

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

ITA No. 3586/MUM/2019

Assessment Year: 2009-10

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ITA No. 3587/MUM/2019

Assessment Year: 2010-11

&

ITA No. 3588/MUM/2019

Assessment Year: 2011-12

ACIT-21(1),
Room No. 116, 1st floor, Piramal
Chambers, Parel,
Mumbai-400012.

Appellant

M/s Electromag Methods
Vs. 4th Fl. Unique Indl. Estate, Off Veer
Savarkar Marg, Prabhadevi,
Mumbai-400025

PAN No. AAAFE0293R

Respondent

Revenue by : Mr. Amit Pratap Singh, DR
Assessee by : None

Date of Hearing : 30/09/2020
Date of Pronouncement: 01/10/2020

ORDER

PER N.K. PRADHAN, A.M.

These captioned appeals filed by the Revenue are directed against the order passed by the Commissioner of Income Tax-(Appeals)-33, Mumbai [in short the 'CIT(A)'] and arise out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 30.09.2020, neither the assessee nor its authorized representative participated for virtual hearing before the Tribunal. As there is non-

compliance by the assessee, we are proceeding to dispose off these appeals by examining the materials available on record and after hearing the Ld. Departmental Representative (DR). Facts being identical, we begin with the AY 2009-10.

2. The grounds of appeal filed by the Revenue read as under :

1. On the facts and circumstances of the case and in law the learned CIT(A) erred in reducing the addition on account of bogus purchases to 30 % thereof at Rs.34,438/- granting a relief of Rs.1,14,792/- without appreciating the fact that the addition made on the basis of credible information received from the Maharashtra Sales Tax Dept.
2. On the facts and circumstances of the case and in law the learned CIT(A) erred in deleting the 70% addition on account of bogus purchases without appreciating the fact that the assessee had failed to discharge his primary onus of proving the genuineness of the purchases claimed.
3. On the facts and circumstances of the case and in law the learned CIT(A) erred in holding that it is proper to add only profit element/benefit embedded in such purchases which is estimate at 30% of purchase amount when the assessee has failed to prove that the quantity of material in the bills was used in the manufacturing activity.
4. On the facts and circumstances of the case and in law the learned CIT(A) erred in deleting the 70% of addition on account of bogus purchases without appreciating the fact that once it is proved that the purchase claimed was bogus then there is no reason or basis to estimate the disallowance and the entire bogus claim should be disallowed.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2009-10 on 24.09.2009 declaring income of Rs.1,75,21,276/-. The assessee manufactures machinery equipment. On the

basis of information from the Sales Tax Department, Government of Maharashtra that the assessee had purchased bogus purchase bills of Rs.1,14,792/- from M/s Vraj Enterprises, the AO made an addition of the above amount.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 11.03.2019, the Ld. CIT(A) restricted the addition to 30% of the disputed amount of Rs.1,14,792/- with the following observations :

“4. I have considered the facts of this case and the submission of the appellant. There is no dispute on the fact that M/s. Vraj Enterprises was declared as hawala /suspicious supplier based on enquiries and investigation done by the Sales Tax Department. It is also a fact that the appellant has shown and booked purchases from the said party. Hence, re-opening on the basis of specific information about a fictitious transaction of purchase is found to be justified and the same is sustained.

4.1 Further, it is also a fact that 100% of bogus purchase has been added by the AO without conducting any further enquiry. Even there is no mention of issuance of notice u/s 133(6) and the addition has been made solely on the basis of information from Sales Tax Department. The appellant has produced various documentary evidences to prove the genuineness of purchase like invoice, bank statement certificate from production in-charge, stock sheet etc. Hence, considering the findings of the Sales Tax Department that the party Vraj Enterprises has only issued bills without actual supply of goods, it is logical to conclude that the purchases were made from grey market and only bills was obtained from Vraj Enterprises. Hence, the actual rate and quantity of purchase remains unverifiable. Any business man will do such practice only if he gets a substantial benefit.

4.2 Considering the entirety of facts, it is considered proper to assess and add only profit element/benefit embedded in such purchase which is estimated at the rate of 30% of purchase amount. Hence, addition to the extent of 30% of

Rs.1,14,792/- = Rs.34,438/- is sustained and balance addition @ 70% of Rs.1,14,792/- = Rs.80,354/- is hereby deleted.”

5. Before us, the Ld. Departmental Representative (DR) submits that the assessee failed to prove before the AO the direct co-relation between the purchases made and the corresponding sales. Therefore, the full addition of Rs.1,14,792/- made by the AO be restored.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, in response to the query raised by the AO *vide* order sheet entry dated 23.02.2015 to show cause as to why the purchases be not disallowed, the assessee filed a reply dated 11.03.2015 (mentioned by the AO at para 5 of the assessment order dated 27.03.2015) stating as under :

"Stock statement copies highlighting items received and issued for production pertaining to Vraj Enterprises. Note from production in-charge stating that without items of Vraj Enterprises, FG cannot be produced. Letter of Authority for all 3 year.

In view of all documentary evidences provided as called for, it is humbly submitted that the purchases are to be accepted as genuine by Income Tax Department without any doubt.”

After receipt of the above reply of the assessee, the AO could have made further inquiries/verifications. However, the AO has not made any inquiry/verification. In such a situation, the Ld. CIT(A) has rightly restricted the addition/disallowance to 30% of Rs.1,14,792/- which comes to Rs.34,438/-.

Considering the above facts, we affirm the order of the Ld. CIT(A).

Facts being identical, our decision for AY 2009-10 applies *mutatis mutandis* to AYs 2010-11 and 2011-12.

7. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 01/10/2020
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai