



आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4650/Mum/2018
 (निर्धारण वर्ष / Assessment Year: 2009-10)

V.R.Enterprises 204, Gupta Bhavan Ahmedabad Street Masjid (East), Mumbai – 400 009	बनाम/ Vs.	ITO-17(3)(5) R.No.137, Aaykar Bhavan M.K.Road Mumbai – 400 021
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAGFV-3063-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Rahul Hakani – Ld. AR
Department by	:	Chaudhary Arun Kumar Singh-Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	16/05/2019
घोषणा की तारीख / Date of Pronouncement	:	16/05/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-28, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-28/IT-488/ITO-17(3)(5)/2015-16 dated 29/06/2018 qua* enhancement of certain additions on account of *alleged bogus purchases*. Although, the additional grounds have been filed, however, the same has not been



pressed during hearing before us and therefore, not considered while adjudicating the appeal.

2.1 Facts in brief are that the assessee being *resident firm* stated to be engaged in trading of iron & steel was assessed u/s 143(3) r.w.s.147 for impugned AY on 23/03/2015 wherein the assessee was saddled with addition of Rs.10.41 Lacs on account of *alleged bogus purchases* The original return of income filed by the assessee was processed u/s 143(1).

2.2 The reassessment proceedings got triggered pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* wherein it transpired that the assessee stood beneficiary of accommodation purchase bills aggregating to Rs.83.35 Lacs from 2 suspicious entities, the details of which have already been extracted in *para 4.1* of the quantum assessment order. Accordingly, the case was reopened u/s 147 by issuance of notice u/s 148 on 27/03/2014 which was followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the aforesaid purchases.

2.3 Although the assessee defended the purchases made by him, however, the same were not accepted by Ld. AO for various reasons as summarized in *para 4.5* of the quantum assessment order. One of the reasons was that the assessee did not make available the details of transportation of the material purported to have been purchased from the aforesaid *hawala dealers* and could not provide any transportation receipts, delivery challans etc. In the affidavits filed before Sales Tax Authorities, the stated dealer admitted to have indulged in providing accommodation entries



without carrying out any actual business activities. The assessee could not produce any of the supplier to confirm the transactions.

2.4 The factual matrix led the Ld. AO to believe that the said purchases were non-genuine and accordingly, the additions against these purchases were estimated @12.5% which resulted into an addition of Rs.10,41,892/- in the hands of the assessee.

3. Aggrieved, the assessee preferred appeal against the same before Ld. CIT(A). The Ld. first appellate authority, after considering assessee's submissions and material on record came to a conclusion that the circumstances called for full additions as against 12.5% estimated by Ld. AO. Accordingly, enhancement notice was issued to the assessee on 01/06/2018 wherein the assessee was show-caused as to why the whole amount of *bogus purchases* may not be added to the income of the assessee. The assessee refuted the same by submitting that purchase bills were produced, corresponding sales were made and the payments to the suppliers was through banking channels. The attention was drawn to the fact that VAT was paid twice. However, not convinced, the additions were enhanced to 100% in the background of several judicial pronouncements, which have already been enumerated in the impugned order and not repeated here for the sake of brevity. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], Shri Rahul Hakani, vehemently contested the enhancement made by Ld. first appellate authority whereas Ld. DR supported the stand in impugned order by placing



reliance on the decision of Hon'ble Gujarat High Court rendered in **N.K.Proteins Ltd. Vs. CIT [2016-TIOL-3165-HC-AHM-IT]**.

5. We have carefully heard the rival submissions and perused relevant material on record and deliberated on judicial announcements cited before us. We find that assessee was in possession of primary purchase documents and the payments to the suppliers was through banking channels. The assessee had established corresponding sales before Ld. AO. The books of accounts were audited wherein quantitative details of stock was provided. We are of the considered opinion that there could be no sale without actual purchase of material keeping in view the fact that the assessee was engaged in trading activities. At the same time, the assessee failed to produce even a single supplier to confirm the purchase transactions. The delivery of material could not be substantiated. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. The Ld. AO, in our opinion, had clinched the issue in the right perspective and was fair enough to estimate the additions @12.5%. Therefore, concurring with the stand of Ld. AO, we restore the order of Ld. AO. Accordingly, the enhancement of Rs.72.93 Lacs as made by Ld. first appellate authority stands deleted.

6. Our aforesaid view is in line with the recent decision of Hon'ble Bombay High Court rendered in bunch of appeals titled as **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated**



11/02/2019] wherein Hon'ble Court distinguishing the cited case law of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs Dy. C.I.T. in Tax Appeal No. 240 of 2003 and connected appeals decided on 20th June, 2016** observed as under: -

8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of **N.K. Industries Ltd. (supra)** cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“ So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favor of the assessee and partially in favor of the revenue.”

9 In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs.

7. Resultantly, the appeal stands allowed in terms of our above order.

Order pronounced in the open court on 16/05/2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/05/2019

Sr.PS:-Jaisy Varghese



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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**