

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 254/MUM/2019  
Assessment Year: 2011-12**

Smt. Bramhadevi S. Mishra,  
13, Prem Jivan Building, 87,  
Kazi Sayed Street,  
Mumbai-400003

**PAN No. AABPM 2874 R**

**Appellant**

ITO-17(1)(3),  
**Vs.** Room No. 116,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020

**Respondent**

Assessee by : Mr. Prateek Jha, AR  
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 13/01/2021  
Date of pronouncement : 14/01/2021

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-55, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. The Ld. CIT(A) erred in passing the order ex-parte without granting the appellant reasonable opportunity of being heard.

2. The Ld. CIT(A) erred in confirming the addition of Rs.1,36,718/- without appreciating that the ITO had not considered the facts and materials furnished by appellant.
3. The Ld. CIT(A) erred in upholding addition of Rs.16,41,997/- made under section 41(1) without appreciating that the ITO had made this addition without proving that the liability had ceased and also without making any inquiries.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2011-12 on 28.09.2010 declaring total income of Rs.14,04,660/-. The return was processed u/s 143(1) of the Act. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from M/s Navoday Trading Impex Ltd., ('*Navoday*') the AO re-opened the assessment by issuing notice u/s 148 dated 26.03.2014. During the course of re-assessment proceedings, the assessee filed before the AO the ledger accounts of *Navoday* as appearing in his books of accounts for the period relevant to AYs 2010-11, 2011-12, 2013-14 and 2014-15. The assessee also filed before the AO, statement showing purchases from *Navoday* and corresponding sales made to Raj Oil Mills along with related details. However, the AO was not convinced with the above explanation on the ground that the assessee failed to produce the *Navoday* along with transportation bills, challans etc. to substantiate the purchase. Therefore, the AO estimated the profit @ 5% on the disputed purchases of Rs.27,34,362/- which comes to Rs.1,36,718/-. Accordingly, he made an addition of Rs.1,36,718/-.

From the ledger accounts, the AO discerned that the assessee has shown purchases from *Navoday* only during two financial years relevant to AYs 2010-11 & 2012-13, but made payments only in one year. As per the AO, the assessee

did not make any payment for the impugned assessment year. In response to a query raised by the AO to explain why the above cessation of liability should not be added u/s 41(1) of the Act, the assessee submitted that he would make the payments of the outstanding amount, subject to deductions and adjustments if at all. However, the AO was not convinced with above reply on the ground that the assessee failed to produce *Navoday* for establishing genuineness of the liability; for the purchases during the impugned assessment year, the assessee did not make any payment; the assessee failed to produce lorry receipts through which the said goods were stated to have been transported. Therefore, the AO made an addition of Rs.16,42,997/- u/s 41(1) of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 13.11.2018, the Ld. CIT(A) confirmed the action of the AO mainly on the ground that there was non-compliance. The assessment order was followed at length by the Ld. CIT(A).

5. Before us, the Ld. counsel for the assessee submits that reasonable opportunity of being heard was not giving to the assessee by the Ld. CIT(A). It is stated that the assessee could have succeeded before the Ld. CIT(A), if a reasonable opportunity would have been given.

On the other hand, the Ld. Departmental Representative (DR) supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the Ld. CIT(A) has stated that notice of hearing

was sent to the assessee on 04.09.2018 and as there was no compliance by the assessee, she had to decide the case on merits.

It is not evident from the order of the Ld. CIT(A) whether the notice sent by the office on 04.09.2018 was received by the assessee or not.

In view of the above facts, we are of the considered view that a reasonable opportunity of being heard should be given to the assessee as the additions made by the AO are on account of bogus purchases and cessation of liability. Therefore, we set aside the impugned order and restore the matter to the file of the Ld. CIT(A) to pass an order afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the Ld. CIT(A).

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 14/01/2021.**

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 14/01/2021  
Rahul Sharma, Sr. P.S.

**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,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**