

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM**

ITA No. 1204/Mum/2017

(Assessment Year: 2009-10)

Bengal Mill Stores P. Ltd.
205, Maganlal Chamber,
Baburao Bobde Marg, IRON
market
Mumbai-400 009

(Appellant)

Vs.

DCIT- Circle 6(1)(2)
Mumbai-400

(Respondent)

PAN No. AADCB2473Q

Assessee by : Shri Vijay Mehta, AR
Revenue by : Shri Ashok Kumar Ambastha, DR

Date of hearing: 08.04.2024
Date of pronouncement : 19.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 1204/Mum/2017 is filed by M/s Bengal Mills Stores P. Ltd. (assessee / appellant) for A.Y. 2009-10 against the appellate order passed by the Commissioner of Income-tax (Appeals)-12, Mumbai, [the learned CIT (A)] dated 21st November, 2016, wherein the appeal filed by the assessee against the assessment order dated 30th March, 2015, under Section 143(3) of the Income-tax Act, 1961 (the Act) r.w.s 147 of the Act passed by the Dy. Commissioner of Income Tax, 6(1)(1), Mumbai (the learned Assessing Officer) was partly allowed. The assessee is aggrieved with the appellate order wherein



the addition to the extent of 12.5% amounting to ₹24,20,213/- of total alleged bogus purchases of ₹1,93,61,702/-, was partly allowed.

02. The assessee has raised following grounds of appeal:-

"1) In the facts and the circumstances of the case and in law, the learned Assessing Officer erred in reopening the assessment u/s 147 merely on the basis of change of opinion, presumption and surmises and borrowed satisfaction and recording reasons in respect of only 5 parties and therefore rendering the whole assessment bad in law.

2) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in confirming disallowance of Rs. 24,20,213/- being 12.5% of total alleged bogus purchases amounting to Rs. 1,93,61,702/- of the Appellant through alleged bogus suppliers by treating the same as bogus by:

(a) Not providing the copy of the statements recorded by the VAT department from the said supplier.

(b) Not providing the proof of any cash refunded by the supplier.

(c) Also rejecting the books of the Appellant u/s 145(3) without pointing out any defects in the books of accounts.

(d) Treating the same as unproved purchases even though the payment for purchases is made from the books and cannot be termed as unproved.

(e) Relying only upon information received from MAHAVAT Department.

(f) Not providing cross-examination of suppliers.

3) The Assessing Officer wrongly charged interest u/s 234 and Initiated penalty u/s 271(1)(c)”

03. The assessee is a company engaged in trading in Iron, Steel and Pipes. It filed its return of income on 25th September, 2009, at a total income of ₹ 67,87,625/-. The return was revised on 11th November, 2009 at a total income of ₹44,46,545/-. The assessment under Section 143(3) of the Act was made on 21st November, 2011, at a total income of ₹49,46,550/-.
04. Subsequently, the information was received that assessee has purchased only the bills from five different parties amounting to ₹193,61,702/-, which are only accommodation bills. Therefore, notice under Section 148 of the Act was issued on 13th March, 2014. Notice under Section 143(2) of the Act was issued on 3rd September, 2014. The assessee was asked to produce the relevant information to prove the genuineness of the purchases. The learned Assessing Officer further issued notices under Section 133(6) of the Act to the alleged parties, where most of the notices were returned back being unserved. Some of the parties refused to or denied any transaction with the assessee company. The learned Authorized Representative was apprised of the same. The assessee replied that the above dealers may not be genuine but the purchases are genuine and the materials have been received and sold subsequently in the normal course of business. It was further stated that all these parties have the necessary registration under Sales Tax Act, and the payments have

been made by account payee cheques hence, the purchases are genuine. The learned Assessing Officer rejected the contention of the assessee stating that on the basis of the enquiry conducted by Sales Tax Department, Maharashtra, it was found that all these parties are engaged in giving bogus bills. The notice is issued to these parties have also returned. Therefore, the learned Assessing Officer rejected the contention of the assessee and relying on several judicial precedents found that these purchases are bogus. He further asked the assessee to submit the quality and quantity wise details and their corresponding consumption and sales. Assessee submitted such details therefore, the learned Assessing Officer made the addition of ₹1,93,61,702/- on account of bogus purchases and computed the total income at ₹2,43,08,252/- by passing an assessment order under Section 143(3) read with section 147 of the Act on 30th March, 2015.

05. On appeal before the learned CIT (A), the learned CIT (A) held that the entire purchases cannot be added to the total income but only the profit element is required to be added. He restricted the disallowance/ addition to the extent of 12.5% of the bogus purchases.
06. The assessee is aggrieved with the same and is in appeal before us. The learned Authorized Representative submitted that assessee has shown the quantitative details of purchases and also corresponding sales or consumption which has been noted by the learned Assessing Officer in the assessment order itself. Despite this fact the addition is made in the hands of the assessee at the rate of 12.5% by the learned CIT (A). He submitted that the Hon'ble Bombay High Court as in case of Pr. CIT-17 vs. Mohammad Haji Adam & Co. [2019] 103



taxmann.com 459 (Bom) has also directed to bring to tax only gross profit rate as applied in other genuine purchases.

07. The learned Departmental Representative submitted that Hon'ble Bombay High Court in case of Hitesh Modi, 160 taxmann.com 110 has upheld the addition to the extent of 8%. Further, in case of Siraj Infrastructure Pvt. Ltd. in 156 taxmann.com 192 has restricted the addition to the extent of 12.5% similar in case of 151 taxmann.com 93 has upheld the profit of 12.5%. Therefore, there is no infirmity in the order of the learned CIT (A).
08. We have carefully considered the rival contentions and also perused the orders of the lower authorities. We also considered the several judicial precedents relied upon before us. Admittedly, assessee is unable to prove the genuineness of the purchase with respect to the five parties amounting to ₹1,93,61,702/-. However in paragraph no.5.9 of the order, when the learned Assessing Officer asked the assessee to show the quantity and quality wise details of purchase and their corresponding consumption and sales, assessee produced the same. There is no infirmity found in those details. Therefore, it is apparent that assessee has purchased material from party A and procured bogus bills of the same material from party B. In this circumstance all the judicial precedents cited before us shows that only profit element embedded therein should be added. Therefore, the learned Authorized Representative has submitted that the profit element in case of assessee in Steel and Pipe business is merely 2 to 3 %. Therefore, in view of the above facts, over and above the normal profit earned by the assessee, there are certain other expenses and credit of the taxes and duties which is required to be added to the total income of the assessee. In view of the above arguments and



looking to the overall facts and circumstances, we deem it appropriate and fit to adopt the addition to the extent of 4% of bogus purchases of ₹1,93,67,763/- in the hands of the assessee. Accordingly, addition to the extent of ₹7,74,468/- is confirmed and balance addition is required to be deleted. The learned Assessing Officer is directed to retain the addition accordingly.

09. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.04.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19.04.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai