

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.5690/M/2016 (Assessment Year: **2010-2011**)

Elcon Pipe and Fittings Private Limited, B-8, Godown No.7, Prithvi Complex-II, Pipe Line Kalher, Bhiwandi-421302.	बनाम/ Vs.	The Income Tax Officer- Ward-1(1), Moham Plaza, Wayale Nagar, Khadakpada, Kalyan (W), Thane – 421301.
स्थायी लेखा सं./PAN : AABCE9399J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Ajay R. Singh
प्रत्यर्थी की ओर से/ Respondent by :	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 09.02.2017

घोषणा की तारीख /Date of Pronouncement : 31.03.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 21.9.2016 is against the order of the CIT (A)-2, Thane Mumbai dated 30.6.2016 for the assessment year 2010-11.

2. In this appeal, assessee raised six grounds in toto. The only ground that requires the adjudication is Ground no. V. All other grounds raised by the assessee are argumentative / general and they are not pressed. Therefore, considering the argumentative / generation nature of the Ground nos. I, II, III, IV and VI are dismissed as not pressed. Ground no. V raised by the assessee reads as under:-

- "V. (1) Ld CIT (A) erred in comparing gross profit rate with GP rate of AY 2007-08, since turnover volume and business conditions were not same in relevant year.
(2) Ld CIT (A) worked out disallowance amount of Rs 2,45,237/- based on 12.5% of alleged purchases Rs. 19,61,897/- but erred in not restricting addition to the extent.
(3) Ld CIT (A) erred in confirming addition of Rs. 4,07,538/- as alleged suppressed profit which is 7.03% of total purchase of Rs. 57,97,129/-. The percentage, if, it were at all to be applied, it ought to have been on amount of alleged purchases of Rs. 19,61,897/-, which works out to be Rs. 1,37,921/-.

3. The only issue raised in this appeal relates to the Gross Profit (GP) addition on account of alleged ingenuine purchases. Briefly stated relevant facts of the case are that the assessee is a 'trading in pipes and plates'. Assessee filed the return of

income for the AY 2010-11 declaring the total income of Rs. 28,227/-. Assessment was completed u/s 143(3) r.w.s 147 of the Act and the assessed income was determined at Rs. 19,90,124/- which includes the addition of Rs. 19,61,897/- on account of non-genuine purchases. In the assessment, AO held that the assessee made purchases from three hawala parties, who are block listed in the official website of the Sales Tax Authorities. Assessee made purchases from (i) Pushpak Metal Industries (Rs. 96,434/-); (ii) Shiv Industries (Rs. 5,02,034/-) and (iii) Maruti Steel Traders (Rs. 13,63,429/-). After conducting enquiries with the said three parties u/s 133(6) of the Act and after being dissatisfied regarding the non-cooperation from the parties as well as the assessee, Assessing Officer proceeded to make addition of the entire purchases amounting to Rs. 19,61,897/- on account of 'bogus purchases'. Aggrieved, assessee carried the mater appal before the first appellate authority.

4. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) granted part relief to the assessee. Before the CIT (A), assessee filed copies of the affidavits from the said persons and relied on various decisions against the said additions on account of bogus purchases. On hearing the same and after obtaining the remand report of the AO on the said affidavits, CIT (A) decided the appeal partly allowing the appeal of the assessee. In his order, CIT (A) held that restricting the addition to 12.5% of the said purchases is reasonable. He relied on the Gujarat High Court judgment in the case of CIT vs. Simit P Sheth [2013] (356 ITR 451) (Guj.) in this regard. However, CIT (A) restricted the disallowance to the extent of Rs. 8,94,847/- (ie total hawala purchases of Rs.71,58,777/- and 12.5% of such purchases is worked out to Rs. 8,94,847/-). Aggrieved with the said decision of the CIT (A), assessee is in appeal before the Tribunal by raising the above mentioned ground.

5. During the proceedings before the Tribunal, Ld AR for the assessee relied heavily on the relevant documentation and the affidavits furnished by the suppliers. Further, Ld AR argued for deletion of entre addition on account of bogus purchases. Without prejudice, Ld AR submitted that the decision of the CIT (A) in restricting the addition of 12.5% of the bogus purchases is not sustainable for the reason that the

judgment of the Gujarat High Court is not related to trading in pipes and plates and it was engaged in construction business.

6. *Per contra*, Ld DR for the Revenue opposed vehemently stating that it is the case of accommodation entries and therefore, it is a case of making entries of bogus purchases from the said three parties. He relied on the order of the AO. Referring to the order of the CIT (A), Ld DR submitted that the CIT (A) is reasonable in restricting the addition to 12.5% of the said bogus purchases.

7. I have heard both the parties and perused the order of the Revenue Authorities as well as the relevant material placed before the Tribunal. The issues involved here include: bogus purchases / bogus purchase bill suppliers / validity of the GP of 12.5%. Regarding 12.5% adopted by the CIT (A) relying on the judgment of the Hon'ble Gujarat High Court in the case of Simit P Sheth (supra), I find, the said judgment is the source material for the said 12.5%. The CIT (A) did not apply his mind to the nature of the business, VAT % and the relatable GP & NP rates of the different businesses. Further, it is a settled principle that the addition of entire purchases is not sustainable as per the the jurisdictional High Court judgment in the case of CIT vs. Nikunj Eximp Enterprises [2015] (372 ITR 0619) (Bom). Considering the above as well as keeping in view the factual matrix of the case, I direct the AO to restrict the disallowance @ GP rates of the assessee and not to the entire purchases of the assessee. Thus, the disallowance if any should work out to only Rs. 1,37,921/- and balance of the addition (Rs. 8,94,847 – Rs. 1,37,921) Rs. 7,56,926/- should be deleted. Accordingly I order. Thus, the ground raised by the assessee is partly allowed.

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

Order pronounced in the open court on 31st March, 2017.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 31.03.2017
व.नि.स./ OKK, Sr. PS

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

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**