

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5740/Mum/2019

(A.Y: 2010-11)

ACIT – 17(2), Rm No. 116, 1 st Floor, Kautilya Bhavan, Bandra Kurla Complex, Mumbai – 400051.	Vs.	Niraj Dilip Randery 80, Nagdevi Street, Mumbai – 400003.
PAN/GIR No. : AABPR3683H		
Appellant	..	Respondent

Appellant by :	Shri Tharian Oommen, DR
Respondent by :	None

Date of Hearing	08.06.2021
Date of Pronouncement	11.06.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) - 58 Mumbai, passed u/s. 143(3)r.w.s147 and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and law, the Ld. CIT(A) justified in restricting the addition made by the AO @ 12.5% of bogus purchases to 8.5% of such purchases, ignoring that the assessee was also unable to prove the genuineness of the purchases either by producing

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the suppliers for examination or by furnishing other substantial documents which were required by the A.O

2. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in allowing out of books purchases of Rs. 6,99,818/- from M/s. Shanthinath Corporation, which were suppressed by the assessee, holding that there was no discussion in the assessment order specific to this, ignoring that the assessee was unable to prove the genuineness of the impugned purchases.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the A.O was based on credible information received from the sales tax department wherein it was established that the assessee has taken mere accommodation entries bogus bills from the suppliers without actually making purchases from them.

4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of AO be restored.

5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.

2. The Brief facts of the case are that, the assessee is a proprietor of M/s. Motilal Kalindas & Co. and is engaged in the business of mill grain stores merchants. The assessee has filed the return of income for the A.Y 2010-11 on 09.10.2010 disclosing the total income of Rs. 40,42,740/. The return of income was processed u/sec143(1) of the Act. The A.O. has received the information from the Sales Tax department Mumbai & DGIT (Inv) Wing, Mumbai that

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the assessee has obtained Bogus purchase bills from 13 parties aggregating to Rs.79,16,865/-. The A.O has called for the details to prove the genuineness of purchase of goods. Whereas, the A.O after considering the various facts and the purchase documents filed b found that the assessee was dealing with operators and relied on the judicial decisions and estimated the income Rs.9,02,131/- being @ 12.5% of non genuine purchase of Rs. 72,17,050/-and along with the addition of suppressed purchases of Rs 6,99,816/- and assessed the total income of the assessee of Rs. 56,44,690/-and passed the order u/s 143(3)r.w.s147 of the Act on 14.12.2015.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O. and has restricted the addition of income @8.5% of bogus purchases and deleted addition of suppressed purchases and partly allowed the assessee's appeal.

4. At the time of hearing none appeared on behalf of the assessee. Contra, the Ld. DR submitted that the

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CIT(A) erred in restricting the addition to 8.5% of bogus purchases as against 12.5% estimated by the A.O. and also deleted the suppressed purchases. Whereas the A.O has received the information that, the assessee has obtained bogus purchase bills and the same could not be overlooked and prayed for allowing the revenue appeal.

5. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in restricting the addition to 8.5% overlooking the facts of bogus purchases and deleting the suppressed purchases. Whereas, the Ld.CIT(A) considering the facts and circumstances and the evidence brought on record observed that the addition has to be restricted to 8.5% instead of 12.5% based on material information and the transaction of suppressed purchases cannot be treated as bogus purchase. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent evidences or information. Accordingly, we are not inclined to interfere with the order of the Ld.CIT(A) and upheld

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the same and dismiss the grounds of appeal of the revenue .

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 11.06.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 11.06.2021

KRK, 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, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai