

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 3729/Mum/2019 (Assessment Year 2009-10)  
I.T.A. No. 3730/Mum/2019 (Assessment Year 2011-12)

DCIT Circle-3 Room No. 02 6 <sup>th</sup> Floor Aashar IT Park B-Wing, Wagle Industrial Estate Road No. 16Z Thane(W)-400 604. (Appellant)	Vs.	Shri Sreekumar Janardhan Unnithan 2704, Whitefiled Hiranandani Meadows Pokharan Road No. 2 Thane(W)-400 610.  PAN : AAGPU6868G (Respondent)
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Assessee by	Ms. Rutuja N. Pawar
Department by	Shri Brajendra Kumar
Date of Hearing	26.10.2020
Date of Pronouncement	27.10.2020

ORDER

These are appeals by the revenue wherein the revenue is aggrieved that Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has reduced the addition for bogus purchase done @ 100% by Assessing Officer by sustaining only 16.78% & 18.47% respectively for the concerned assessment year.

2. The assessee in this case is engaged into the business of operating printing press and other related work. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The Assessing Officer made addition of the bogus purchases as under @ 100% :-

A.Y.	Rs.
2011-12	Rs. 14,86,652/-
2009-10	Rs. 3,71,540/

The Assessing Officer also made disallowance of expenses on estimate basis @ 20%.

3. Upon the assessee's appeal learned CIT(A) has noted that the sales have not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case he sustained addition equal to gross profit on these purchases @ 16.78% and 18.47% respectively. Learned CIT(A) sustained only 5% disallowance for other expenses. Learned CIT(A) gave relief both on bogus purchases and expenses. However, Revenue has not filed appeal against relief on account of expenses. We may gainfully refer to learned CIT(A) order on bogus purchase for A.Y. 2009-10 as under :-

"I have considered the facts of the case and the submissions of the appellant. As the relevant purchases have been debited to the P&L Account and claimed as deduction in computing the profits of the business chargeable to tax, the onus was on the appellant to prove the genuineness of the purchases with satisfactory evidences. It is observed that the assessee, during the course of remand proceedings as well as appellate proceedings has produced the copies of bills, balance sheet, P&L A/c, Audit report, etc. It is also seen that the documents provided as evidence are also incomplete in so far as the receiver's signature, date, etc., are not mentioned. The appellant has also shown that the GP to turnover ratio in the previous financial year are similar to the year under consideration. However, the fact remains that information called for from the bogus party - J.B. Interlink, u/s 133(6) of the Act by the AO, remained unserved and was returned by the Postal Authorities. The AO requested the appellant to produce the party but the appellant failed to do so. It is noted that the AO was in possession of information received from the DGIT(Inv), indicating strongly that the supplier concerned was only providing accommodation entries and was not carrying out any real business. Thus, the onus" that was caste on the appellant was of a greater degree to prove the genuineness of this party as well as these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.

There cannot be any dispute about the well settled legal proposition that tax can be levied only on real income. It is elementary rule of accountancy as well as of | taxation laws that the profit from business cannot be ascertained without deducting cost of purchase from sales, otherwise it would amount to levy of income tax on gross receipts or sales. Such recourse is not permissible unless it is specifically authorized under any provisions contained in the Act. The Hon'ble Jurisdictional High Court in the case of Harima Bharubhai - ITA No. 313 of 2013) has held that only the profit attributable to the unaccounted sales can be brought to tax. It is further observed that the Hon'ble Gujarat High Court in the case of Simit P Seth ( 38 taxmann 385) has held that not the entire purchases but only the profit

element embedded in such purchases can be added to the income of the assessee. Similar view has been taken by the Gujarat High Court in the cases of Vijay M Mistry Construction Pvt Ltd (355 ITR 498), Bholanath Polyfab (P) Ltd (355 ITR 290) and Vijay Proteins Ltd (58 taxmann 44).

Considering the facts of case and in view of various decisions as discussed above, it is held that only profit element of 18.47% embedded in the bogus purchases of Rs 3,71,540/-, that is Rs 68,623/- is to be added to the income of the appellant. Accordingly the disallowance of Rs 68,623/- is confirmed and balance amount of Rs. 3,02,917/- [Rs. 3,71,540/- (-) Rs. 68,623/-] is deleted.”

4. Against above order revenue is in appeals before the ITAT only on issue of bogus purchases. I have heard both the counsel and perused the records. I find that in this case the sales have not been doubted it is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in writ petition no 2860, order dt. 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However the facts of the present case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation in my considered opinion on the facts and circumstances of the case the disallowance out of the bogus purchases done by the learned CIT-A meets the end of justice. Accordingly I uphold the order of learned CIT-A.

5. The decision of N.K. Proteins Ltd. (250 ITR 22) relied by the revenue was a dismissal of SLP by the Hon'ble supreme court and has already been explained and distinguished by Hon'ble Bombay high court in the case of M. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019).

6. In the result these appeals filed by the revenue stand dismissed.

7. Before parting I may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Order pronounced under Rule 34(4) of the ITAT Rules on 27.10.2020.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 27/10/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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