

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.1566/Mum/2019
(Assessment Year :2011-12)**

DCIT – 7(2)(2) Mumbai Room No.126B, First Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. New Age Fire Protection Engineering Pvt. Ltd., 101/102, Champaklal Udyog Bhavan Sion (E) Mumbai – 400 022
PAN/GIR No.AACCN9026C		
(Appellant)	..	(Respondent)

Revenue by	Shri Rajendra Joshi
Assessee by	None
Date of Hearing	02/12/2020
Date of Pronouncement	04/12/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1566/Mum/2019 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-16, Mumbai in appeal No.CIT(A)-16/ACIT-7(2)(2)/IT-16/2016-17 dated 24/12/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to

as Act) dated 01/03/2016 by the Id. Asst. Commissioner of Income Tax, Circle 7(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the addition made on account of bogus purchases to 12.5% of value thereon as against 25% added by the Id. AO in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that assessee is a private limited company engaged in trading and export of fire fighting equipments to Public Sector companies and for exports. It is not in dispute that assessee had made certain purchases from five parties totalling to Rs.35,92,013/- whose names appeared to be tainted dealers in the website of Sales Tax department of Government of Maharashtra pursuant to which the assessee's case was sought to be reopened. The assessee filed the requisite details before the Id. AO and the Id. AO observed that assessee in the instant case was not able to prove the veracity of purchases made from aforesaid five parties, however, had furnished details of corresponding sales made thereon. In other words, the sales made by the assessee out of the corresponding disputed purchases have been proved by the assessee in the instant case and the same was not disputed by the Id. AO. The Id. AO proceeded to bring to tax the profit element embedded in the value of such disputed purchases and such profit element was estimated at 25% and accordingly, the Id. AO made an addition of Rs.8,98,003/- in the assessment. The Id. CIT(A) by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of Vijay M Mistry Constructions Ltd., reported in 355 ITR 498 and yet another decision of Hon'ble Gujarat High Court in the case of CIT vs.

Simit P Sheth reported in 38 taxmann.com 385 determined the profit element embedded in the value of said disputed purchases to be at 12.5% and granted relief accordingly to the assessee.

4. Aggrieved by this order of the Id. CIT(A), revenue is in appeal before us.

5. We find that assessee has not preferred any appeal before us against the order of the Id. CIT(A) as submitted by the Id. DR. It is not in dispute that the assessee could not prove the genuineness of the purchases made from five parties beyond doubt. At the same time, the sales made by the assessee out of disputed purchases have been accepted and not doubted by the revenue. Hence, it would be just and fair to tax only the profit element embedded in such disputed transaction. In this scenario, it could be safely concluded that assessee should have made purchases only in the grey market in order to have saving in some indirect taxes and the incidental profits embedded thereon. This Tribunal in series of decisions with regard to other assessees engaged in similar line of industry in which assessee is engaged in, had estimated the reasonable profit percentage on disputed purchases to be at 12.5%. For the sake of brevity, those series of Tribunal decisions are not reiterated herein. Hence, keeping in view the judicial precedents before us, we hold that the Id. CIT(A) had reasonably estimated the profit percentage at 12.5% of non-genuine purchases which would meet the ends of justice and does not warrant any interference. Accordingly, the ground raised by the revenue is dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced on 04/12/2020 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 04/12 /2020
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai