

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 5604 OF 2010

The Commissioner of Income Tax-1,
Mumbai

..Appellant

versus

M/s. Nikunj Eximp Enterprises Pvt. Ltd.

..Respondent

Mr. Vimal Gupta, Sr. Advocate with Mrs. Padma
Diwakar for the Appellant

Mr. J.D. Mistri, Sr. Advocate with Aasifa Khan for
the Respondent.

.....
CORAM : J.P. DEVADHAR &
M.S.SANKLECHA, JJ.

DATE : 17th December, 2012

P.C. :

1 This appeal by the Revenue under Section
260A of the Income Tax Act, 1961 (the Act)
challenges the order dated 30.04.2010 of the Income
Tax Appellate Tribunal (the Tribunal) relating to
Assessment Year 2001-02.

2 The following question of law has been

formulated for consideration of this court.

“Whether on the facts and in the circumstances of the case and in law the Tribunal was right in deleting the addition made by the Assessing Officer of Rs.1,33,41,917/- towards bogus purchases even though the suppliers were non-existent and one of the parties had categorically denied having any business dealings with the Assessee Company?”

3 The respondent-assessee had filed its return of income for the Assessment Year 2001-02 declaring a total income of Rs.42.08 lacs. The Assessing Officer *interalia* disallowed an expenditure of Rs.1.33 crores on account of non-genuine purchases from 7 parties alongwith other disallowances. The Assessing Officer by order dated 25.03.2004 assessed the respondent-assessee to an income of Rs.1.87 crores.

4 Being aggrieved an appeal was filed by the respondent-assessee with the Commissioner of Income Tax (Appeals) ('CIT(A)'). By an order dated 19.08.2004, the CIT(A) upheld the order of the Assessing Officer *interalia* to the extent Rs.1.33

crores disallowed as bogus purchases.

5 Being aggrieved by the order dated 19.08.2004 of the CIT(A), the respondent-assessee preferred an appeal to the Tribunal. The Tribunal in the impugned order dated 30.04.2010 while allowing the appeal records that the respondent-assessee had filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through Account Payee cheques to the suppliers, copies of invoices for purchases and stock statement i.e. stock reconciliation statement. This reconciliation statement gave complete details with regard to opening stock, purchases, sales and closing stock and no fault with regard to it was found. Besides, substantial amount of sales made by the respondent-assessee was to Government Department i.e. Defence Research and Development Laboratory, Hyderabad and such sales could not be bogus. Besides the Books of Account of the respondent-assessee have not been rejected. In view of the above, by order dated 30.04.2010 the

Tribunal deleted the disallowance of Rs.1.33 crores by holding that the purchases were not bogus.

6 Mr. Vimal Gupta, Senior Counsel appearing in support of the appeal submits that the Tribunal could not have relied only upon the stock statement i.e. the reconciliation statement to conclude that the purchases were genuine. Therefore, he submits that the question formulated is a substantial question of law and needs to be decided by this court.

7 We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30.04.2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted

position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30.04.2010 of the Tribunal.

8 In view of the above, we find that question as formulated is not a substantial question of law. Therefore, the appeal is dismissed with no order as to costs.

(M.S. SANKLECHA, J.)

(J.P.DEVADHAR, J.)

