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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5373/Mum/2019

(A.Y: 2012-13)

Asst. Commissioner of Income Tax, Circle – 15 (1)(1), Room No. 470, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	बनाम/ Vs.	M/s Excelhone Manufacturing Pvt. Ltd., R-606, TTC Industrial Area, MIDC, Thane Belapur Road, Rabale, Navi Mumbai - 400701
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACE4747K		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Appellant by :**	Shri Vijay Kumar Menon, DR
प्रत्यर्थी की ओर से/**Respondent by :**	None

सुनवाई की तारीख / **Date of Hearing**	03/02/2021
घोषणा की तारीख /**Date of Pronouncement**	08/02/2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 24, Mumbai, passed u/s. 143(3) r.w.s. 147 and 250 of the Income Tax Act 1961.

2. The revenue has raised the following grounds of appeal:-

1) "On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in computing profit for the purpose of section 28 of the I.T. Act,1961 taking in to consideration the bogus bills against which no goods have been received.
2) "On the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in presuming that goods have been made from unknown parties where bills have been received from Hawala dealers.
3) "On the facts and in the circumstances of the case and in law, if the 14. CIT (A) has made a presumption that purchases have been made from unknown parties, the Ld.CIT(A) has not clarified how the payment was made and whether action 69 of the I. T Act. 1961 will be applicable?
4) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not considering the order of the Honble supreme Court in the case of N. K. Protien Ltd. dated

16.01.2017, which is oil similar issue of bogus purchases and when the apex court order was already the law of land, the 14. CIT(A) pronounced its order on 10.05.2019.

5) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred by not allowing the Hon'ble Gujrat High Court decision in the case of CIT vs N. K. Industries (in income tax appeal No. 240 of 2009 vide order dated 26.02.20 16) where in 100% of the bogus purchases was held liable to be added in the hands of the assessee reversing the order passed by the Hon'ble ITAT restricting addition to 25%?

6) The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

7) The applicant craves leave to add, amend or alter any grounds or add new ground, which may be necessary".

3. At the time of hearing, none appeared on behalf of the assessee, nor adjournment petition was filed. We have heard the Ld. DR submissions.

4. The Brief facts of the case are that the assessee is engaged in the business of manufacturing of honed tubes and reconditioning of hydraulic cylinder tubes. The return of income was e-filed on 29.09.2012 declaring the total income of Rs. 80,27,600/-.The return of income was processed u/s 143 (1). Subsequently, the Assessing Officer has issued notice u/s 148 of the Act. In response to the notice. the assessee has filed income tax return on 16.08.2018. Subsequently, notice u/s 143 (2) and 142 (1) of

the Act was issued and in compliance the Ld. AR of the assessee appeared from time to time and filed the details. In the re-assessment proceedings, the AO has called for the explanations on the transaction with M/s SAR Engineering Ltd Rs5,50,620/-.The A.O. found that the assessee has obtained the purchases bills from M/s SAR Engineering Ltd. Further, the AO has issued notice u/s 133 (6) of the Act to M/S SAR Engineering Ltd. and the said notice was returned un-served. The AO dealt on the dispute issues and observed that the assessee could not prove the genuineness of the transaction and hence made an addition of Rs.5,50,620/- and assessed the total income of Rs. 85,78,220/- and passed the order u/s 143 (3) r.w.s. 147 dated 22.12.2018.

5. Aggrieved by the order, the assessee has filed the appeal with the CIT (Appeals). The CIT (A) considered the grounds of appeal, submissions of the assessee and findings of the A.O. and relied on the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth (2013) 356 ITR 451 (Guj) and observed that the AO is of the opinion that the assessee failed to prove the genuineness of the transaction but the AO has not doubted the sales and the assessee has made purchases to save taxes and therefore only profit element

has to be estimated. Accordingly, the Ld. CIT(A) has confirmed the disallowance to the extent of 12.5% of the purchase value and partly allowed, the assessee's appeal.

6. Aggrieved by the order of CIT (A), the revenue has filed an appeal with the Hon'ble Tribunal. The Ld. DR submitted that CIT(A) has erred in granting relief irrespective of fact that the A.O. has made sufficient enquiry and made addition and prayed for restoration of Assessing Officer order.

7 We have heard the Ld. DR and perused the material on record. We find that the Ld.CIT (A) has considered the facts and circumstances and the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth (supra) and has restricted the addition to the extent of 12.5% of bogus purchases. The Ld.DR has supported the order of the AO and could not controvert the findings of the Ld. CIT (A) with any new cogent evidence or information. We find that the Ld. CIT (A) has passed a reasoned order by estimating the income at 12.5% of value of the bogus purchases transaction which was accepted. Accordingly, we do not find

infirmity in the order of the Ld. CIT (A) and uphold the same and dismiss the grounds of appeal of the revenue.

In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 08.02.2021.

Sd/-	*Sd/-*
(SHAMIM YAHYA)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 08.02.2021

AK, PS

आदेश की प्रतिलिपि अग्रेषित/**Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार**/** BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai