

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

BEFORE SHRI. AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3487/Mum./2023
(Assessment Year :2020-2021)

A.P.I Civilcon Private Limited

155A, Shop No. 6, Ambikar Apartments,
Jawahar Nagar No. 2, Goregoan West,
Mumbai – 400062.
PAN-AAJCA0006C

..... Appellant

v/s

ACIT CC- 5(2)

19th Floor, Air India Building, Nariman Point,
Mumbai.

..... Respondent

ITA no. 2625/Mum./2023
(Assessment Year :2020-2021)

DCIT

1928, Air India Building, Nariman Point,
Mumbai - 400021.

..... Appellant

v/s

A.P.I Civilcon Private Limited

155A, Shop No. 6, Ambikar Apartments,
Jawahar Nagar Road No. 2, Goregoan West,
Mumbai – 400062.
PAN-AAJCA0006C

..... Respondent

Assessee by : Ms. Samrudhi Tawde
Revenue by : Shri. Ram Krishna Kedia (Sr. DR)

Date of Hearing – 19/09/2024

Date of Order – 20/09/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross-appeals have been filed challenging the impugned order dated 19/05/2023 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals)- 53, Mumbai ["learned CIT(A)"], for the assessment year 2020-21.

2. In its appeal, the assessee has raised the following grounds: –

"1) On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in partially upholding the addition to the tune of Rs. 6,59,404/- being 12.5% of the total purchases made from various parties as unexplained or bogus purchases without appreciating that all the purchases made from above mentioned parties are genuine and goods so purchased has been fully utilised for completion of work assigned by semi govt and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

2) On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in charging interest u/s. 234A/234B/234C/234D of the IT Act and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

3) Your appellant craves leave to add to, amend alter or delete any of the above grounds of appeal on or before the date of hearing."

3. While the Revenue has raised the following grounds in its appeal: –

"1) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition @ 12.5% on account of bogus purchase ignoring the facts that the assessee failed to prove the genuineness of purchases, and any expenditure in respect of which payments by account payee cheques is not enough evidence to prove the genuineness of the transaction ?"

2) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition in respect of cessation of liability u/s 41(1) of the IT Act ignoring the facts that the assessee has not proved the confirmations for creditors or proof of payments during the assessment proceedings and ignoring the facts that the assessee has failed to prove that the creditors outstanding for more than three years, are subsisting liabilities to the satisfaction of the AO, so as to discharge the primary onus?"

3)"The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be."

4. Thus, the only dispute that arises for our consideration pertains to the addition made on account of alleged bogus purchases.

5. Brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is in the business of constructing roads and buildings and also undertakes BMC and Government Contract. For the year under consideration, the assessee filed its return of income on 08/01/2021 declaring a total income of ₹ 12,50,02,540. During the search and post-search investigation, it was found that the assessee has claimed purchase expenses during the year under consideration. With regard to the claim of purchases, inquiries done by the Department revealed that certain entities are bogus and the claim of purchases made to the tune of ₹ 52,75,234 is infructuous, with an intention to inflate the expenses and to maximise the taxable income. It was further revealed that some entities have dubious financials and some are even non-existent. Accordingly, the assessee was asked to furnish the list of sub-contract expenses, and parties along with the complete address and PAN from whom the assessee has purchased material along with documentary evidence like sub-contract expense orders, ledgers, invoices, e-way bills, delivery challans, lorry receipts, consumption register, sub-contract expenses and consumption reconciliation statement and bank statement, etc. to substantiate the genuineness of the sub-contract expenses claimed by the assessee. In response to the aforesaid query, the assessee produces the list of sub-contract expense parties along with their

PAN in tabular format, ledgers and a few invoices. However, the assessee failed to produce the bogus purchase expense order, complete set of invoices, e-way bills, delivery challans, lorry receipts, consumption register, subcontract expenses consumption reconciliation statement and bank statement, etc. before the Department. Upon examination of documentary evidence, certain lapses were identified, such as purchase bills had been prepared using the same style, format, and font; bills did not contain the type and no. of the expenses used for transportation, delivery address; invoices issued by the parties do not contain mandatory PAN. Accordingly, the statement of the Senior Accountant was recorded on oath, who stated that the purchase expenses claimed were mere book entries made to inflate the deduction and suppress profit to avoid paying taxes and the assessee did not possess any purchase order, delivery address, e-way bills, delivery challan and lorry details, etc. in respect of the bogus entities. During the assessment proceedings, the assessee was also asked to produce the alleged parties to substantiate the claim of purchases, however, the assessee failed to produce the parties and only produced certain documentary evidences which were earlier furnished.

6. Accordingly, the Assessing Officer ("AO") vide order passed under section 143(3) of the Act concluded that the assessee has failed to prove the genuineness of the expenses which are claimed as a deduction in computing the taxable income. It was further held that the assessee also failed to prove that the suppliers were genuine suppliers of various raw materials. The AO held that the assessee has failed to produce any of the parties despite the

specific opportunity provided. Further, the parties do not exist at the given addresses and the assessee has not furnished the change of address of these parties. The AO held that just making payment by account pay cheque is not enough evidence to prove the existence of the parties and also the genuineness of the transaction. Accordingly, the AO held that the purchases shown to have been made with these parties are bogus transactions. Accordingly, the AO treated the purchase expenses amounting to ₹ 52,75,234 as bogus purchase expenses and added the same to the total income of the assessee.

7. It is evident from the record that the learned CIT(A) restricted the addition to 12.5% of bogus purchases of ₹ 52,75,234 by following certain judicial pronouncements. Being aggrieved, both the assessee and the Revenue are in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, based on the information received during the search and post-search investigation it was found that the assessee is the beneficiary of bogus purchases. The assessee claims that it is a private limited company and is engaged in infrastructure development and received contracts from Government organisations and various other private entities. Further, the invoices were raised by parties in respect of materials, which were used by the assessee in the infrastructure development activity undertaken by it. Further, the assessee claims that all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee was neither able to produce the

parties nor could furnish the documents as directed by the AO. Even before us, no such details are available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, it is evident from the record that the Revenue has not doubted the usage of materials for infrastructure development undertaken by the assessee. Further, it cannot be doubted that without the purchase of material, the assessee cannot carry out its activity. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entities and materials purchased from somewhere else at a lower cost.

9. We find that the Co-ordinate Bench of the Tribunal in ITA no.5156/Mum./2018, vide order dated 19/09/2019, for A.Y. 2010-11, in Shri Narpat H. Mehta v/s ITO, while dealing with a similar issue of bogus purchases observed as under:-

"4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of NikunjEximp Enterprises (in writ petition no 2860, order dt 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to government agency. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 there off) the

addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

5. We respectfully following the aforesaid judgement of the Honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases, Needless to add the assessee should be granted adequate opportunity of being heard."

10. Thus, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal which in turn has followed the decision of the Hon'ble Bombay High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019, we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. No order shall be passed without affording the assessee a reasonable opportunity of hearing. Accordingly, the grounds raised in the assessee's and Revenue's appeal are allowed for statistical purposes.

11. In the result, the cross-appeals by the assessee and the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on 20/09/2024

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER
MUMBAI, DATED: 20/09/2024
Poonam Mirashi, (Stenographer)

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai