

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1933/MUM/2019
Assessment Year: 2011-12**

The ITO 21(2)(5), Income Tax Office, Piramal Chambers, 1 st Floor, Room No. 107, Lalbaug, Parel, Mumbai - 400012	Vs.	M/s Print Magic, 13, Sahavas, Opp. Kashinath Dhuru Road, Near Kirti College, Mumbai - 400028 PAN: AAGFP4991D
(Appellant)		(Respondent)

Revenue by : Shri V. Vinodkumar (DR)
Assessee by : Shri Satish Mody (AR)

Date of Hearing: 16/06/2020
Date of Pronouncement: 23/06/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 21.01.2019 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the. CIT (A) 33, Mumbai, for the assessment year 2011-12, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s.147 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of offshore printing, filed its return of income for the assessment year under consideration declaring nil income claiming current year's carry forward loss of Rs.2,38,476/-The return was processed u/s 143(1) of the Act. Subsequently, the AO received information from the DGIT (Inv.), that during the previous year the assessee obtained accommodation bill from one of the bogus parties listed out by the Maharashtra Sales Tax Department, which used to issue bogus bills without making delivery of goods in order to facilitate various assessee's in

inflating the purchases. Accordingly, the assessment was reopened u/s 147 of the Act after issuing notice u/s 148 of the Act to the assessee. During re-assessment proceedings, AO asked the authorized representative of the assessee to produce the bills /invoices. The AO also issued notices u/s 133(6) of the Act to the four parties from whom, the assessee had shown purchases during the previous year. The notices were returned back by the Postal Department with the remarks 'left the place'. The assessee expressed its inability to produce the parties, however contended that the purchases were genuine. Accordingly, the AO determined the total amount of unverified/bogus purchases at Rs. 1,31,268/- and made addition of the said amount to the income of the assessee.

3. In the first appeal, the Ld. CIT (A) restricted the addition to 30% of the total amount of bogus purchases and deleted the remaining amount. The revenue is in appeal against the said findings of the Ld. CIT (A).

4. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following grounds:

1. *“On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in upholding only 30% addition of Rs. 1,31,268/- on the bogus purchases as against the AO’s stand of disallowing 100% of the bogus purchases, ignoring the fact that the action of the Assessing Officer was only based on credible information received from the Maharashtra Sales Tax Department, the assessee, during the course of assessment proceedings, failed to prove the genuineness of the purchases transaction.”*

5. Before us, the Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has wrongly restricted the addition to 30% of the total amount of questioned purchases. Since, the assessee had inflated the purchases on the basis of bogus bills, the Ld. CIT (A) ought to have confirmed the addition made by the AO.

6. On the other hand, the Ld. counsel for the assessee submitted that as per the law laid down by the Hon'ble jurisdictional High Court, *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 619 (Bom)* that merely because the suppliers had not appeared before the Assessing Officer one could not conclude that the purchases were not made by the assessee. The Ld. counsel further pointed out that the payments were made through banking channels. Moreover, the assessee has furnished PAN Card in respect of Aryan Printers, proof of tax deducted at source in respect of payment to Trimurti Enterprises. The Ld. counsel further pointed out that the AO has not rejected the sales made by the assessee during the previous year. Under these circumstances, there is no justification or making 100% addition. Accordingly, the Ld. counsel submitted that there is no infirmity in the order of the Ld. CIT (A).

7. We have heard the rival submissions and perused the relevant material on record in the light of the rival contentions of the parties. The Ld. CIT (A) has restricted the addition to 30% of the total amount of bogus purchases determined by the AO (mentioned as Rs. 1,24,632/- instead of Rs. 1,31,268/- mentioned in the assessment order). The findings of the Ld. CIT (A) read as under:-

“17. To conclude, I am of the view that certain percentage of purchase can only be disallowed for the reason that the appellant failed to produce the parties or their whereabouts and hence the verification of rates and quantity supplied could not be done. This view is also applicable in a case when the assessee has purchased materials from grey market and taken only bills from the parties under consideration. The appellant has not placed on record any comparable bills/invoices for purchases of similar items made from other parties to establish that the purchases from M/s Padmavati Enterprises and Pramod Shinde were at par with the purchases made from other parties during the period under consideration. In the absence of any such evidence placed on record, the correctness of the purchase price mentioned on such bills/invoices issued by the party in question cannot be accepted and some additional gross profit need to be estimated on the purchases made from the above parties in question

18. *As the purchases invoices issued against the alleged bogus purchases remains unverifiable, it would be fair and just, if the additional gross profit @ 30% is applied on such total alleged bogus purchases amounting to Rs. 1,24,632/-. The additional gross profit on such purchases would come to Rs 37,389/- which needs to be added to the income of the assessee on account of alleged bogus purchases for the year under consideration and the balance addition made amounting to Rs. 87,243/- is hereby deleted. The Assessing Officer is directed accordingly.”*

8. As pointed out by the Ld. counsel for the assessee, the Hon'ble Bombay High Court In *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 619 (Bom)* has held that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the respondent/assessee. Moreover, the AO has not rejected the sales of the assessee. Under these circumstances, the Ld. CIT (A) has rightly restricted the addition to 30% of the total amount of bogus purchases. Hence, we do not find any reason to interfere with the findings of the Ld. CIT (A). We therefore, uphold the findings of the Ld. CIT (A) and direct the AO to restrict the addition to 30% of the total amount of bogus purchases made by the assessee.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 23/06/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
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./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**