

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.1679/Mum/2018
(Assessment Year :2013-14)**

Income Tax Officer – 24(1)(5), R.No.523, 5 th Floor Piramal Chambers Lalbaug, Parel Mumbai -400 012	Vs.	Shri Dinesh Mahavir Prasad Bhartia Nand Bhavan 3, J.P.Road Andheri (W) Mumbai – 400 053
PAN/GIR No. AETPB8761J		
(Appellant)	..	(Respondent)

**CO No.151/Mum/2019
(Arising out of ITA No.1679/Mum/2018)
(Assessment Year :2013-14)**

Shri Dinesh Mahavir Prasad Bhartia Nand Bhavan 3, J.P.Road Andheri (W) Mumbai – 400 053	Vs.	Income Tax Officer – 24(1)(5), R.No.523, 5 th Floor Piramal Chambers Lalbaug, Parel Mumbai -400 012
PAN/GIR No. AETPB8761J		
(Appellant)	..	(Respondent)

Revenue by	Shri J. Saravanan
Assessee by	Shri Vimal Punmiya
Date of Hearing	28/08/2019
Date of Pronouncement	18/09/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1679/Mum/2018 & Cross Objection No.151/Mum/2019 for A.Y.2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-36, Mumbai in appeal No.CIT(A)-36/IT-217/ITO-24(1)(5)/2016-17 dated 18/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/03/2016 by the Id. Income Tax Officer – 24(1)(5), Mumbai (hereinafter referred to as Id. AO).

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2. Both the parties before us mutually agreed that this revenue appeal is to be dismissed as not maintainable in view of the recent Circular issued by the CBDT dated 08/08/2019 wherein the revenue has been directed to withdraw the appeal preferred by it before the Tribunal if the tax effect on the disputed issues is less than or equal to Rs.50,00,000/-. It is well settled that this Circular is binding on the revenue authorities.
3. Respectfully following the said Circular, the appeal filed by the revenue is dismissed as not maintainable.
4. In case, if the revenue is able to provide evidence that the case falls under any of the exceptions provided in the circular issued by the CBDT, then the revenue may prefer miscellaneous application for recalling of this order, if they so desire, in which circumstance this order shall be recalled by this Tribunal.

5. In the result, appeal filed by the revenue is dismissed as not maintainable.

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6. The only ground to be decided in this Cross Objection by the assessee is as to whether the Id. CIT(A) was justified in estimating profits at 12.5% on alleged bogus purchases of Rs.1,14,50,804/- in the facts and circumstances of the case.

7. We have heard rival submissions and perused the material available on record. We find that assessee is engaged in the business of trading in textiles and derived income from business as well as income from other sources. The Id. AO observed that assessee had made purchases totalling to the tune of Rs.8,64,06,901/- during the year under consideration and sought to verify the same on test check basis from the details of purchases furnished by the assessee. The notice u/s.133(6) of the Act were issued to some parties by the Id. AO and the said notice were returned unserved by the postal authorities in respect of the following parties:-

Praveen Textiles	-	Rs.13,31,030/-
Durga Textiles	-	Rs.13,13,910/-
Kavita Textiles	-	Rs.10,18,256/-
Sharp Textiles	-	<u>Rs.22,43,545/-</u>
Total		Rs.59,06,741/-

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7.1. The Id. AO observed that in respect of notice u/s. 133(6) of the Act sent and served to yet another party i.e. Sovereign Silk Mills wherein the purchases were made to the tune of Rs.55,44,063/- by the assessee, no

reply was received from the said party in response to notice u/s.133(6) of the Act. The Id. AO confronted the assessee with regard to above mentioned deficiencies. With regard to total purchases made from aforesaid four parties to the tune of Rs.59,06,741/- the assessee stated that there was some dispute with the said parties and hence, they are not cooperating by filing the necessary reply before the Id. AO. The Id. AO requested the assessee to produce the proof of delivery of goods by the said suppliers to the assessee such as transportation bills etc together with confirmation from the said parties for having supplied the goods and also produced those parties for his examination. The Id. AO also requested the assessee to produce the stock statements to evidence the receipt of materials from the said suppliers together with ledger account and bank statement of those parties reflecting the payments received from the assessee. In response to the same, the assessee submitted the ledger copy along with his bank statements duly highlighting the payment made to those parties from time to time through regular banking channels in respect of aforesaid parties. The Id. AO for want of evidence proceeded to disallow the entire purchases in the sum of Rs.1,14,50,804/- (Rs.5906741/- + 5544063/-) in the assessment as not proved by the assessee. The Id. CIT(A) gave a categorical finding that the said goods that were purchased from the aforesaid five parties were actually sold by the assessee and hence only profit could be estimated as income of the assessee thereon. The Id. CIT(A) also observed that assessee had submitted the following details before the Id. AO.

- a. Copy of confirmation of account of the five parties
- b. Bank statements reflecting payments made to the aforesaid five parties

- c. Ledger account of the aforesaid five parties as appearing in the books of assessee.
- d. Name and address of the aforesaid parties together with their PAN.

7.2. The Id. CIT(A) gave a categorical finding that since the goods purchased from the aforesaid suppliers were duly sold by the assessee and the sales reflected by the assessee were not disputed by the Id. AO and that, without the receipt of goods, there could not be any sales that could be made by the assessee and accordingly concluded that the assessee at best be accused of making purchases in the grey market so as to avoid sales tax etc., With these observations and placing reliance on certain decisions of this Tribunal and various Courts, the Id. CIT(A) estimated the profit of the assessee at 12.5% on the alleged bogus purchases and restricted the addition to 14,31,350/-.

8. Aggrieved, the assessee is in appeal before us.

9. We find that the gross profit declared by the assessee is 8.76%. For the undisputed purchases, the gross profit declared by the assessee is 5.85% which has been accepted by the revenue. The Id. AR submitted that for the alleged bogus purchases that are in dispute before us, the gross profit was declared at 25.90% by assessee and hence, there is no need to make any further addition in the facts of the instant case. We find by considering the totality of the facts and circumstances of the instant case and considering the GP declared by the assessee at 8.76%, the estimation of profit at 10% on alleged bogus purchases would meet the ends of justice. Accordingly, the grounds raised by the assessee in its cross objections is partly allowed.

10. In the result, appeal of the Revenue is dismissed as not maintainable and Cross Objection of the assessee is partly allowed.

Order pronounced in the open court on this 18/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated 18/09/2019
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai