



ITA No.5570/Mum/2018
Atish Mafatlal Nahar
Assessment Year-2009-10

आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय श्री श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5570/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

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| ITO-Ward 19 (1)(2), Room No.204, Matru Mandir Mumbai-400 007. | बनाम/ Vs. | Atish Mafatlal Nahar 1308, B-2, 13 th Floor, Matoshri Bldg, MP Mill Compound, Tardeo, Mumbai-400 007. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADUPN-6578-B | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri Akhtar H. Ansari, Ld. DR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri Nirav Sanghvi, Ld.AR |

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| सुनवाई की तारीख/ Date of Hearing | : | 14/11/2019 |
| घोषणा की तारीख / Date of Pronouncement | : | 20/11/2019 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-53, Mumbai [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-



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53/IT-347/ITO-19(1)(2)/2017-18 dated 16/07/2018 on following grounds of appeal: -

1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made on account of holding that the addition made in the case is found to be unsupported with evidences despite the fact that the addition is made on the basis of information received from external sources in the nature of law enforcement agencies?
2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not considering the order of Hon'ble Supreme Court in the case of N K Protein Ltd. dated 16.01.2017, which is on the similar issue of bogus purchases and when the apex court order was already the law of the land when the Ld. Commissioner of Income tax(Appeals) has pronounced its order on 16.07.2018?

As is evident from ground of appeal, the only issue under appeal is addition on account of alleged bogus purchases.

2.1 Facts on record would reveal that the assessee being resident individual stated to be carrying out its business under proprietary concern namely M/s. Toys Center, was assessed for impugned AY u/s. 144 r.w.s. 147 on 05/03/2015 wherein the income of the assessee was determined at Rs.13.75 Lacs, after sole addition of *alleged bogus purchases* for Rs.13.41 Lacs as against returned income of Rs.0.34 Lacs field by the assessee on 07/04/2014 pursuant to notice u/s 148. The assessee is stated to have any not filed any regular return of income in view of the fact that its income was below taxable limit.

2.2 Pursuant to receipt of certain information from the DGIT (Inv.), Wing, Mumbai/Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of accommodation purchases bills for Rs.13.41Lacs stated to be obtained from an entity namely M/s. Ajinkya



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Multi Trade Pvt. Ltd. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 24/03/2014 which was followed by statutory notices u/s 142(1) wherein the assessee was directed to substantiate the stated purchase transactions by filing the detail of seller, invoices, description of goods with proof of delivery of material. The failure on the part of the assessee to supply the requisite details and satisfactory documentary evidences led Ld. AO to disallow the purchase of Rs.13.41 Lacs and accordingly, the same was added to the income of the assessee.

3. Aggrieved, the assessee contested the stand of the Ld. Assessing Officer before learned first appellate authority, with success vide impugned order dated 16/07/2018 wherein the attention was, *inter-alia*, drawn to the fact that the assessee was neither the proprietor of the entity i.e. M/s Toy Center nor it made any purchases from the stated party as alleged by Ld.AO. It was submitted that M/s Toy Center was registered in the name of some other person and the assessee had no concern with the same. The Sales Tax Department had erred in recording the information about the PAN of the assessee as proprietor of M/s Toy Center. It was submitted that the said facts were brought to the notice of Ld.AO, however, he failed to verify the same. In support, an affidavit was also filed before Ld. CIT(A). Accordingly, a remand report was called from Ld. AO who supplied the information received from Sales Tax Department. Finally, after considering the same, Ld. first appellate authority deleted the impugned additions by observing as under: -



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4.5 *I have considered the facts on record and submissions carefully. The Assessing Officer was directed to verify the claim of the appellant that the transaction alleged in respect of Toys Centre does not pertain to it. He was also directed to make enquiries with the Sales Tax Authorities and to submit a factual position along with evidence after allowing opportunity to the appellant. It is noted that the Assessing Officer has not made any enquiry with the Sales Tax Authority. No enquiry has been made with Ajinkya Multi Trade Pvt. Ltd to confirm whether any transactions were carried out with the appellant. No evidence has been brought on record to show that any concern by the name of "Toys Centre" belong to the appellant. There is no evidence of any copy of bill, bank statement or any other evidence to show that the appellant had made any claim of such purchases or was in any way connected with the transaction. Only mere reflection on the name of the appellant in the Maharashtra Sales Tax Department is not adequate proof that such transaction was carried out by the appellant when the same is specifically denied. Even after opportunity was provided to the AO to bring credible evidence on record to show that the appellant had transactions with Ajinkya Multi Trade Pvt. Ltd, the A.O has failed to do so. The AR has further informed that the assessing officer did not even call the appellant in the remand proceedings nor had any correspondence with the appellant. When no purchases are claimed, the question of disallowance of the same does not arise. Without any evidence of any payment made for purchases, it cannot be construed that there was any unrecorded investment. No opportunity of cross examination is provided nor the appellant has been confronted with any credible evidence to support the addition. In these facts, the addition made in this case is found be unsupported with any evidence. The addition made is, therefore, deleted. Grounds of appeal are therefore allowed."*

Aggrieved, the revenue is under appeal before us.

4. We have heard the arguments advanced by respective representatives and perused relevant material on record.

5. Upon due consideration, the fact that the assessee was neither the proprietor of M/s Toy Center nor made any purchases from suspicious dealer as alleged by revenue, remain uncontroverted before us. The return of income filed by the assessee reveal that the assessee has not reflected any income under the head *Business Income*. Except for certain bald information from Sales Tax Department, Maharashtra, the revenue is unable to bring on record any material to substantiate the fact that the



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assessee made these purchases from the stated party or the assessee was even the proprietor of M/s Toy Center. In these circumstances, no fault could be found in the conclusion drawn by learned first appellate authority and we see no reason to disturb the same.

6. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 20th November, 2019

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20/11/2019
Sr.PS, Pradip Paul

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**