IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (IT) NO. 2127 OF 2018

WITH

INCOME TAX APPEAL (IT) NO. 2128 OF 2018

WITH

INCOME TAX APPEAL (IT) NO. 2234 OF 2018

Pr. Commissioner of Income Tax - 2 … Appellant
Versus
Bharat Copy Centre Pvt. Ltd. … Respondent

Mr. Suresh Kumar for Appellant.
None present for Respondent.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 6th September 2023

P.C. :

1. Mr. Suresh Kumar states that Respondent has been served. Respondent, however, is absent.

2. The Appeal filed is under Section 260A of the Income Tax Act, 1961 ("**the Act**"). The following two questions of law are proposed in the Appeal :

> *i. Whether on the facts and circumstances of the case and in law, the ITAT has erred in partly allowing the appeal of the revenue against the order of Ld. CIT(A) by restricting the disallowance to 12.5% of unproven purchases without considering the position of law established by Hon'ble Apex Court in the case of N. K. Protiens Ltd. that 100% disallowance on bogus purchases is upheld ?*

ii. Whether on the facts and circumstances of the case and in law, the ITAT was right in restricting the addition made by the A.O. to the extent of 12.5% of unproven purchases, without considering the fact that purchases remain unproven and even for the A.Y.'s, the ITAT has upheld disallowance on unproven purchases ?

3. Assessee, as stated in the statement of facts, is engaged in the business of undertaking labour works in offset printing and photo copying. Consequent to the information received from the Sales Tax Department that certain parties are engaged in the business of providing accommodation bills without actually supplying the materials and upon noticing that the assessee has purchased goods from some of such parties in the three years under consideration, the Assessing Officer ("**AO**") reopened the assessments of those three years. Assessee filed its return of income on 14th October 2010 declaring total income of Rs. 65,25,600/-. AO completed the assessment on 29th November 2013 by determining the total income at Rs. 1,49,27,100/- after making certain additions/disallowances. AO disallowed the entire amount of purchases made from the suspicious dealers in all the three years by treating them as 'bogus purchases'. For Assessment Year 2010-2011 it was Rs. 84,01,498/-. Assessee impugned the assessment order dated 29th November 2013 before the Commissioner of Income Tax (Appeals) ("**CIT(A)**"). The CIT(A) partly allowed the Appeal vide an order dated 18th November 2015. This was challenged by the Revenue before the Income Tax Appellate Tribunal ("**ITAT**"). The ITAT vide its order dated 22nd September 2017 partly allowed the Appeal of Revenue. This Appeal has been filed challenging the legality and validity of the impugned order passed by the ITAT to the extent it was against the Revenue.

4. AO had noticed that the assessee did not have evidence for transportation of materials, receipt and consumption of materials. Assessee could produce only bills and payment details. Assessee could not obtain confirmation letters from the suppliers to prove the genuineness of the purchases, nor could it produce those parties before AO. AO therefore concluded that assessee has failed to discharge the responsibility to prove the genuineness of purchases.

5. Admittedly, in this case the assessee had purchased goods like paper, flex roll, ink, toner, card board and various other materials required for printing, publishing and photo copying. The fact that assessee had used those goods has not been disputed. The ITAT agreed with the findings of CIT(A) that AO having relied on the details provided by the Sales Tax Department but neither

AO, nor the Sales Tax Department took a stand that the suppliers do not exist. Therefore, the ITAT came to a conclusion on facts that there is a possibility that assessee might have saved VAT and also obtained some discount on purchase price and in this kind of situation, the principle of taxing the profit embedded in such purchases covered by the bogus bills, should only be disallowed instead of disallowing entire expenditure. The CIT(A) also took this view but adopted the net profit rate for sustaining the addition. The ITAT modified the order of CIT(A) to adopt the gross profit level, but retain the addition to the extent of 12.50% of the value of alleged bogus purchases.

6. The common impugned order of ITAT is for Assessment Years 2009-2010, 2010-2011 and 2011-2012.

7. There are innumerable judgments of this Court and other High Courts where the Courts have held that the ITAT was correct in restricting the addition limited to the extent of bringing the gross profit rate on purchases and not the entire amount paid.

8. Since both the authorities, i.e., the CIT(A) and the ITAT have held that it is not the entire sales consideration which is to be brought to tax, but only the profit attributable on the total sales consideration which alone can be subject to income-tax, the view taken by the authorities, in our view, is a reasonable and possible view. Therefore, Appeals dismissed.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**

GITALAXMI KRISHNA KOTAWADEKAR Digitally signed by GITALAXMI KRISHNA KOTAWADEKAR Date: 2023.09.08 17:19:18 +0545