

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1073/Mum/2023
(Assessment Year :2018-19)**

M/s. Esszee Manufacturing Pvt.Ltd. Unit No.9, Corporate Park II, 9 th Floor V.N. Purav Marg Chembur, Near Swastik Chamber,Mumbai- 400 071	Vs.	Income Tax Officer, National E- Assessment Centre Delhi
PAN/GIR No.AACCE3219J		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Biswanath Das
Date of Hearing	10/07/2023
Date of Pronouncement	10/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the order dated 04/02/2023 passed by NFAC, Delhi by the quantum of assessment passed u/s. 143(3) for the A.Y.2018-19.

2. Despite sending various notices to the assessee as well as notice through e-mail on following dates, none appeared nor has any communication been received. Accordingly, the case of the

assessee is being decided *ex parte* on the basis of material placed on record.

Srl	Subject	Recipients	Communication
1	Notice of Hearing in ITA 1073/MUM/2023 (Date of Hearing: '2023-Jun-21')	esszeemanufacturingpvtltd@gmail.com, mumbai.saritat6.2@incometax.gov.in,	30/05/2023
2	Notice of Hearing in ITA 1073/MUM/2023 (Date of Hearing: '2023-Jul-10')	esszeemanufacturingpvtltd@gmail.com, mumbai.sar.itat6.2@incometax.gov.in,	22/06/2023 09:38:16

3. In the grounds of appeal assessee has challenged disallowance of purchases amounting to Rs.255,61,41,337/- alleging it to be unverified purchases.

4. The brief facts are that the assessee is engaged in the business of trading in multi commodities such as metals, steel, cotton and fabrics. In metals dealt with HR plates, SS plates and TMT bar, etc. The return of income was filed on 31/03/2019 declaring income of Rs.18,78,650/-. As noted by the ld. AO, during the year under consideration, assessee has claimed purchases of Rs. 423,07,94,337/-. The ld. AO required the assessee to file the details of purchases and in response to the same, assessee has filed partywise purchase details and also provides quantitative details of sales. Thereafter, the AO asked to

file further details and bank statements and narration of all debit and credit entries which according to the ld. AO assessee failed to respond. According to the AO, assessee had only filed summary in respect of purchases made during the year. Out of total purchases of Rs. 423,07,94,337/-, the ld. AO has treated Rs.255,61,41,337/- as unverified purchases and has added the entire purchases as 'business income' of the assessee. One of the reasons given by the ld. AO is that purchases made from five parties and the return of income was not filed in respect of 3 parties. The parties who had filed the return of income, the same were accepted and the parties who have not filed the return of income had been added back. The summary of the purchases disallowed by the ld. AO and the reasons for disallowance is summarised as under:-

Name of Party	PAN	Amount of goods Purchased	Reason for disallowance
GREENLEAF - COMMERCE PRIVATE LIMITED	AAJCM1922D	Rs.2,15,49,45,231/-	The party has not filed its ROI after A. Y. 2015-16
MARQUISE INTERNATIONAL PRIVATE LIMITED	AAECM6036H	Rs.30,66,76,356/-	The party has not filed its ROI after A Y. 2014-15
PYRAMID ENTERPRISES	AATFP8404E	RS. 9, 45, 19, 750/-	The party has not filed Its ROI after A, Y. 2016-17
Total		Rs.2,55,61,41,3377-	

5. Before the 1d. CIT (A), assessee filed additional evidences which are summarized in the following manner:-

Name of party	Additional documents
<p>Greenleaf Commerce Private Limited</p>	<p>1. Annual Account duly audited and filed with ROC</p> <p>2. MCA Data showing filing of financials for 2017-18</p> <p>3. GST Return Copies filed showing the turnover declared in the year</p> <p>4. Copies of Tax Invoices</p> <p>5. Copy of Tax Audit in Form No. 3CD for the FY 2017-18 including acknowledgement for filing the same.</p> <p>6. We have been informed that the Return of income was not filed by their chartered accountant since self-assessment tax challan was not paid by them.</p> <p>7. We have informed that ITR for AY .2016-17 and 2017-18 has been filed by them which can be verified on Income tax site by your good selves whereas it has alleged by the AO that no return after AY 2015-16 has been filed.</p>
<p>Pyramid Enterprises</p>	<p>1. Copies of Tax Invoices</p> <p>2. We have been informed that the Return of Income was not filed due to</p>

	huge losses incurred by the firm during the year
Marquise International Private Limited	1. Copies of Tax Invoices 2. We have been informed that the Return of Income was not filed due to huge losses incurred by the company during the year

6. However, the ld. CIT(A) after calling the remand report from the ld. AO wherein the ld. AO has stated as under:-

Name of party	Remarks of Learned AO in summary	Conclusion
Greenleaf Commerce Private Limited	<ul style="list-style-type: none"> • None of goods delivery challan is supported by transport bill. • On invoice vehicle number is mentioned but genuinely the vehicle was involved in movement of goods cannot be said. • Details of transported is not submitted Greenleaf has not filed return till date. Thus existence of party is not established. • The assessee did not 	Unverified purchases and earlier stand taken is maintained

	<p>provide details of goods sold after purchasing from this party. Thus actual involvement of goods is questionable.</p> <ul style="list-style-type: none"> • Basis above, non existence of goods and supplier is proved and thus the purchases cannot be treated as genuine. 	
<p>Pyramid Enterprises</p>	<ul style="list-style-type: none"> • None of goods delivery challan is supported by transport bill. • None of delivery challan has vehicle number transporting goods. • In absence of transporter details, genuineness of delivery of goods cannot be established. • The party Pyramid has not filed return of income till date and thus existence of party is also not established • The assessee did not provide details of good sold after purchasing from this party Thus actual involvement of goods is questionable. • Basis above, non 	<p>Unverified purchases and earlier stand taken is maintained</p>

	existence of goods and supplier is proved and thus the purchases cannot be treated as genuine	
Marquise International Private Limited	<ul style="list-style-type: none"> • None of goods delivery challan is supported by transport bill. • On invoice vehicle number is mentioned but genuinely the vehicle was involved in movement of goods, cannot be said. • Details of transported is not submitted. • Marquise has not filed return till date. • Thus existence of party is not established • The assessee did not provide details of good sold after purchasing from this party Thus actual involvement of goods is questionable. • Basis above, non existence of goods and supplier is proved and thus the purchases cannot be treated genuine. 	Unverified purchases and earlier stand taken is maintained

7. The Id. CIT (A) has confirmed the entire addition holding that primary onus to establish the genuineness of the transaction has not been discharged by the assessee and assessee did not submit

any goods receipt notes to support the actual receipt of the goods.

8. After considering the various submissions as incorporated in the impugned order and argument placed by the ld. DR, we find that the only reason given by the ld. AO for disallowing the entire purchases is that, firstly, the aforementioned three parties have not filed the return of income, and secondly assessee could not give supporting documents for delivery of such purchases. However, it is a very strange note that nowhere the ld. AO has disputed the corresponding sales or the gross profit shown by the assessee in the trading account. Nowhere the ld. AO has conducted any enquiry from the sellers when assessee has given the entire details of the parties' alongwith PAN and the copies of the tax invoices, GST returns, and their tax audit reports and also has given the reasons as to why these parties have not filed the return of income. Merely because the parties from whom assessee made purchases have not filed their return of income, that itself cannot be the ground for disallowing the entire purchases. At least AO should have conducted the some enquiry from these parties and it is also not the case that these parties were found to be bogus or non-genuine by some agency. If the entire purchases to the tune of Rs.255.61 Crores are disallowed and corresponding sales have been accepted, then how come the assessee had made so much sale of the same quantity? Nowhere the ld. AO has disputed the quantity wise details of the sales and is such an addition on debit side of the trading account is made, then the GP of the assessee would go upto 61% as against 1% of

GP rate shown by the assessee, especially when assessee is a wholesale trader of steel and metals where GP margins are low. Even in the worst case scenario, if the assessee cannot prove the purchases, then without disturbing the quantitative details of sales from same corresponding purchase quantity, entire purchases cannot be disallowed. At the most, some GP rate should have been applied which is in line with the principle laid down by the **Hon'ble Bombay High Court in the case of PCIT vs. Mohammad Haji Adam And Co and other appeals in ITA No.1004 of 2000 dated 11/02/2019**, wherein the Hon'ble High Court has held that the purchases cannot be disallowed without disturbing sales in the case of the trader and therefore, it would be appropriate that addition should be limited to the extent of estimating GP rate on purchases at the same rate of other genuine purchases. Accordingly, on the facts and circumstances of the case, we hold that 6% of GP rate on such purchases of Rs. 2,55,61,41,3377 would be sufficient to make the addition of trading account.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced on 10th July, 2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 10/07/2023
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai