

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3495/Mum/2023  
(Assessment Year :2018-19)**

Capacite Infra Projects Ltd, 605-607,Shrikant Chambers, Near R K Studios, Sion Trombay Road, Chembur, Mumbai – 400 071	Vs.	The DCIT, Central Circle-1(2), 9 <sup>th</sup> Floor Prathistha Bhawan, New Marine Lines, Mumbai – 400 020
<b>PAN/GIR No.AAECC9463G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Viraj Mehta, A.R.
Revenue by	Shri H.M. Bhatt, Sr. D.R.
<b>Date of Hearing</b>	<b>07/02/2024</b>
<b>Date of Pronouncement</b>	<b>26/02/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 09-08-2023, passed by Id. CIT(A)-47 Mumbai for quantum of assessment passed u/s. 143(3)/147 for the assessment year 2018-19.

2. The only ground raised by the assessee reads as under:-

*“a) The Learned Assessing Officer has erred in disallowing purchases made by the assessee under section 37(1) of the Income Tax Act, 1961 amounting to Rs. 30,92,800/- on the ground that they are unverified. The appellant contends that the order of the Ld. AO making the addition without considering details filed by the appellant and merely relying on the information received from other agencies is bad in law and needs to be quashed.”*

3. The brief facts are that the assessee is a public limited company which is engaged as a civil contractor and provides end to end construction services for residential buildings, multi-level car parking, corporate offices and other institutional buildings. The assessee had originally filed its return of income u/s. 139(1) on 31-10-2018 declaring total income of Rs. 80,59,47,060/- and deemed total income of Rs. 120,70,26,217/- u/s. 115JB of the Act. Later, the income was revised at Rs. 87,29,34,230/- in the computation of book profit u/s. 115JB remained the same. After search and seizure action u/s. 132 was conducted on Capacit E Group on 24-12-2019. Accordingly, assessment was completed u/s. 153A for the impugned assessment year 2018-19 vide order dated 27-07-2021 on total income of Rs. 92,93,16,940/-. Subsequently, on the basis of information received during the investigation wing by the CGST Commissionerate Kutch Gandhidham, it was found that M/s. A.A. Enterprises, proprietor of Shri Gagandeep Nanda is an entry provider and was involved in issuing invoices and passing of input credit without supply of goods. The assessee also had made purchases from this party. Accordingly, notice u/s. 148A(d) was issued on 31-03-2022. The assessee informed that the name of the

party was Shri A.K. Industry and not A.A. Enterprises. M/s. A.K. Industry has done contract work and other allied services for completion of construction work to the assessee. Further, assessee produced copy of invoices, ledger account in the books of account, GST return filed by the said party and the details of payment through regular banking channels. It was further submitted that the assessee has duly deducted TDS in respect of services received from the party in the proceeds of its business. Thus, it was submitted that assessee had genuine transaction with the said party. It was further submitted that the services availed by the assessee was that, it has engaged A.K. Industry in respect of its site no. 94060 at Seaview Workfill. The assessee company has raised corresponding sale invoices as well as to its clients and offered it for sales. However, the ld. A.O. rejected the assessee's explanation and solely relied upon the information received from the anti evasion wing of CGST Commissionerate, Kutch and the purchase transaction amounting to Rs. 30,92,800/- has been added by the assessee.

4. The ld. CIT (A) has confirmed the said addition after observing as under:-

*“6. I have carefully considered the submission of the appellant in the light of facts highlighted in the assessment order. It is the observation of anti-evasion wing of CGST Commissionerate, Kutch (Gandhidham) that M/s. Preet Enterprises and 17 other entities controlled and operated by Shri Gurkamal Singh are involved in issuance of invoices and passing of input tax credit without actual supply of goods or*

*services, showing GST amount and facilitating the receipts to avail ITC on such fake invoices.*

*6.1. It is also observed by anti-evasion wing of CGST Commissionerate Kutch (Gandhidham) during their investigation that Shri Gurkamal Singh fraudulently obtained the documents of different persons such as PAN Aadhar etc, and used the same for GST registration of said bogus entities.*

*6.2. Further as observed from the bank account in the name of bogus firms were also opened in different banks it was found that other firms were not operational at the said addresses and address of some firms were not traceable. M/s AA. Industry, Prope Sri Gagandeep Nanda was also one such entities controlled and operated by Shri Gurkamal Singh.*

*6.3. During the investigation conducted, summons were issued to Shri Gurkamal Singh and the entities floated by him. However, they did not comply with the summons issued to Shri. Gurkamal Singh for furnishing of audit report, return of income, ledger copy, cash book etc. As no compliance was made, the nature and purpose of routing of funds remains unexplained.*

*6.4. During the present appellate proceedings, the appellant in his submission stated that the transactions with the said party are genuine and carried out through regular banking channels and also submitted ledger copies and stated that the party in question has also filed its GST returns for the relevant period.*

*6.5. I have carefully perused the facts of the case the submission of the appellant and the order of the Assessing Officer. It seem from the submission of the appellant, that the appellant has failed to furnish any documentary evidences that the expenses incurred through M/s A.A. Industry were actually incurred and the same were for the purpose of the appellant's business.*

*6.6 When it was proved by anti-evasion wing of CGST Commissionerate Kutch (Gandhidham) that the entities controlled by Shri Gurkamal Singh were bogus entities who had supplied bills without actual services being rendered, then merely furnishing ledger account and bills of such credit less persons do not carry any evidentiary value neither does it prove the genuineness of the transaction entered with M/s A.A. Industry.*

*6.7 Further, merely because the transactions are routed through banking channel does not prove the genuineness of the transaction entered with M/s AA Industry since bank is only channel for transfer of funds from one account to the account of the other person.*

*7. Considering the above facts, I am of the considered view that the Assessing Officer has rightly added the transaction entered by the appellant with M/s A. A. Industry u/s. 37(1) of the IT Act. Thus ground no. 2 & 3 raised by the appellant are dismissed.”*

5. We have heard both the parties and also perused the relevant findings during the impugned years. Entire basis for disbelieving purchase transaction by the A.O. and CIT(A) is that information and finding given by the anti evasion wing of CGST Commissionerate that M/s. Preet Enterprises and 17 other entities were operated by Shri Gurkamal Singh who was involved in issuance of invoices and passing of input credit without actual supplies of goods or services. On the other hand, the assessee's case is that the assessee had given contract work to M/s. A.K. Industry, Proprietor Shri Gangadeep Nanda who has done contract work and provided other allied services for completion of construction work to the assessee. The assessee had shown all the payments of Rs. 30,92,800/- paid

to the said party through banking channel and also produced along the copy of banking statements highlighting the payment made to the said party, ledger account, copy of invoices and details of GST of the said persons. Further, the GST return of the said party for the financial year 2017-18 was also filed. It was further submitted that this transaction was much before the CGST Investigation Wing carried out inquiry. From the perusal of the order, we find that nowhere AO and CIT (A) have doubted the corresponding sales or the contract work executed by the said party on behalf of the assessee. If the payments have been made through cheques and there is corresponding sales affected on the contract work carried out and TDS has been deducted, it cannot be said that the entire payment is to be disallowed. At the most, there could be the case of profit if it is believed that assessee has taken some accommodation bills from the said party. In such case as held by the Hon'ble Bombay High Court in various cases that only GP rate should be applied. Hon'ble Bombay High Court in the case of PCIT vs. Ram Builders reported in 454 ITR 444, the Hon'ble High Court held that where assessee was involved in execution of civil works and it had shown purchases from twelve parties even if assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as non-genuine purchases but only profit element on such purchases and thus, Appellate Authorities were justified in restricting addition by estimating profit of 12.5 per cent on total purchases. Further in the case of PCIT vs. Vishwashakti Construction reported in 454 ITR 448 held that where

assessee-firm was engaged in business of road repairs/construction and it had shown purchases from various entities even if assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as bogus purchases; only profit element embedded in such purchases to be considered for addition. Thus, in this case also, we hold 12.5% of GP rate on amount of Rs. 30,92,800/- may be added.

6. Accordingly, the appeal of the assessee is partly allowed.

Order pronounced on 26<sup>th</sup> February, 2024

Sd/-  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated: 26/02/2024

**Copy of the Order forwarded to :**

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

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**