sup> Floor,<br>Road No. 16-Z, Wagle<br>Industrial Estate,<br>Thane West - 400604 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACK6811G   |     |   |
| Appellant   | ..  | Respondent  |

**ITA No.317/Mum/2023  
(A.Y.2017-18)**

|   |     |  |
|---|-----|--|
| The ACIT, CC-2<br>Room No. 13, A Wing, 6 <sup>th</sup><br>Floor, Ashar IT Park<br>Wagle Industrial Estate<br>Road No.16Z, Thane (W)<br>400604 | Vs. | M/s Kundan Industries<br>Limited Harisiddhi Indl<br>Estate, Gora Pada ,Vasai<br>East, Palghar,<br>Maharashtra - 401208 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACK6811G   |     |  |
| Appellant   | ..  | Respondent   |

|                 |                 |
|-----------------|-----------------|
| Appellant by :  | Rahul K. Hakani |
| Respondent by : | Anne Varghese   |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 18.04.2023 |
| Date of Pronouncement | 28.04.2023 |

आदेश / ORDER

**Per Amarjit Singh (AM):**

These two appeals filed by the assessee and revenue are based on identical issue and similar facts, therefore, these appeals are

adjudicated together by taking ITA No. 3199/Mum/2022 as lead case and its finding will be applied to ITA No. 317/Mum/2023 mutatis mutandis.

### **ITA No. 3199/Mum/2022**

- “1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in estimating profit @20% on the alleged purchases of Rs.17,38,77,323/- without pointing out any defect from sales record and stock records.
- 2 On the facts and circumstances of the case and in law, the learned CIT(A) erred by not restricting the disallowances to the extent of gross profit element of Rs.10,59,925/-embedded in the alleged purchases.
3. The appellant craves leave to add, alter, delete or modify and/or withdraw grounds of appeal up to the date of hearing of the appeal.”

2. Fact in brief is that return of income declaring total income of Rs.81,18,080/- was filed on 07.11.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 10.08.2018. The assessee company was engaged in the business of manufacturing and sale of steel fasteners. During the course of assessment proceedings information was received from the DDIT(Investigation) that survey action was carried out in the case of the assessee company on 25.10.2018. During the survey action various incriminating documents were found and impounded indicating that the assessee company had made purchases from non-genuine entities to inflate the expenses. On the basis of survey report the assessing office noticed that assessee has made non-genuine purchases from the following parties:

| Sr. No. | Name and address of the party  | Amount (in Rs.) |
|---------|--|-----------------|
| 1.      | M/s RPV Infotrading Pvt. Ltd., B-307, Ramji Mansion, Jagannath Shankar Sheth Marg, Jambulwadi, Dhobi Talao, Kalbadevi, Mumbai – 400002 | 6,53,33,979/-   |
| 2.      | M/s Vighrah Trading Pvt. Ltd. Shop No. 218, Veena Mall, Western Express Highway, Nr. Saidham Mandir Kandivali (E), Mumbai – 400101     | 10,85,43,344/-  |

|  |              |                |
|--|--------------|----------------|
|  | <i>Total</i> | 17,38,77,323/- |
|--|--------------|----------------|

The A.O stated that during the course of assessment proceedings notice u/s 133(6) were issued to the aforesaid parties, but the notices were returned unserved. Therefore, the A.O has treated the aforesaid purchases amounting to Rs.17,38,77,323/- as bogus purchases and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has restricted the addition to the extent of profit embedded in bogus purchases to the extent of 20% of such purchases.

4. Heard both the sides and perused the material on record. The Id. CIT(A) has referred a number of judicial pronouncements of jurisdictional High Court and decision of the ITAT that where the sale is not doubted by the assessing officer than only the profit element embedded in the bogus purchase should be subject to disallowance and not the entire amount of bogus purchases. During the course of assessment proceedings assessee has filed details of purchases made from the aforesaid two concerns also copies of invoices along with details of corresponding sales of goods which was purchased from these parties. The detail of corresponding sales made against such purchases are also reproduced at page no.7 and 8 of the order of the Id. CIT(A). The assessee has also claimed that payment for such purchases were also made by account payee cheques only. The Id. CIT(A) arrived at the conclusion on the basis of abovementioned facts, material and statement of the director recorded during the course of survey proceedings that assessee has purchased goods from other supplier without bills in the grey market and has been benefitted by the extra margin of purchasing goods from the grey market.

5. We observe that assessing officer has not doubted the corresponding sales against the said purchases, therefore, only the profit margin embedded in such transaction could be taxed. We observe that in such type of transaction the assessee purchase the goods from the grey market by making gross payment in cash without bills. The bills are obtained from the third parties and after receipt of cheque such parties adjust the same by providing cash after deducting their commission. Taking all these facts, the material purchased in the grey market are always cheaper than the material sourced from the genuine dealer. The Id. CIT(A) has restricted the addition to the extent of profit embedded in the bogus purchases @ 20% on the basis of decision of ITAT in the case of the assessee in assessment year 2010-11 wherein the addition was made upto 15% on the basis of gross profit shown by the assessee. During the course of appellate proceedings before the Id. CIT(A) the assessee has also submitted that goods purchased from the alleged two parties i.e M/s RPV Infotrading Pvt. Ltd., and M/s Vighrah Trading Pvt. Ltd. were used for trading purpose and delivered directly to the sale parties without entering in the excise register for manufacturing activity. The assessee also submitted that it had paid VAT ranging from 5 to 6% on the purchases made, therefore, the disallowance of such purchases which were used for trading purpose should be restricted to 6% of the impugned purchases. During the course of appellate proceedings before us the assessee has filed a copy of statement showing trading purchases at 16,45,20,510/- and trading sale at Rs.16,55,80,436/- excluding the purchases shown as consumed for its manufacturing. We consider that the claim of the assessee that bogus purchases were used for trading activity are required to be verified from the relevant supporting records like excise register and corresponding sale invoices issued directly against such purchases without entering in the excise register. Therefore, subject to the

verification as above, we direct the assessing officer to restrict the disallowance to the extent of gross profit shown during the year @ 18% of such bogus purchases in case the purchases were used for manufacturing purpose and to the extent of 7% of such bogus purchases in case the same were used for trading activity. Accordingly, ground no. 1 & 2 of the appeal of the assessee are partly allowed for statistical purposes.

### **ITA No. 317/Mum/2023**

6. Since on similar facts and identical issue we have adjudicated the appeal of the assessee vide ITA No. 3199/Mum/2022 as supra and partly allowed for statistical purpose, therefore, we do not find any merit in the ground no. 1 to 4 of the appeal of the Revenue. Accordingly, the appeal of the revenue stand dismissed.

7. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue stand dismissed.

Order pronounced in the open court on 28.04.2023

Sd/-  
(Vikas Awasthy)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 28.04.2023

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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