

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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 169/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2010-11)

Mrs. Kinnari Sahil Shah 25, Ganeshwadi, M. J. Market, Kalbadevi, Mumbai- 400002.	बनाम/ Vs.	ACIT-19(2) Room No.207, Second Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AOPPS9040H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Ms. Smita Verma (DR)	

सुनवाई की तारीख / Date of Hearing: 24/02/2021

घोषणा की तारीख /Date of Pronouncement: 17/05/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 13.02.2019 passed by the Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2010-11.

2. The assessee has raised the following grounds: -

“1. The Hon’ble CIT(A) has erred in upholding the act of the Ld. Assessing Officer {Assistant Commissioner of Income Tax- 19(2)} of assuming jurisdiction and reopening assessment u/s. 148 of the Income Tax Act.

2. The Hon’ble CIT (A) has erred in upholding the act of the Learned Assessing Officer of completing the re-assessment



proceedings without giving appellant sufficient and reasonable opportunity of being heard and without disposing objection to such wrongful re-opening of the assessment u/s. 148 of the Income Tax Act as per guidelines laid down by the Hon'ble Supreme Court in GKN Drive Shafts (India) Ltd vs ITO (2003) 59 ITR 19(SC) and as further explained by the Hon'ble Bombay High Court in the case of Asian Paint Limit DCIT (2008 296 ITR 90 (Bom).

3 Hon'ble CIT (A) has erred in upholding the act c Learned Assessing Officer {Assistant (Commissioner Income Tax- 19(2) of disallowing the expenses of Rs8,07,563/- for purchase of raw material, treating it as bogus purchases only on the basis of information received from Sales Tax Department ignoring the details submitted to him during the re-assessment proceedings.

Your appellant craves leave to add, alter, amend or withdraw any of the ground/s. if necessary.”

3. The brief facts of the case are that the appellant is an individual engaged in the business of manufacturing, trading of readymade garments under the proprietary concern by name M/s K. K. Enterprises. The return of income for the A.Y.2010-11 was filed on 15.10.2010 declaring total income of Rs.14,63,744/-. The return of income was processed u/s 143(1) of the I. T. Act, 1961. The case was reopened u/s 147 of the Act by issuance of notice u/s 148 dt. 11.11.2014 after recording reasons. Information was received from the DGIT (Inv.), Mumbai based on information received from Sales Tax Department of Maharashtra with respect to some of the dealers indulging in providing accommodation entries by issuing bogus sales/purchases bills without supplying any goods, this information was based on the admission of the dealers vide their statements filed before the Sales Tax Authorities. The Sales Tax Department had also made detailed investigation in the affairs of dealers who were issuing bogus sales/purchases bills. The details of all these dealers, who have admitted to



having issued bogus sales/purchase bills to number of parties, were publicity/displayed on the website of the Sales Tax Department, Govt. of Maharashtra. As per this information, the assessee was also one of the beneficiary of accommodation entries totaling Rs.8,07,563/- from 2 dealers details of which are mentioned at para 3 of the assessment order. Assessment u/s 143(3) r.w.s. 147 was completed on 11.03.2016 determining total income of Rs.22,71,310/-.

4. We have heard the argument advanced by the Ld. Representative of the revenue and has gone through the case carefully. We find that the issue has duly been covered by the decision of Hon'ble ITAT in the assessee's own case bearing ITA. No. 3932/Mum/2019 for the A.Y.2011-12 dated 03.12.2020, therefore, the claim of the assessee is liable to be accepted. However, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case (supra) on record.:-

“6. Upon careful consideration I find that assessee has provided the documentary evidence for the purchase. Adverse inferences have been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted nor any adverse observation is there in other aspects of working. 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 in that case all the supplies were to government agency.

7. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the



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grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I find that 12.5% disallowance serve the interest of justice. I direct accordingly.”

5. Since the issue is squarely covered by the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2011-12, therefore, we restricted the addition of bogus purchase to the extent of 12.5%. Accordingly, we partly allowed the claim of the assessee.

6. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 17/05/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/05/2021

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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)-
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