

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 6962/Mum/2017 (Assessment Year 2009-10)

I.T.A. No. 6963/Mum/2017 (Assessment Year 2010-11)

M/s. Noble Corporation D-41, Supanth CHS Plot No. 602, Sector 6 Charkop, Kandivali (W) Mumbai-400 067. PAN : AAHHA2159K	Vs.	ITO Ward 33(1)(1) C-13, BKC Bandra West Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Ashwin S. Chhag
Department by	Smt. Arju Garodia
Date of Hearing	4.4.2018
Date of Pronouncement	4.4.2018

ORDER

Per B.R. Baskaran (AM) :-

Both these appeals filed by the assessee are directed against the orders passed by the learned CIT(A)-45, Mumbai and they relate to A.Ys. 2009-10 & 2010-11. The assessee is aggrieved by the decision of the learned CIT(A) in sustaining the addition relating to the alleged bogus purchases made by the AO in both the years. Since identical issues were urged in these two appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee herein is a trader in hygienic products and chemicals. Consequent to the information received from the Sales Tax Department that certain dealers are providing only accommodation bills without actually supplying the materials and upon noticing that the assessee has purchased goods from some of such suspicious dealers in both the years under consideration, the Assessing Officer reopened the assessments of both the years under consideration by issuing notices u/s. 148 of the Act. In the reopened assessment, the Assessing Officer asked the assessee to prove the

genuineness of purchases made from the suspicious dealers. In response thereto, the assessee furnished copies of purchase bills, ledger account of suppliers, delivery challans, corresponding sale bills and bank statements highlighting payment made to the suppliers.

3. In order to ascertain genuineness of the transaction of purchases, the Assessing Officer issued notices u/s. 133(6) of the Act to the suppliers. However, all the notices were returned unserved by the postal authority. The AO asked the assessee to produce the suppliers, but the assessee did not do the same. Hence, the Assessing Officer proposed to disallow purchases made from such suspicious dealers. In response thereto, the assessee placed heavy reliance on the documents furnished by it. The assessee also submitted that the statement given by the dealers before the sales tax authority should not be relied upon as no opportunity of cross examination was given to the assessee. The Assessing Officer, however, held that the onus to prove the genuineness of purchases is placed upon the assessee. The Assessing Officer also observed that the assessee did not prove that the goods were actually delivered to it by the suppliers by producing evidences for transportation of goods. Since the assessee has reconciled the purchases with the corresponding sales, the Assessing Officer took the view that the profit element embedded in such purchases should alone be brought to tax. In this regard, the Assessing Officer placed reliance on the decision rendered by Hon'ble Gujarat High Court in the case of Simit P. Sheth (356 ITR 451). Accordingly, the Assessing Officer estimated the profit on such purchases at 12.5% and accordingly made addition of ₹ 6,94,490/- in A.Y. 2009-10 and ₹ 7,95,828/- in A.Y. 2010-11.

4. The assessee carried the matter by filing appeals before the learned CIT(A) but could not succeed. Hence, the assessee has filed these appeals before the Tribunal.

5. We have heard the parties and perused the record. We noticed that the assessee has placed reliance on the purchase bills, delivery challans and bank statements only in order to prove the genuineness of purchases. It is an

admitted fact that the Assessing Officer issued notices u/s. 133(6) of the Act but all of them were returned unserved and hence the Assessing Officer asked the assessee to produce the suppliers for verification but the assessee has failed to comply with the same. The assessee has also failed to prove that the goods were actually transported to its premises by producing transportation bills. Under these set of facts, the tax authorities have doubted the genuineness of purchases. The AO has rightly held that that the burden to prove the genuineness of expenditure is placed upon the assessee and also observed that the said burden was not discharged by the assessee. Since the assessee has proved that it has sold goods by reconciling purchases with the sales, the Assessing Officer has observed that the assessee might have purchased goods from some other sources and obtained bills from suspicious dealers. Accordingly, the Assessing Officer has come to the conclusion that the profit element embedded in such purchases alone should be assessed to tax.

6. We notice that the AO has not simply relied upon the information received from the Sales tax department with regard to the impugned purchases. The AO has made independent enquiry by issuing notices u/s 133(6) of the Act, but all of them were returned unserved. The AO also asked the assessee to produce the suppliers, but the assessee could not produce them. The assessee has simply placed reliance on the documents available with it to prove the genuineness of purchases. The assessee has failed to prove that the goods were, in fact, transported from the place of the suppliers. Hence, in our view, it cannot be said that the assessee has conclusively proved the genuineness of purchases. Before us also, the assessee has failed to furnish any material to contradict the findings given by the tax authorities. Hence we do not find any infirmity in the decision reached by the tax authorities that the assessee might have sourced the materials from some other source.

7. However, we noticed that the profit rate of 12.5% estimated by the Assessing Officer is on higher side. The Assessing Officer himself has observed that assessee might have saved money on account of sales tax etc., embedded

in such purchases. The Learned AR submitted that the VAT rate applicable to the impugned purchases is 4%. We notice that the assessee has declared GP rate at around 7% in AY 2009-10 and at around 4% in AY 2010-11. Considering these facts, the profit rate of 12.5% estimated by the Assessing Officer, in our view, is on higher side. Accordingly, we are of the view that the profit rate embedded on the impugned purchases may be estimated at 7%, which, in our view, would take care of savings made on account of tax and discount, if any, available to the assessee. Accordingly, we modify the order passed by the learned CIT(A) and direct the Assessing Officer to sustain the addition to the extent of 7% of the value of bogus purchases in both the years under consideration.

8. The assessee has also raised certain legal grounds with regard to validity of reopening, non rejection of books of account. The Learned AR also raised legal contention that the assessee was not afforded opportunity of cross examination. However, at the time of hearing, the learned AR submitted that he will not press legal issues if partial relief is given to the assessee. Since we have given partial relief to the assessee, we do not find it necessary to dispose of the legal grounds urged by the assessee.

9. In the result, both the appeals filed by the assessee are partly allowed.
Order has been pronounced in the Court on 4.4.2018.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/4/2018

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//

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BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai