

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2312/MUM/2018  
Assessment Year: 2011-12**

ITO-33(3)(4), Room. No.  
612, 6<sup>th</sup> floor, C-12,  
Pratyakshkar Bhavan,  
BKC, Mumbai.

Shri Sunil Govind Agre, 255/21-B,  
Sankalp CHS Ltd., Sector 5/2,  
Vs. Charkop, Kandivali (W), Mumbai-  
400067

**Appellant**

**PAN No. AEGPA0962H  
Respondent**

Revenue by : Mr. Chaudhary Arun Kumar Singh, DR  
Assessee by : None

Date of Hearing : 31/07/2019  
Date of pronouncement : 31/07/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax-45, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing before the Tribunal on 10.08.2018 and 31.07.2018, neither the assessee nor his authorized representative appeared on the above date. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal after

hearing the Ld. DR and examining the relevant materials available on record.

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

1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in partly deleting the addition of Rs.85,08,600/- after accepting that the parties from whom purchase were made were bogus and were rotating funds.
2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in directing the Assessing Officer to take the peak of the purchase without giving any logic or justification.
3. The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and the addition made in the Assessment order may kindly be restored as the Hon'ble Supreme Court in the case of N.K. Proteins Ltd. Vs DCIT has upheld the Hon'ble Gujarat High Court order which held that 'addition on the basis of undisclosed income could not be restricted to certain percentage when the entire transaction was found as bogus'.

3. Briefly stated, the facts are that the assessee filed his return of income for the assessment year (AY) 2011-12 on 30.09.2011 declaring total income of Rs.5,07,610/-. The assessee is engaged in trading in computer system, assembled systems and peripherals etc. in the name and style of his proprietary concern M/s Infocom Technologies/S.N. Enterprises. During the course of assessment proceedings, the AO observed that as per the information received from the Sales Tax Department, Government of Maharashtra the assessee has obtained bogus purchase bills from the following two parties :

Sl. No.	Name of the purchase party	Amount of purchase (Rs.)	TIN
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1.	Kotson Impex Pvt. Ltd.	6,50,000/-	27110537510V
2.	Urvin General Trading Co. Pvt. Ltd.	78,58,600/-	27940584729V
	Total	85,08,600/-	

During the course of assessment proceedings, the AO called for information u/s 133(6) from the above two parties in order to verify the genuineness of transactions. However, the notices sent by him could not be served and these were returned un-served by the postal authorities with the remark "not known". The AO noted that the TIN Nos. of the above two parties mentioned in the website of the Sales Tax Department are matching with the TIN reflected in the purchase bills filed by the assessee. The AO sent a show cause notice along with the statement recorded by the Sales Tax Authorities to the assessee *vide* letter dated 10.02.2014 asking to explain why the above purchases amounting to Rs.85,08,600/- shall not be treated as unexplained expenditure u/s 69C of the Act. The said show cause notice and the reply to it has been extracted by the AO in the assessment order dated 10.03.2014.

The AO was not convinced with the reply of the assessee for the reason that in spite of request, the assessee failed to produce either of the two parties before him for examination except stating that the purchases and sales are genuine. Relying on the statements and findings of the Sales Tax Department, Government of Maharashtra coupled with the fact that the notices issued by him u/s 133(6) to the said two parties were returned un-served by the postal authorities, the AO made an addition of Rs.85,08,600/- u/s 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). In the order dated 31.01.2018, the Ld. CIT(A) held as under :

“4.7 Assessee in its submission before the AO vide letter dated 07.03.2014 at point (g) submitted that without prejudice to his arguments that his gross profit is 1.66% addition at GP of 9% may be made as additional income. However, the appellant has taken an alternate ground as under :

5. Without prejudice to the above, the assessee states that the peak purchases of Rs.31,50,000/- can at the most be determined as unexplained purchase.

It is noticed that the appellant though filed confirmations of the seller parties but failed to produce them for verification. Notices issued by the AO were not served at the given addresses. Examination of the bank accounts of these parties by the AO at the time of remand proceedings, it appeared that the seller parties were only rotating funds in their account. Affidavit filed by the appellant by himself during the proceedings supports the argument of the AO. Though the AO has not made any analysis with regard to the peak purchases and bank transactions from the peak point of view, the assessee himself has worked out and came up with the peak of his purchases. Therefore, accepting the alternate ground of the appellant, the AO is directed to restrict the addition to the peak of purchases of Rs.31,50,000/- as against the addition of Rs.85,08,600/-. Appellant gets part relief.”

5. Before us, the Ld. DR relies on the decision in *N K Proteins Ltd. v. CIT* (2017-TIOL-23-SC-IT), *N K Proteins Ltd. v. CIT* (2016-TIOL-3165-HC-AHM-IT), *CIT v. Arun Malhotra* 47 taxmann.com 385 (Delhi)/[2014] 363 ITR 195, *Vijay Proteins Ltd. v. ACIT* [2015] 58 taxmann.com 44

(Gujarat), CIT v. La Medica [2001] 117 Taxman 628 (Delhi)/[2001] 250 ITR 575 (Delhi)/[2001] 168 CTR 314 (Delhi), Udit Kalra v. ITO Ward 50(1) of Hon'ble Delhi High Court ITA No. 220/2019 & CM No. 10774/2019 dated 08.03.2019, Pr. CIT (Central)-1 v. NRA Iron & Steel Pvt. Ltd. Civil Appeal No. of 2019 (Arising out of SLP (Civil No. 29855 of 2018) Supreme Court recent decision dated 05<sup>th</sup> March 2019, Pr. CIT-6, New Delhi v. NDR Promoters Pvt. Ltd. ITA 49/2018 of Hon'ble Delhi High Court dated 17.01.2019 and Jansampark Advertising & Marketing Pvt. Ltd. (2015) 231 Taxman384 (Delhi).

Relying on the above decisions, the Ld. DR submits that the addition of Rs.85,08,600/- by the AO be confirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case the notices issued by the AO u/s 133(6) were returned un-served by the postal authorities with the remarks "not known". The assessee failed to produce the parties before the AO for examination.

However, we find that though the assessee was not able to produce the above parties before the AO for examination, it is a fact on record that the AO has not doubted the sales. Thus it is logical that without corresponding purchases, the assessee could not have made the sales. Such being the facts, the case of the present assessee is distinguishable from the case laws relied on by the Ld. DR.

Considering the entirety of facts and circumstances of the case, we find that the Ld. CIT(A) has rightly restricted the disallowance to the

peak of purchases of Rs.31,50,000/- taken as an alternate ground by the assessee. Thus we confirm the order of the Ld. CIT(A).

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

**Order pronounced in the open Court on 31/07/2019.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

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

Mumbai;

Dated: 31/07/2019.

*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,

(Sr. Private Secretary)  
**ITAT, Mumbai**