

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1342/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Prabhat Rajmal Nibjiya
Prop. M/s. Blue Point Powerlines,
139, Bhavani Peth,
Pune-411 042.
PAN : AANPN7427R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 5(3), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 29.04.2019

घोषणा की तारीख / Date of Pronouncement : 30.04.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeal)-13, Pune dated 22.06.2018 for the assessment year 2011-12 as per following grounds of appeal on record:

"1.On the facts and in the circumstances of the case and in law the Ld. CIT(A) is not justified in confirming the addition of Rs.9,24,803/-

holding that the purchases were from the Hawala Dealers as reported by the Sale-tax Department but at the same time accepting the sales made out of it. The A.O. did not follow the matching principle of accountancy i.e. to say that the A.O. has not doubted the sales made but has disallowed whole of the purchases. The addition be deleted.

2. On the facts and in the circumstances of the case and in law the Hon'ble Bombay High court in an unreported judgment had confirmed the matching principle of accountancy and further held purchases cannot be added. The addition of Rs.9,24,803/- be deleted.

3. On the facts and in the circumstances of the case and in law the Ld.CIT(A) is not justified in making the addition of Rs.1,98,649/- on account of stock discrepancy. No such discrepancy was found so also the addition is "Revenue Neutral" as the subsequent years opening stock will get increased as per the Hon'ble Supreme Court verdict. In any case there is no loss of revenue. The addition be deleted.

4. On the facts and circumstances of the case and in law the levy of interest u/s 234B and 234C is not justified.

5. The appellant craves to leave, add/amend or alter any of the above grounds of appeal."

2. The brief facts in this case are that the assessee is an individual engaged in the business of proprietary concern in the name and style of M/s. Blue Point Powerlines which is dealing in Computer hardware and peripherals. The assessee filed the original return on 30.09.2011 declaring total income at Rs.11,66,240/-.

3. During the assessment proceedings, the Assessing Officer found that the assessee's opening stock amounted to Rs.1,61,32,612/- as per his P&L account whereas the same was shown at Rs.1,59,33,963/- as per his stock summery. Thus, there was a discrepancy in the opening stock to the extent of Rs.1,98,649/- which was later admitted by the assessee. The same was added back to the assessee's total income by the Assessing Officer. The Assessing Officer also observed that the assessee had made purchase transactions from certain parties who have been identified as Hawala dealers providing bogus purchase bills by the Sales Tax Department, Maharashtra.

Such purchases totalled to Rs 9,24,803.0n being asked to explain the same, the assessee submitted that it had made due payment to these vendors inclusive of the taxes thereon and hence, there has been no default thereof. The assessee also furnished ledger extract with such vendors. The contention of the assessee was rejected by the Assessing Officer on the ground that the Sale Tax Department specifically furnished the benefit received by the assessee from one of the vendors M/s. Siddhi Enterprises to the extent of Rs.5,96,298/-. Whereas the purchase from such vendor stood in the assessee's books at Rs.3,27,982/-. It was also noticed that no bills of purchase have been filed by the assessee below Rs.20,000/- against which cash payment have been made. No delivery challans, Octroi receipt have been submitted for the said purchases. The Assessing Officer thus, opined that the purchases so claimed to have been made and shown by the assessee are not genuine, but, bogus accommodation bills and that he is involved in hawala transaction. Therefore, he added the entire amount of bogus purchases so made of Rs 9,24,803/-to the assessee's total income.

4. The Ld. CIT(Appeal) confirmed the addition of Rs.9,24,803/- on account of bogus purchases and also confirmed the addition of Rs.1,98,649/- on account of stock discrepancy. Being further aggrieved the assessee has preferred this appeal before us.

5. At the time of hearing, the Ld. AR of the assessee has placed reliance on the ratio laid down by the Hon'ble Bombay High Court in the case of Pr.CIT Vs. Mohammad Haji Adam & Co. vide its judgment dated 11.02.2019 in ITA No.1004 of 2016. The Ld. AR of the assessee has further submitted that in such situation of bogus purchases, the GP rate of genuine purchases has to be identified and along with that bogus purchase GP also have to be

identified. The difference of these two can be added to the income of the assessee. For example, if the GP percentage of genuine purchases comes to 8% whereas GP percentage of bogus purchases comes to 10%, then 2% of bogus purchases can be added to the income of the assessee.

6. We have perused the case records and heard the rival contentions and considered the judicial pronouncement placed before us. We have also given considerable thought to the judgment of the Hon'ble Bombay High Court in the case of Pr. CIT Vs. Mohommad Haji Adam (supra.) wherein it has been held that no ad-hoc addition at the rate of 10% of bogus purchases is warranted. Rather, the addition should be made to the extent of difference between gross profit rate on genuine purchases and gross profit rate of bogus purchases.

Reverting to the facts of the present case and taking guidance from the said judgment of the Hon'ble Bombay High Court in the case of Pr.CIT Vs. Mohommad Haji Adam (supra.), we set aside the order of the Ld. CIT(Appeal) and restore the matter back to the file of the Assessing Officer for undertaking this exercise and finding out the excess gross profit rate earned from bogus purchases and then making the addition accordingly after allowing reasonable opportunity of hearing to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 30th day of April, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th April, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

| | | Date | |
|----|--|------------|----------|
| 1 | Draft dictated on | 29.04.2019 | Sr.PS/PS |
| 2 | Draft placed before author | 30.04.2019 | Sr.PS/PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 5 | Approved draft comes to the Sr. PS/PS | | Sr.PS/PS |
| 6 | Kept for pronouncement on | | Sr.PS/PS |
| 7 | Date of uploading of order | | Sr.PS/PS |
| 8 | File sent to Bench Clerk | | Sr.PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R | | |
| 11 | Date of dispatch of order | | |