

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA No. 5852/Mum/2019
Assessment Year : 2009-10

M/s.ANJ Turnkey Projects Private Limited, C/o.M/s.Jayesh Sanghrajka and Co LLP, 405-408, Hind Rajasthan Centre, DS Phalke Road, Dadar (East) MUMBAI [PAN : AAHCA0115C]	Vs.	The Deputy Commissioner of Income Tax-12(1)(1), MUMBAI
(Appellant)		(Respondent)

Appellant by : Shri Margav Shukla, AR
Respondent by : Shri S.Michael Jerald, DR

Date of Hearing : 19-12-2019 | Date of Pronouncement : 20-12-2019

ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-20, Mumbai, dated 13-08-2019 for the AY.2009-10.

2. Shri Margav Shukla, appearing on behalf of the assessee, submitted that the solitary ground raised in the appeal by assessee is against the addition confirmed by the CIT(A) in respect of alleged bogus purchases by the assessee. The Id.AR submitted that the assessee is engaged in execution

of works contract for interior works as per the specification of clients/architects. The assessment for AY.2009-10 was reopened on the ground that the assessee has indulged in obtaining bogus purchase bills aggregating to Rs.1,13,86,164/- from Halawala dealers. The Assessing Officer (AO) made addition of the entire bogus purchases and the CIT(A) upheld the order of AO. The ld.AR pointed that assessee has declared Gross Profit (GP) of 17.64% during the impugned assessment year. Similar addition was made by the AO in subsequent assessment year i.e., AY.2010-11 on same set of facts. The matter travelled to the Tribunal. The Co-ordinate Bench of the Tribunal has accepted the GP @16% declared by the assessee in AY.2010-11. The ld.AR prayed for deleting the addition in light of the order of the Tribunal in assessee's own case in ITA Nos.6889/Mum/2017 & 3076/Mum/2018 for the AYs.2010-11 & 2011-12, decided on 27-12-2018.

3. Per contra, Shri S.Michael Jerald, representing the Department, vehemently defended the impugned order. However, the ld.DR fairly admitted that the facts in the assessment year under appeal are similar to facts in AYs.2010-11 and 2011-12.

4. Both sides heard. Orders of authorities below perused. The authorities below have made addition in the hands of the assessee on account of alleged bogus purchases made by the assessee from Hawala dealers. Both the sides are unanimous in stating that the facts in the assessment year under appeal

are similar to the facts in assessee's own case for the AYs.2010-11 & 2011-12. The Co-ordinate Bench of the Tribunal while adjudicating the appeals of assessee in ITA Nos.6889/Mum/2017 & 3076/Mum/2018 for the AYs.2010-11 & 2011-12 respectively (supra), held as under:

"7. We have heard both the counsel and perused the records. The ld. Counsel of the assessee has submitted that the sales in this case have not been doubted. Hence, he pleaded that on the touch stone of the Hon'ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in writ petition no 2860, order dt. 18.6.2014), no disallowance was to be done. He further submitted that disallowance has been done in this case on account of profit earned on bogus purchases @ 12.5%. The ld. Counsel of the assessee submitted that the assessee has already disclosed sufficient gross profit of 15.99% more than the amount of 12.5%. Hence, he pleaded that no disallowance is necessary.

8. Per contra, the ld. Departmental Representative (ld. DR for short) relied upon the orders of the ld. CIT(A).

9. Upon careful consideration, we find that the ld. CIT(A) in this case has sustained 12.5% disallowance on account of bogus purchase. We note that sales have not been doubted. The Revenue is not in appeal against the order of the ld. CIT(A). We note that this disallowance is done to tax the profit earned by the assessee on the bogus purchase. Hence, in our considered opinion, though 12.5% disallowance is to be sustained, but the gross profit already disclosed by the assessee, needs to be reduced to avoid double jeopardy to the assessee. Double jeopardy, in our considered opinion, is not sustainable in law. Accordingly, we hold that the disallowance in this case should be restricted to 12.5% of the bogus purchase and the gross profit already declared should be reduced there from. Since the gross profit declared is more than 12.5%, no disallowance is further called for".

5. Since the facts in assessment year in appeal are similar to the facts in AYs.2010-11 & 2011-12 adjudicated by the Co-ordinate Bench of Tribunal, respectfully following the

order of Tribunal in assessee's own case, the impugned order is set aside and the appeal of assessee is allowed.

6. In the result, appeal of assessee is allowed.

*Order pronounced in the open court on Friday
the 20th day of December, 2019*

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 20-12-2019

TNMM

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai