

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 4799/Mum/2019

(A.Y: 2010-11)

M/s Raj Poly Products Limited, B/202, 2 nd Floor, Citi Point Bldg, A.K. Road, Andheri (East), Mumbai - 400059	बनाम/ Vs.	The Income Tax Officer- 5(3)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR3102R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Sambhav Shah, AR
प्रत्यर्थी की ओर से/ Respondent by :	Ms. Smita Verma, DR

सुनवाई की तारीख / Date of Hearing	27/01/2021
घोषणा की तारीख / Date of Pronouncement	04/02/2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) -36, Mumbai, passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961.

The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, the Learned CIT (A)-10 has erred in not quashing the re-opening of assessment u/s 147 of the Act.*

2. *On the facts and in the circumstances of the case and in law, the Learned CIT (A)-53 has erred in confirming an addition of Rs. 11,44,115/- on account of purchase from the alleged hawala dealers.*

3. *Without prejudice to the above the Ld. CIT (A) erred in estimating the profit of Rs 11,44,115/- at the rate 12.5% on alleged bogus purchases on the basis of the certain information received from Sales Tax Department without providing the Appellant an opportunity to cross examine the persons relying on whose statement an adverse inference has been drawn against the Appellant. Hence, the ad-hoc addition of Rs. 11,44,115/- is unjustified and the same may be deleted.*

4. *The Ld. CIT(A) failed to appreciate that the material purchased during the year are duly accounted in the boot of the Appellant and the same are supported by proper documentary evidences The said material was subsequently sold by the Appellant and the profit earned thereon is offered for tax. Hence, the estimation of profit at the rate 12.5% that is amounting to Rs.11,44,115/- on alleged bogus purchases is unjustified and the same may be deleted.*

5. *Alternatively, the disallowance at 12.5% of GP be restricted after giving deduction of GP on sales, already offered to tax @ 3.12% on sales.*

6. *On the facts and in the circumstances of the case and in law, the Learned CIT (A) – 10 has erred in not providing the principle of natural justice.*

2. The Brief facts of the case are that, the assessee is engaged in the business of ferrous and non ferrous metal and filed the return of income electronically on 29.09.2010 declaring total income of Rs.4,57,067/-.The case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act with reasons recorded and was provided to the assessee. In compliance, the

assessee has filed a letter to consider the original return filed on 29.10.2010 as compliance to notice. Subsequently, notice u/s 143 (2) and 142 (1) of the Act are issued. The Ld. AR of the assessee appeared from time to time and submitted the details. Whereas, the Assessing Officer has received the information from DGIT (Inv.), Mumbai that the assessee has obtained bogus purchases bills from hawala parties and referred in para 4 of the assessment order. The Assessing Officer informed the assessee to submit evidences for the genuineness of the purchases. Further, the AO has issued notice u/s 133(6) of the Act on the parties and the same were returned un-served. The A.O. also issued show cause to prove the genuineness of the purchase transactions. The assessee submitted the explanations and the evidences with respect to transactions. Finally, the Assessing Officer relied on the decision of the Hon'ble Gujarat High Court in the CIT vs. Simit. P. Sheth (2013) 38 taxmann.com 385 and made addition @12.5% of the bogus purchases value and disallowance u/s 14A of the Act and assessed the total income of Rs. 16,44,437/- and passed order u/s 143 (3) r.w.s. 147 of the order dated 26.02.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the Ld.CIT(A), whereas the Ld.CIT (A) found that the Assessing Officer has passed a reasoned order and confirmed the addition and dismissed the assessee's appeal. Aggrieved by the CIT (A) order, the assessee has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR has argued only one ground of appeal that the CIT (A) has erred in confirming the addition. Whereas the assessee GP ratio is less than the estimate made by the Assessing Officer and prayed for reduction in estimation of income and supported his arguments with judicial decisions. Contra, the Ld. DR relied on the order of the Ld.CIT (A).

5. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the estimation of income by the Assessing Officer @ 12.5% of the bogus purchases is higher in comparison with Gross profit (GP) generated in similar business. We find the Hon'ble Jurisdictional Bombay High Court in the case of Pr. CIT vs. Mohammad Haji Adam & others (ITA 1004 of 2016) dealt on dispute issue and gave observations at para 8 and 9 which is read as under:-

“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without

disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

” So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %.

Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9 In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs.”

6. We find in the present case, the Gross profit rate maintained by the assessee @3.12% as against estimation

made by the assessing officer. Accordingly, we restore the disputed issue to the file of assessing officer for limited purpose to recalculate the income considering the ratio of the judicial decision and provide adequate opportunity of hearing to the assessee. We allow the grounds of appeal of the Assessee for statistical purpose.

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

Order pronounced in the open court on 04.02.2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.02.2021

AK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
ITAT, Mumbai