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

INCOME TAX APPEAL NO. 1149 OF 2018

The Principal Commissioner
of Income Tax – 25 ….Appellant

V/s.

Trans Conduct (India) …Respondent

Ms. Sushma Nagaraj a/w Ms. Sakshi Kapadia for Appellant.

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 7th FEBRUARY 2024

P.C. :

1. Revenue is impugning an order pronounced on 14th July 2017 dismissing Revenue's appeal for the Assessment Year 2011-12. Even if it is taken to be a case of bogus purchases as alleged by the Assessing Officer (A.O.), the A.O. not having disputed that the materials stated to have been purchased from several suppliers have been used in executing the contracts, as held by the various courts not the entire purchases but only profit element embedded in such purchases can be added to the income of assessee. It will be apposite to reproduce Paragraph Nos. 6 to 10 of the judgment in ***Pr. Commissioner of Income Tax – 19 vs Vishwashakti Construction***[1].

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6. An appeal was preferred before the CIT(A) by the assessee, who concurred with the A.O. that purchases from the ten parties in question were bogus but held that the entire amount of such purchases could not be added to the total income and that only the profit element embedded and suppressed in the disputed purchases be assessed to income, which he estimated at 12.5%. The CIT(A) accordingly retained the addition to the extent of 12.5% while deleting the rest.

7. An appeal was preferred before the ITAT both by the assessee as also the revenue, which was finally decided by virtue of the order impugned dated 20th January, 2017, which is impugned in the present appeal. The Tribunal upheld the view of the CIT(A) to treat the purchases from ten parties as bogus and also upheld the view expressed by the CIT(A) to sustain the addition to the extent of 12.5% of the amount of the disputed purchases relying upon the decision of Gujarat High Court in the case of CIT v. Bholanath Poly Fab Pvt. Ltd. (2013) 355 ITR 290 (Guj).

8. In a case involving a similar issue, even this Court in Income Tax Appeal No. 398 of 2018 decided on 18th July, 2022, had dismissed the appeal flied by the revenue on the ground that if the entire amount of purchases were to be held as non-genuine purchases, then it would not be possible to justify as to how the works allotted to the assessee for execution by the semi Government Agencies, could be completed.

9. Even in the present case the Appellant is a contractor, who had been allotted a subcontract for carrying out civil works of road and buildings repairs for which various types of building materials are stated to have been purchased from several suppliers including the ten suppliers, who are alleged to have been providing accommodation entries. It is not denied that the works allotted had been completed for the concerned agency, which would have been otherwise impossible, if the entire purchases made by the Appellant were to be held as non-genuine.

10. In our opinion the order passed by the Tribunal warrants no interference. No substantial questions of law arise in the present appeal.

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Paragraph Nos.4 and 8 of an order in ***Principal Commissioner of Income Tax vs. Hiren C. Parekh***[2] also reads as under :

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4. We have considered the order of the AO. The AO does not dispute that purchases have been actually made but what is disputed is whether purchases have been made from the said 4 parties. The fact that payments were made to these parties by way of account payee cheques is also not questioned by AO. The AO has not given any finding as to whether he has even approached the bank or made any enquiries with the bank to find out genuineness of those payments. It is of course recorded that the notices sent to those persons came back undelivered and assessee was unable to provide any actual delivery challans. What is material to note is that the purchases themselves were not being disputed and what is disputed is genuineness of the sellers. Therefore, in view of these factors, CIT(A), relying on a judgment of the Gujarat High Court in CIT Vs. Simit Sheth [2013] 38 taxmann.com 385/219 Taxman 85 (Mag)/356 ITR 451, came to a conclusion that not the entire purchases, but only profit element embedded in such purchases can be added to the income of the assessee. CIT(A) while deciding what is appropriate profit element percentage has very correctly stated that though there is no uniform yardstick adopted, while looking at the norms in the market and considering the trade of the assessee, 12% gross profit on the impugned component of purchases is appropriate and directed the same to be added to the profit of the assessee for that year.

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8. Moreover, what would be actual profit margin in the business that the assessee was carrying on and the matter of calculation before the concerned authority, whether the purchases were bogus and the parties from whom such purchases were allegedly made were bogus are essentially questions of fact for which evidence will have to be led. Therefore, in view of this, no substantial question of law arises.

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2. Even in the case at hand it is not disputed that assessee was a

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contractor who has executed the contracts. The A.O. also has not denied that the works have been completed which would not have been possible without using the materials allegedly purchased.

3. In the circumstances, in our view, the order of the Income Tax Appellate Tribunal (ITAT) requires no interference. No substantial questions of law arise.

4. Appeal dismissed.

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