

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

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.6577/MUM/2019
(Assessment Year: 2011-12)**

ITO-33(1)(8)
R. No. 751, 7th Floor,
Kautilya Bhavan, BKC,
Bandra (E),
Mumbai – 400 051

M/s Unique Exports
Vs. B/3, 102, Kamla Nagar,
M.G. Road, Kandivali (W),
Mumbai -400067

PAN No. AAAFU0255F

(Revenue)

(Assessee)

Assessee by : Shri Devendra Jain, A.R
Revenue by : Shri Jitendra Kumar, D.R

Date of Hearing : 15/06/2021
Date of pronouncement : 16/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-45, Mumbai, dated 03.07.2019, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 254 of the Income Tax Act, 1961 (for short 'Act'), dated, 29.12.2018 for A.Y. 2011-12. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in restricting the disallowances to 2.37% of the bogus purchases without appreciating the fact that the identity and the genuineness of the purchase transaction with the bogus purchase parties could not be established by the assessee.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in randomly restricting the disallowances to 2.37% the bogus purchases

without appreciating the fact that the AO had held the purchases to be unverified after carrying the proper independent investigation.

3. On the facts & circumstances of the case and in the law Ld. CIT(A) erred in not appreciating the fact that the assessee has failed to produce delivery challan, proof of delivery of goods, stock register and quantitative stock statement whereby corresponding purchase could be linked with sales.
4. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.
5. The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary.”

2. Briefly stated, the assessee firm which is engaged in the business of export of imitation jewellery had filed its return of income for A.Y. 2011-12 on 29.09.2011, declaring a total income of Rs.18,08,340/-. Original assessment was framed u/s 143(3), dated 11.03.2014, wherein the A.O after inter alia making an addition/disallowance towards bogus purchase of Rs.1,03,34,330/- u/s 69C of the Act had assessed the total income of the assessee firm at Rs.1,21,99,536/-. On appeal, the CIT(A) deleted the disallowance made by the A.O u/s 69C. Aggrieved, the revenue carried the matter in appeal before the Income Tax Appellate Tribunal (for short ‘Tribunal’). After deliberating on the issue in question the Tribunal vide its order dated 12.07.2017 remitted the issue back to the file of the A.O, with a direction to examine the assessee’s claim of reconciliation of goods purchased and goods exported/sold by examining the relevant documents in light of certain judicial pronouncements. The A.O in the course of the set-aside proceedings vide his order passed u/s 143(3) r.w.s 254, dated 29.12.2018 made an addition of Rs. 25,83,582/- on account of profit which the assessee would have generated by purchasing the impugned goods from the open/grey market, and assessed its total income at Rs.44,48,790/-.

3. Aggrieved, the assessee assailed the order passed by the A.O u/s 143(3) r.w.s 254, dated 29.12.2018, before the CIT(A). Although the CIT(A) concurred with the view taken by the A.O that the assessee had procured the goods in question not from the parties in question but from the open/grey market however, he was of the view that the profit made by the assessee from

procuring the goods at a discounted value from the open/grey market that was estimated by the A.O i.e @ 25% of the value of the impugned purchases was on the higher side. Relying on the judgment of the Hon'ble High Court of Bombay in the case of PCIT Vs. Mohammad Haji Adam, ITA No. 1004 of 2016, the CIT(A) directed the A.O to restrict the addition to the extent of difference between the G.P rate on purchases which were alleged to be bogus and the G.P rate on the normally accepted purchases. Observing, that the assessee had claimed that the differential G.P rate [i.e difference between the G.P rate of purchases alleged to be bogus AND the G.P rate on the normally accepted purchases] was 2.37%, the CIT(A) directed the A.O to call for the working of the differential G.P rate, and after verifying the same apply the verified differential rate on the impugned bogus purchases of Rs.1,03,34,330/- . Accordingly, in the backdrop of his aforesaid observations the CIT(A) directed the A.O to modify the addition made by him.

4. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As is discernible from the orders of the lower authorities, we find, that it is a matter of fact borne from the records that the assessee had failed to substantiate the authenticity of the impugned purchases of Rs.1,03,34,330/- to the satisfaction of the A.O, both in the course of the original assessment as well as in the course of the set-aside proceedings. Controversy involved in the case before us hinges around the quantification of the profit that the assessee would have generated by procuring the goods not from the alleged suppliers but from the open/grey market. As the profit element that was quantified by the A.O vide his order passed u/s 143(3) r.w.s 254, dated 29.12.2018 i.e @ 25% of the value of the impugned purchases of Rs.1,03,34,330/- was found by the CIT(A) to be highly pitched and exorbitant, therefore, following the judgment of the Hon'ble High Court of Bombay in the case of PCIT Vs. Mohammad Haji and Adam, ITA No. 1004 of 2016, it was concluded by him that the addition qua the impugned bogus purchases was liable to be made only to the extent of the differential

G.P rate [i.e difference between the G.P rate of purchases alleged to be bogus AND the G.P rate on the normally accepted purchases]. As the assessee had claimed that the differential G.P rate in its case was 2.37%, therefore, the CIT(A) in all fairness had directed the A.O to call for the differential G.P working, and apply the verified differential rate on the impugned bogus purchases of Rs.1,03,34,330/-. Insofar the aforesaid view so taken by the CIT(A) is concerned, we do not find any infirmity in the same. As the CIT(A) by relying on the judgment of the Hon'ble High Court of jurisdiction in the case of Mohammad Haji Adam (supra) had directed the A.O to restrict the addition qua the impugned bogus purchases to the extent of the verified differential G.P rate, the same, being in conformity with the view taken by the Hon'ble High Court in its aforesaid order is accordingly sustained.

5. Resultantly, as the appeal filed by the revenue is devoid and bereft of any merit, the same is thus dismissed.

Order pronounced in the open court on 16.06.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 16.06.2021
*PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai