

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 5319/Mum/2019 (Assessment Year 2009-10)

The DCIT-14(2)(2) Room No. 461 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Patkon Construction (I) Pvt. Ltd. 16, Shivnum D, Mahtaney Park, R.C. Marg Vashi Naka, Chembur Mumbai-400 074.
(Appellant)		(Respondent)

I.T.A. No. 5318/Mum/2019 (Assessment Year 2009-10)

M/s. Patkon Construction (I) Pvt. Ltd. 16, Shivnum D, Mahtaney Park, R.C. Marg Vashi Naka, Chembur Mumbai-400 074.	Vs.	The ITO-14(2)(2) Room No. 461 Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AAACP0526F

Assessee by	Shri Rakesh Gandhi
Department by	Shri Manpreet Duggal
Date of Hearing	04.05.2021
Date of Pronouncement	05.05.2021

ORDER

Per Shamim Yahya (AM) :-

These are cross appeals by the assessee and Revenue against the order of learned CIT(appeal) dated 14.6.2019 pertaining to assessment year 2009-10.

2. The revenue is aggrieved that learned CIT(A) has erred in restricting the disallowance on account of bogus purchase to 4% as against 6.10% made by the assessing officer. The assessee in its appeal has challenged reopening under section 147 of the Income Tax Act.

3. At the outset in this case learned counsel of the assessee stated that this ITAT in assessee's own case for assessment year 2011-12 by the order dated 24.11.2020 has restricted the disallowance on account of bogus purchase to 3%. Hence learned counsel of the assessee pleaded that the disallowance in the present case also can be similarly restricted to 3% on the basis of ITAT order in assessee's own case.

4. We have heard both the parties and perused the records.

5. Brief facts of the case are that consequent upon information that assessee has engaged into bogus purchases the assessing officer made an estimated disallowance of 6.10% of the alleged bogus purchases. Upon assessee's appeal learned CIT(appeals) found the same to be on higher side and restricting the same to 4%.

6. The brief facts of the case found by assessing officer are as under :

It is seen that the Sale Tax Department of the Government of Maharashtra had conducted extensive enquiries against such dealers who used to provide bills facilitating bogus purchases/sales. As a result of this inquiry, information about many assesses were forwarded to the Income Tax Department. The A.O. has stated in the assessment order that the appellant is one such person who has inflated his purchases by showing purchases from many such persons who appear in the list of bogus entries providers as prepared by the Sales Tax Department. During the course of assessment proceedings, the A.O. found that the assessee had not been able to establish the genuineness of purchases in dispute. The main arguments of the AO on the basis of which he had formed his opinion were :-

- (1) The assessee was not able to submit any lorry receipts or any details regarding transportation of goods.
- (2) The suppliers from whom the disputed purchases have been are included in the list of hawala operators prepared by the Sales Tax Department.
- (3) The suppliers from whom the disputed purchases have been made, were not produced before the AO.
- (4) Even if the purchases are not treated as bogus, the expenditure on such purchases remain unexplained.

7. We find that in assessee's own case the ITAT in the aforesaid order has given the finding that from standard disallowance of 12.5% the gross profit declared which was found to be 9.5% should be deducted and the resultant 3% should be disallowed. The learned counsel of the assessee wants this ratio to be followed in as much as his contention is that during the present year the gross profit ratio is 9.34%.

8. Upon careful consideration we note that the submission of the learned counsel of the assessee that the gross profit ratio in the present year is 9.34% is not supported by any audit report but it is given in a plain paper computation. In our considered opinion this facet of the gross profit being 9.34% should be examined by the assessing officer. Thereafter as per the ITAT's order in assessee's own case the said gross profit should be deducted from 12.5% and the resultant disallowance should be made. Both the parties were fairly agreed to this proposition.

9. In the result, these appeals stands partly allowed as above.

Pronounced in the open court on 5.5.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 05/05/2021

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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