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

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER

ITA No.4970/M/2017
Assessment Year: 2009-10

Mr. Chandrashekhar Dandkar, Prop. Nishikant Power House, At Post Shahpur, Tal. Shahpur, Dist. Thane – 421 601 **PAN: ADDPD 8810B**	Vs.	Income Tax Officer-2(1), Kalyan
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Devendra Jain, A.R.
Revenue by : Ms. N. Hemalatha, D.R.

Date of Hearing : 11.12.2017
Date of Pronouncement : 22.12.2017

O R D E R

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.04.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The only effective ground is ground No.4 which is in relation to the addition of Rs.16,59,438/-. The short facts of the case are as under:

The assessee is a proprietor of Nishikant Power House, engaged in the business of erection, commissioning and installation of electrical goods. The case was reopened on the basis of information received from the Sales Tax Department that the parties namely M/s. Om Corporation, M/s. Blue Nine Enterprises and M/s. Manibhadra Trading Co. from whom the assessee had made purchases were involved in providing hawala entries and assessee was one of the beneficiaries. The notice was issued to the parties but they were remained absent. Therefore, the Assessing Officer (hereinafter referred to as the AO) has made addition of Rs.16,59,438/- under section 69C of the Act.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of hearing, the Ld. A.R. relied upon the decision of the Tribunal in the case of Ashtavinayaka Construction with identical facts of the present case in ITA No.3821/M/2015 for A.Y. 2011-12 wherein the Tribunal estimated 12.5% of the said purchases to be made addition. Therefore, this issue may be considered accordingly.

5. The Ld. D.R. objected to it.

6. Having heard both the parties, we find that in ITA No.3821/M/2015 for A.Y. 2011-12 the Tribunal has held as under:

> "5. After hearing both the parties, and on perusal of materials placed before us, we observe that the assessee is undoubtedly beneficiary of bogus purchase bills issued by these three parties as mentioned hereinabove to the tune of Rs.39,88,535/-. In respect of first two parties viz. (a) EMCO Industries and (b) Mercury Enterprises, the payments were withheld due to defective materials which were duly entered into by the assessee in the stock register and also consumed in the construction at the various sites, whereas in respect of the third party viz Viraj Trading Co., the material was received and shown in the stock register and consumed. The payment was made through banking channel. The AO doubted the entire purchases and added the same to the income of the assessee which was upheld by the ld. CIT(A) by observing that the provisions of section 69C of the Act treating the purchases as

unexplained expenditure was rightly applied. In the case of bogus purchases, the practice followed by the beneficiaries are that the bills are prepared from the hawala dealers while purchases the goods from the grey market thereby making the saving of non-payment of VAT and other incidental charges. We are not in agreement with the conclusion drawn by the ld.CIT(A) specifically when the assessee has filed the statement of receipt of materials and consumption thereof at the various sites and hence at the most a reasonable disallowance to cover the leakages of revenue and various types of savings made by the assessee by purchasing goods from the grey market could be made. In the similar cases, the Co-ordinate Benches of the Tribunal have taken a consistent view of directing addition ranging from 5% to 12.5% depending upon the facts of the case. In the present case, we are of the view that it would be fair and reasonable to make the addition towards gross profit at the rate of 12.5% of the said purchases. Accordingly, we set aside the order of CIT(A) on this issue and direct the AO to make addition at 12.5% of the bogus purchases. Ground no.1 is partly allowed."

7. Respectfully following the same, I direct the AO to make the addition towards the gross profit @ 12.5% of the said purchases which comes to Rs.2,07,430/-.

8. Ground No.2 is not pressed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 22.12.2017.

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 22.12.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.