

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 398 OF 2018

The Principal Commissioner }
of Income Tax -25, C-10 }
Pratyakshakar Bhavan }
Bandra-Kurla Complex, }
Mumbai – 400 051. } .. Appellant

Versus

Ram Builders, 5, Vireshwar Kunj, }
V. S. Khandekar Marg Vile Parle }
(East), Mumbai – 400 057. } .. Respondent

Mr. Ashok Kotangle a/w Mr. P. A. Narayanan, Mr. Ajay V. Anand & Ms. Raveen Kaur, Advocates for the Appellant.

**CORAM : DHIRAJ SINGH THAKUR AND
ABHAY AHUJA, JJ.**

**RESERVED ON : 29th JUNE, 2022
PRONOUNCED ON : 18th JULY, 2022**

(PER DHIRAJ SINGH THAKUR, J.):

. The present appeal has been preferred under Section 260(A) of the Income Tax Act, 1961, against the order dated 28th February, 2017, passed by the Income Tax Appellate Tribunal - ‘G’ Bench, Mumbai, whereby the revenue’s appeal has been dismissed and the order passed by the Commissioner of Income Tax (Appeals)-39, {for short “CIT(A)”} has been upheld.

2. The appellant has framed the following question of law for consideration:

A) Whether, in the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of CIT(A) in deleting addition to the tune of Rs.4,15,22,944/- out of Rs.4,74,54,793/- added by the Assessing Officer on account of non-genuine purchases, by sustaining addition of only Rs.59,31,849/- by adopting estimated rate of 12.5% on the unexplained and non-genuine purchases?

3. Briefly stated material facts in the backdrop of which the present controversy has arisen, are as under:

The respondent / assessee is involved in the execution of civil works like road construction etc. under the Public Works Department of the Government of Maharashtra and the Municipal Corporation of Greater Mumbai. For the assessment year 2010-11, the assessee filed a return declaring a total income at Rs.1,56,21,670/-. Based on the information received from the Sales Tax Department of the Government of Maharashtra, the Assessing Officer (for short "A.O.") during the course of assessment proceedings asked the assessee to explain purchases to the tune of Rs.4,74,54,793/- from twelve parties, which were stated to be bogus purchase entries as per the information received by the A.O. The assessee was asked to produce the twelve parties from whom the assessee was reported to have taken the so called bogus bills, which the

assessee failed to do. Upon failure of the assessee to produce the twelve parties from whom the purchases were made, the A.O. asked the assessee to show cause, as to why the amount of purchases being not genuine, be not added to the total income of the assessee.

4. In response to the said show cause notice, the assessee submitted its reply alongwith a copy of the stock register as also details with regard to the material purchased for consumption at its respective work sites. It was stated that on the basis of purchases made by the assessee, the work was executed against which the contract payments were received from the Municipal Corporation of Greater Mumbai i.e. the Government of Maharashtra, which supervised and controlled the execution of works and was also subjected to audit by various wings of the Government of Maharashtra.

5. Despite the stand taken by the assessee, the A.O., upon failure of the assessee to produce the twelve parties for verification, held that the assessee in fact had not purchased the goods from the suppliers, and therefore held the purchase bills as bogus and consequently held an amount of Rs.4,74,54,793/- as non-genuine expenditure and added the same to the total taxable income of the assessee for the relevant assessment years.

6. Aggrieved by the addition so made, the assessee preferred an

appeal before the CIT(A), who vide order dated 09th March, 2015 allowed the appeal partially. It was held that without purchase of the material, it was not possible for the appellant (Assessee) to complete the work allotted to them by a semi Government Authority. It was also held that the A.O. had never disputed or examined the aspect of contract receipts from BMC or the consumption report of the material used in the execution of works and further that since contract work carried out by the appellant was not doubted or disputed by the A.O, the A.O. could not have denied that purchases were not made and the material was not used in the execution of the contract works. It was also held that merely, because the suppliers did not appear before the A.O. or only five confirmation letters were furnished, it cannot not be concluded that purchases were not made by the assessee.

7. Accepting the statement of the assessee that the addition be restricted to only profit element on the purchases effected by it, the CIT(A) by following ***CIT Vs. Bholanath Poly Fab Pvt. Ltd.***¹, and considering the facts and circumstances of the case, restricted the addition by estimating profit of 12.5% on the total purchases in question which works out to Rs.59,31,849/-. It thus, granted relief to the assessee to the tune of Rs.4,15,22,944/- (Rs.4,74,54,793/- – Rs.59,31,849/-).

8. The order passed by learned CIT(A) was challenged by the revenue before the Income Tax Appellate Tribunal. Cross objection was also filed

1 (2013) 355 ITR 290 (Guj).

by the assessee in the said proceedings. By virtue of order dated 28th February, 2017, the Tribunal dismissed the appeal as also the cross-objection filed by the assessee and upheld the order of learned CIT(A).

9. Learned Counsel for the appellant urged that the view expressed by the Tribunal in upholding the order of learned CIT(A), dated 09th March, 2015 was untenable in law, inasmuch as the assessee had clearly failed to prove the genuineness of purchases made during the course of execution of the works, despite having been granted opportunity to produce the twelve parties before the A.O. for purposes of verification.

10. The Tribunal upheld the findings recorded by the learned CIT(A) on two grounds. Firstly, that the consumption report with regard to material purchases had never been controverted by the A.O and secondly that the completion certificate in regard to the contract works submitted by the assessee had been accepted by the A.O., in the light of which, it could not be said that the purchases were totally bogus and consequently ought not to be fully disallowed. The Tribunal also upheld the addition estimated at Rs.59,31,849/- based upon estimated profit at the rate of 12.5% on the total purchases in question.

11. We have heard learned Counsel for the appellant.

12. We are of the opinion that the view expressed by the Tribunal in upholding the order passed by the learned CIT(A), cannot be said to be in

any manner perverse or legally untenable, inasmuch as, if the entire amount of Rs.4,74,54,793/- were to be held as non-genuine purchases, then it would not be possible to justify as to how the works allotted to the assessee for execution by the semi Government Agencies could be completed. Therefore the argument that the entire amount of Rs.4,74,54,793/- ought to have been added to the income of the assessee is untenable, especially when the learned CIT(A) in its order as upheld by the Tribunal in the order impugned held that the purchases per se were not in dispute but the parties from whom the purchases are shown to have been made are disputed.

13. In our opinion, the order passed by the Tribunal is legally valid warranting no interference.

14. The Income Tax Appeal is accordingly dismissed. No order as to costs.

(ABHAY AHUJA, J.)

(DHIRAJ SINGH THAKUR, J.)