

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai**

Before Shri G.S. Pannu, Accountant Member

ITA No.3660/Mum/2017
(Assessment Year: 2009-10)

Shri Rakesh Jitendra Shah
601, Priyas Soecity
CKP Colony, Ekasr Road
Borivali (W), Mumbai 400092

Income Tax Officer-32(3)-1
Room No. 107, C-11
Vs. Pratyaksha Kar Bhavan, BKC
Bandra, Mumbai 400051

PAN – AJMPS0113P

Appellant

Respondent

Assessee by: Shri Ashwin Kashinath
Revenue by: Ms. N. Hemalatha

Date of Hearing: 03.08.2017
Date of Pronouncement: 29.09.2017

ORDER

Per G.S. Pannu, AM

This appeal by the assessee has been filed against the order of the CIT(A)-44, Mumbai dated 06.01.2017 for A.Y. 2009-10.

2. The only issue in this appeal arises with regard to the addition on account of bogus purchases amounting to `21,09,700/-

3. Before proceeding further it may be noticed that there is a delay of 21 days in filing of the appeal before the Tribunal. In this context the assessee vide affidavit dated 12.05.2017 submitted that the delay has occurred due to the death of his father on 26th February, 2017 and made a request to condone the delay in filing the appeal. Considering that the assessee had a reasonable cause and also the fact that there is only a small delay of 21 days, the delay is condoned and the appeal is admitted for adjudication.

4. At the time of hearing the learned A.R. for the assessee submitted that the assessee would be satisfied if only a percentage of profit relatable to the unproved purchases is added following the ratio of the decision of the Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. vs. DCIT (ITA Nos. 240-242, 260 & 261 of 2003 dated 20.06.2016).

5. On the other hand, the learned D.R. for Revenue pointed out that the entire amount of purchases has been held to be unproved and, therefore, addition of the entire purchases made by the lower authorities deserves to be upheld.

6. I have considered the rival submissions. Notably the discussion in the orders of the authorities below reveals that the primary reason to treat the purchases as unproved is the information received from the Sales Tax Department of Government of Maharashtra. The AO has also made independent enquiries which has not yielded any response. However, it is notable that the assessee canvassed that if the purchases from the said parties are found to be unproved, it does not disprove that the material was indeed procured especially when the corresponding sales have been accepted. There is no negation to the aforesaid proposition canvassed by the assessee and considering the same, in my view, it is in the fitness of things that 12.5% of the total purchase is added to the total income on this count. This is in line with the decision of the Hon'ble Gujarat High Court in the case of Simit P. Shah 356 ITR 451 (Guj).

7. In so far as the point of the learned D.R. and the reliance on the case of N.K. Industries Ltd. (supra) are concerned it would suffice to note that in that case there was search action and the material found at the time of search proved the bogus nature of the purchases. The instant is a case where a mere non-substantiation of purchases on the part of the assessee has led the AO to treat the purchases as unproved. Therefore the ratio laid down in the judgement in the case N.K. Industries Ltd. (supra) is not attracted in the present case and accordingly the AO is directed to

make an addition of 12.5% of the unproved purchases and delete the balance amount.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 29th September, 2017.

Sd/-

(G.S. Pannu)
Accountant Member

Mumbai, Dated: 29th September, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -44, Mumbai*
4. *The CIT – 32, Mumbai*
5. *The DR, “SMC” Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.