

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5196/MUM/2019
Assessment Year: 2009-10**

ITO-20(2)(4),
Room No. 220, 2nd floor,
Piramal Chambers, Lalbaug,
Parel,
Mumbai-400012.

Appellant

Vs. M/s National Engineering
Works,
19, Atlas Mills Compound, Opp.,
Reay Road,
Mumbai-400 008

PAN No. AAAFN 0629 G

Respondent

Revenue by : Mr. Sanjay J. Sethi, DR
Assessee by : None

Date of Hearing : 04/03/2021
Date of pronouncement : 05/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arises 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 04.03.2021, neither the assessee nor his authorized representative appeared before the Bench on the above date. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

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

1. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in granting relief of Rs.5,39,483/- by restricting the addition to 6% of the alleged bogus purchase from hawala parties.
2. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has failed to appreciate the fact that the onus is on the assessee to explain and substantiate the genuineness and the true nature of the purchase transaction.
3. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in not considering the fact that the hawala dealers admitted on oath before sales tax authorities that they have not sold any material to anybody and assessee failed to produce such parties at assessment stage though specifically asked by the A.O.
4. On the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in not appreciating the fact that purchases were made from some other parties which were not recorded in books of accounts and only accommodation bills were obtained from hawala parties and thereby attracting provisions of section 40A(3).

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2009-10 on 09.09.2009 declaring total income of Rs.9,36,648/-. The return was processed u/s 143(1) of the Act. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained accommodation entries amounting to Rs.82,99,742/- by making bogus purchases from four parties, the AO re-opened the assessment by issuing notice u/s 148 of the Act. Considering the facts of the case and also observing that the assessee failed to produce the said parties for examination, the Assessing Officer (AO) estimated the profit @ 12.5% on the disputed purchases of Rs.82,99,742/- which comes to Rs.10,37,468/-.

4. In appeal, the Ld. CIT(A) vide order dated 15.05.2019 held that :

“I have considered the assessment order, the submissions and detailed filed by the appellant. I find that the AO has made the addition on the basis of information regarding bogus purchases from 4 parties amounting to Rs.82,99,742/-, based on the investigation carried out by the Sales Tax Authorities. The Appellant has submitted copy of bills/ invoices issued by the alleged purchase parties, copy of bank account reflecting payments and the assessee's financial statements. The AO has held that the appellant has not been able to produce the said parties for examination/verification of the purchases. The AO has accordingly taken a view that the purchases made from the said parties remain unverifiable. However, considering that the assessee has provided quantitative summary of sales and purchases and the summary of details of opening as well as closing stock the AO has concluded that the goods purchased have been consumed by the appellant for manufacturing of finished product finally sold. Accordingly, the AO has made an addition @12.5% of the relevant purchases from the said parties, considering the decision of the ITAT, Ahmedabad in the case of DCIT Vs. Kulubi Steel Baroda.

5.1 The appellant has submitted that it is engaged in the work of contractor of labour and ship repair and the VAT on the items of Iron Steel purchased is 5% and the addition made @ 12.5% is not justified since the necessary evidences have been produced and the goods have been consumed as noted by the AO. I find that the appellant has shown GP rate of 16.81% during the year, as per audit report submitted. Considering the above stated facts and circumstances of this case, I am of the considered opinion that the profit element on the said suspicious purchases can be fairly estimated as 6%. Accordingly, the addition made by the AO is restricted to Rs.497,985/-. The AO is directed to re-compute the total income and allow relief accordingly.”

5. Before us, the Ld. DR relies on the order of the AO.

We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee is engaged in the work of contract-labour and ship repair. The VAT on the items of iron and steel purchased is

5%. The assessee has shown GP rate of 16.81% during the year. Having considered the above facts, the Ld. CIT(A) has rightly restricted the disallowance to 6% of the disputed purchases which comes to Rs.4,97,985/-. We affirm the order of the Ld. CIT(A).

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 05/03/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

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

Mumbai;
Dated: 05/03/2021
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