

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

ITA No. 2422/Mum/2021
(A.Y: 2009-10)

The ITO – 27(1)(1) Room No. 406, 4 th Floor, Tower No. 6, Vashi Rly Stn Complex, Vashi, Navi Mumbai – 400703.	Vs.	M/s Dura Opto Technologies 203, Sai Dham Bldg, 90 Feet Road, Ghatkopar (E), Mumbai – 400077.
PAN/GIR No. : AAefd8131B		
Appellant	..	Respondent

Appellant by :	Mr.T. Shankar. CIT DR
Respondent by :	Mr.Rajesh Kothari.AR

Date of Hearing	18.05.2022
Date of Pronouncement	19.05.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the orders of the Commissioner of Income Tax (Appeals)-50, Mumbai passed u/s 143(3) and 147 of the Act. The revenue has raised the following grounds of appeal:

- (i) *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the entire addition of Rs. 6,14,698/- made by the Assessing of on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary*

evidences in support of its claim and without considering the latest Apex Court decision in the case of N.K Proteins Ltd. wherein it is held that once it is proved that the purchases and not on profit element embedded in such purchases.

(ii) On the facts and circumstances of the case and in law, the Ld CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.2,29,694/-,being 12.5% of the bogus purchases as even the basic onus of producing delivery challans ,transport bills etc. were not fulfilled by the assessee.

(iii) On the facts and circumstances of the case and in law, the Ld.CIT(14) erred in deleting the disallowance of Rs.15,838/-without appreciating the fact that the assessee could not substantiate its expenditure with necessary supporting bills and vouchers.

2. The brief facts of the case are that the assessee is engaged in the business of trading in industrial and electronic components. The assessee has filed the return of income electronically on 17.09.2009 for the A.Y 2009-10 disclosing a total loss of Rs. 32,36,684/-. The Assessing officer (A.O) has received information from DGIT(Inv), Mumbai were the sales tax department Maharashtra has carried out investigation and found that there are list of parties who provides accommodation entries and the assessee is one of the beneficiary of accommodation entries of bogus purchases. The Assessing officer (A.O) find that the

assessee has transactions with three parties and is of the opinion that the income has escaped the assessment and the notice u/sec 148 of the Act was issued. Subsequently notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee has submitted the audited financial statements and details. The A.O. called for additional information to substantiate the genuineness of purchases. Since partial information was filed by the assessee and the A.O. has relied on the information available on record and is of the opinion that the genuineness of transactions could not be accepted and made an addition of Rs.8,44,392/-. Further the A.O. has disallowed 20% of conveyance expenses, motor car expenses and sales promotion expenses in the absence of evidences Rs. 31,677/- and assessed the total loss of Rs. 23,60,615/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 23.03.2015.

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 partial relief on disallowance of conveyance, motor car and sales promotion expenses by restricting the disallowance @10% and partly allowed the appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

4. 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.

5. The Ld. AR relied on the order of the CIT(A) and judicial decisions and prayed for dismissal of revenue appeal.

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue 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 restricting profit element 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. The CIT(A) in respect of disallowance of expenses has considered the nature of business activities and restricted the addition to meet the ends of justice. 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 & Honble Tribunal 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 19.05.2022

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.05.2022

KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai