

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

**BEFORE SHRI SHAMIM YAHYA ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE JUDICIAL MEMBER**

**ITA No. 321/MUM/2020
Assessment Year: 2011-12**

Amod Exports,
163/164, New Satguru Industrial
Estate, Western Express Highway,
Goregaon, Mumbai-400063

ACIT-31(1),
AayakarBhavan, M.K. Road,
Mumbai-400020.

Vs.

PAN No. AABFA 2229 C

Appellant

Respondent

Assessee by : Mr. VimalPunmiya, AR
Revenue by : Mr. Brajendra Kumar, DR

Date of Hearing : 14/07/2021
Date of pronouncement : 20/07/2021

ORDER

PER PAVAN KUMAR GADALE, J.M.

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-42, Mumbai passed u/s 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961. The assessee has raised following grounds of appeal as under :

- 1. On the facts and circumstances of the case the Ld. CIT(A) erred in confirming the reassessment order passed by the Ld. AO. u/s 143(3) rws 147 assessing the total loss at (-) Rs.1,89,42,500/- and thereby confirmed the addition of the genuine purchases from 3 parties of Rs.1,86,712/- and thereby treated the same as unexplained expenditure*

2. *On the facts and circumstances of the case the Ld. CIT(A) erred in treating purchases as non-genuine without rejecting books of accounts of assessee.*
3. *The Ld. CIT(A) erred in confirming the charging of interest under section 234A, 234B and 234C of the Income Tax Act 1961.*
4. *The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.*

2. The brief facts of the case are that the assessee is engaged in the business of Manufacture & Export of Readymade Garments. The assessee has filed the return of income for the assessment year 2011-12 on 30.08.2011 declaring a total loss of Rs.1,94,59,336/-. The Assessing Officer has received information from DGIT (Inv.), Mumbai that the assessee had business transactions with suspicious parties as per the information available in Sales Tax Department, Government of Maharashtra who are involved in the accommodation entries business and the assessee is one of the beneficiary. The Assessing Officer has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. The assessee has filed a letter to treat the return of income filed on 30.08.2011 as compliance. Subsequently, the Assessing Officer has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. In compliance, the Ld. AR of the assessee appeared and submitted a copy of Tax Audit report in form 3CD, audited balance sheet and the documents in support of return of income filed and the case was discussed. The Assessing Officer found that assessee has obtained the purchase bills from three parties aggregating to Rs.1,86,712/- . To test check the genuineness of the transaction the Assessing Officer has called for the information to substantiate the purchases. Whereas the assessee has submitted the details available in respect of transactions. Further the

Assessing Officer was not satisfied with the explanations and issued notice u/s 133(6) of the Act on the parties and the said notices were returned back with the remark "Left/Not known" by the postal authorities. Therefore, the Assessing Officer has called for further information on genuineness of the transactions . The AO found there is no satisfactory explanations of the assessee. Hence the A.O. made addition of bogus purchase of Rs.1,86,712/- and 10% ad-hoc disallowance of expenses Rs.3,30,129/- and assessed the total loss of Rs.1,89,42,500/- and passed the order U/sec 143(3) r.w.s 147 of the Act on 15-06-2016.

3. Aggrieved by the A.O. order, the assessee has filed an appeal before the Ld. CIT(A). Whereas, the Ld. CIT(A) considering the grounds of appeal of the assessee and findings of the Assessing Officer on the issue of addition of 100% addition of bogus purchase, the Ld. CIT(A) has confirmed the Assessing Officer action and in the other grounds of appeal a relief was granted and partly allowed the appeal.

4. Aggrieved by the CIT(A) order, the assessee has filed the appeal with the Honble Tribunal, At the time of hearing, the Ld. AR submitted that the transactions could not be treated bogus purchases and the CIT(A) has erred in confirming the action of the Assessing officer and prayed for allowing the appeal .Contra, the Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions and perused the material available on record. The sole disputed issue is in respect of addition of bogus purchases made by the A.O. and confirmed by the Ld.CIT(A). We find on perusal of the

Assessment Order, the Assessing Officer has made addition 100% addition of purchases in respect of three parties and also there is no compliance to the notice u/s. 133(6) of the Act. Whereas the assessee has made bogus purchases from the dealers and in turn it provides savings to the assessee in nonpayment of state taxes. We considered the facts and circumstances and the decisions of the Honble Tribunal in the identical cases and the judicial precedence were estimating the profit element embedded @ 12.5% of doubtful/ bogus purchases was accepted. We find that the assessing officer has not doubted the sales but made 100% addition of purchases. We rely on the ratio of decision of Hon'ble Jurisdictional High Court in the case of CIT v. Nikunj Eximp (216 Taxman.com 171). Accordingly, we restrict the addition to the extent of 12.5% of the bogus purchases and modify the Ld.CIT(A) order sustaining the addition @ 12.5% of purchases and partly allow the grounds of appeal of the assessee.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20/07/2021.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai;

Dated: 20/07/2021

Rahul Sharma, Sr. P.S.

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai