आयकर अपीलीय अधिकरण "एच" न्यायपीठ, मुंबई

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

BEFORE SHRI RAJESH KUMAR, AM & SHRI RAM LAL NEGI, JM

ITA No.6354/MUM/2017

(**निर्धारण वर्ष /** Assessment Year :2010-2011)

Khilari Infrastructure Pvt. Ltd. 101-104, Prabhat Centre, Annexe, Sector-1A, CBD Belapur, Navi Mumbai-400614	Vs.	ACIT-15(2)(1), Mumbai
स्थायी लेखा सं./PAN No. : **AAFCA 9143 A**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Shri Hari S. Rajeha, AR
राजस्व **की ओर से** /Revenue by : Shri Manoj Kumar Singh, DR

सुनवाई की तारीख **/ Date of Hearing : 31/12/2018**
घोषणा की तारीख**/Date of Pronouncement 31/12/2018**

आदेश / O R D E R

Per Shri Rajesh Kumar, AM:

This appeal by assessee arises out of the order of the CIT(A) – 24, Mumbai, dated 14.07.2017, which in turn has arisen out of the order passed by the Assessing Officer u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to A.Y. 2010-11.

2. The assessee has raised the following Grounds of appeal:

> 1. *On the facts and circumstances of the case and in law, the learned Assessing Officer erred in confirming the additions made by the Assessing Officer at the time of passing the order u/s 143(3) r.w.s. 147 on 30.11.2015, disregarding the submissions made by the appellant in this regard and also in the light of the fact that no independent enquiry was carried out by the Assessing Officer to arrive at the conclusion of income escaping assessment.*
>
> 2. *On the facts and circumstances of the case and in law, the learned Assessing Officer erred in confirming the reopening of the assessment as mentioned by the Assessing Officer in the assessment order, made on the basis of information received from the DGIT (Inv.) that appellant had made non-genuine / hawala purchases of Rs.63,43,806/- from four parties based on findings of Sales Tax Authorities.*

3. *On the facts and the circumstances of the case and in law, the learned CIT(A), erred in confirming the rejection of books of the appellant u/s 145 of the I.T. Act.*

4. *On the facts and the circumstances of the case and in law, the learned CIT(A), erred in confirming the addition made by the Assessing Officer amounting to Rs.7,92,976/- being estimated Gross Profit in respect of non genuine purchases of Rs.63,43,806/- @12.5% treated as GP. Without there being any material to suggest the earring of GP as alleged in the assessment order.*

5. *On the facts and the circumstances of the case and in law, the learned Assessing Officer failed to appreciate that appellant during the course of assessment proceedings had furnished various documentary evidence in support of genuineness of the transactions in respect of purchases made by the appellant from the parties named in the assessment order.*

6. *On the facts and the circumstances of the case and in law, the learned CIT(A), erred in confirming the stand taken by the Assessing Officer that the purchases of Rs.63,43,806/- are not genuine because appellant could not produce the alleged bogus parties for verification of the Assessing Officer.*

7. *On the facts and the circumstances of the case and in law, the learned CIT(A), erred in rejecting the submission made by the appellant that against the addition made on the basis of G.P. Ratio of 12.5% on alleged bogus purchases, credit for 8.58% declared G.P. ratio for the year should be given, as G.P. to that extent has already been offered to tax by the appellant in the final accounts.*

8. *The appellant craves leave to add, amend, alter, modify, delete and/or change all or any above grounds on or before the date of hearing.*

3. The common issue raised in the grounds of appeal by the assessee is against confirmation of addition of Rs.7,92,976/- being 12.5% of Rs.63,43,806/- which represented the bogus purchases by the assessee during the year under consideration.

4. Facts in brief are that the assessee filed return of income on 13.10.2010 declaring total income of Rs.1,12,40,130/-, which was

processed u/s.143(1) of the Act. Thereafter the case of the assessee was reopened u/s.147 r.w.s.148 of the Act by issuing notice u/s.148 of the Act on 19.03.2015. The case of the assessee was reopened after the AO received information from DGIT(Inv.) that the assessee had entered into Hawala Transactions for purchases to the tune of Rs.63,43,806/-. Thereafter the assessee was called upon to furnish the various details/information to prove the genuineness of the purchases. The assessee made purchases from the following four parties :-

Sl.No.	Name of the Supplier	Amount
1.	Ridhi Enterprises	13,59,605/-
2.	Jay Enterprise	16,53,183/-
3.	Shubham Enterprises	18,53,399/-
4.	Ridhi Sales Corpn	14,77,619/-

The assessee filed with the AO the copies of bills and vouchers, bank statement and also the proof of delivery of material in support of its claim, however, the AO was not convinced with the contention of the assessee and finally added the sum of Rs.7,92,976/- to the income of the assessee being 12.5% as bogus purchases by framing assessment u/s.143(3)/147 of the Act.

5. In the appellate proceedings the CIT(A) upheld the order of the AO by observing that the AO has rightly relied on the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth, 356 ITR 451, wherein the Hon'ble High Court has confirmed the order of the Tribunal on account of addition of bogus purchases to the tune of 12.5%.

6. We have heard rival submissions and perused the material on record including the impugned order. Ld. AR vehemently argued before

the Bench that the assessee has produced necessary evidences in the form of bills and vouchers, bank statement and movement of goods including delivery challans through which the material was received by the assessee. Ld. AR submitted that the GP during the year was 8.58% vis-a-vis 9.46% in the immediately preceding previous year. During the year the assessee has shown the turnover of Rs.16.6 crores as against Rs.2.6 crores in the immediately preceding previous year. Ld.AR submitted that since the assessee has been paying VAT @4%, the confirmation of order of AO by the CIT(A) is wrong as the addition has been made in order to prove the profit element in purchase @12.5%, whereas undisputedly the assessee has already declared GP of 8.58% in the overall business of the assessee. Finally, ld. AR submitted that the assessee should be granted the credit of VAT paid by the assessee. Ld. AR also referred to the series of decisions wherein the addition has been sustained @ 2% to 12.5%. Ld. AR further submitted that since the assessee has already returned reasonable GP on all the purchases including the so-called bogus purchases, the order of CIT(A) should be reversed and a reasonable decision should be made after proceeding with the rate of VAT applicable to the assessee.

7. *Per Contra*, ld. DR relied on the order of CIT(A) and argued that even the notice u/s.136 of the Act was not served on the assessee, thus, the CIT(A) has rightly confirmed the addition in the hands of the assessee.

8. Now, after considering the arguments of the rival parties and factual matrix of the case, we are of the view that the addition made by the CIT(A) @12.5% on bogus purchases is on the higher side as the applicability of VAT is 4% in the instant case. In such scenario, the general presumption is that the assessee might have made the purchases from the grey market thereby making savings of various expenses including VAT. In these circumstances, we are of the view that, it would be reasonable in the facts of the present case if the bogus purchases are brought to tax @6%. We, therefore, set aside the order of CIT(A) and direct the AO to apply the rate of 6% on the bogus purchases as against 12.5% confirmed by the CIT(A).

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

Order pronounced in the open court on 31/12/2018.

Sd/-	**Sd/-**
(RAM LAL NEGI)	**(RAJESH KUMAR)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 31/12/2018

प्र.कु.मि/Prakash Kumar Mishra, Sr.PS.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Assistant Registrar**)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai