

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 979/Mum/2019
(निर्धारण वर्ष / Assessment Year 2009-10)

The Income Tax Officer Ward 28(3)(4), Room No. 320, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vashi, Maharashtra-400703	बनाम/ Vs.	Shri Vimal Babulal Shrimal, Plot No.16, Janta Market, Sector-23, Turbhe, Navi Mumbai-400 705
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. ANMPS6054M		

अपीलार्थी की ओर से/ Appellant by	:	Shri Bharat Andhle, CIT DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Deepak Raje, AR

सुनवाई की तारीख / Date of hearing:	29.07.2021
घोषणा की तारीख / Date of pronouncement:	29.07.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of the Revenue is arising out of order of the Commissioner of Income Tax (Appeals)-26, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-26/IT/338/2015-16 vide dated 14.12.2018. The Assessment was framed by the Income Tax Officer, Ward-28(3)(4), Mumbai (in short ACIT / AO) for the A.Y. 2009-10 vide order dated 05.01.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) restricting the addition made by Assessing Officer of bogus purchases at 12.5% by estimating the profit rate as against 100% addition made by Assessing Officer. For this, Revenue has raised the following 2 grounds: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. to restrict the addition of bogus purchases to 12.5% as against 100% addition made by the Assessing officer on account bogus purchases without appreciating the fact that parties from whom those purchases were made proven accommodation entry providers as concluded by Sales Tax Authorities pursuant to the Investigation carried out by them?"

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the latest Apex Court decision in the case of N. K. Proteins Ltd Vs. DCIT (769 of 2017), wherein the Hon'ble Supreme Court has confirmed 100% addition made on account of bogus purchases?"

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has taken accommodation bills from 15 parties amounting to Rs.63,04,662/-. The details of parties are given in assessment order Para 14.1 as under:-

1.	Manav Impex	4,17,481
2.	Ankit Enterprises	6,41,529

3.	Prakash enterprises	7,05,380
4.	Klyan Kirti	8,17,252
5	KK Enterprises	71,112
6	DK Enterprise	2,12,867
7	Palak enterprises	7,60,364
8	VS Enterprises	7,74,001
9	Repute Enterprise	7,88,435
10	SM Trading Co.	49,296
11	KV Trading Co	23,452
12	BM Sales corporation	66,206
13.	Dharmi Enterprises	73,948
14	Cimco corporation	79,768
15`	Darshana Corporation	8,23,571

4. According to Assessing Officer, these parties figured in the Sales Tax Department list as suspicious dealers who have issued accommodation bills without actual delivery of goods. The Assessing Officer required the assessee to explain these purchases. The assessee before Assessing Officer stated that it has made these purchases from the parties and these are genuine. For this, he produced copies of bank statement from where payments are made for these purchases by account payee cheques also produced bills and vouchers and stock register. The assessee also claimed before the Assessing Officer that corresponding sale is made out of these purchases. But the Assessing Officer treated this as bogus purchase and added under section 69C of the Act as non-genuine purchase being 100% at Rs.63,04,662/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) after considering the submissions of the assessee restricted the profit rate at the rate of 12.5% of the alleged bogus purchases by observing in Para 6.10 as under:-

"6.1 Ground Nos. 1 to 4 of the appeal are against addition of Rs.62,58,448/- as unexplained expenditure under section 69C of the Act. As per the investigations carried

out by the Sales Tax Authorities, the aforementioned party was found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the Assessing Officer had made enquiries by issuing notices under section 133(6) of the Act which were returned unserved by the postal authorities. This party was found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of the party. During the scrutiny assessment the appellant furnished details of purchase and corresponding sales. However, the appellant could not produce the party before the Assessing Officer in spite of opportunity being given. The appellant also failed to produce delivery challans or transaction details. The onus of providing the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on oath that it had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from these parties will have to be considered taking into consideration while examining the documentation submitted by the appellant in support of its claim. The documentary evidences such as purchase bills, payments by cheques, etc. would all have been orchestrated to present a façade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The courts have held that payment by cheque by itself is not sacrosanct so as to prove

genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchase from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various courts including the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed and accordingly held 12.5% of the purchases will be reasonable as profit on margin against the bogus purchases. In view of this decision of Hon'ble Gujarat High Court (supra), the addition made by the Assessing Officer is restricted to 12.5% of the total alleged bogus purchases amounting to Rs.65,58,448/- which should sufficiently cover the profit element embedded in the impugned purchases. The appellant's grounds of appeal are 'partly allowed.'

Aggrieved, now Revenue is in appeal before us.

5. We have heard the learned Sr. DR and gone through the facts and circumstances of the case. None is present from assessee's side. However, facts on record are available. Hence, we are adjudicating this appeal. We noted that the assessee has produced copies of bank statement from where payments are made for these purchases by

account payee cheques also produced bills and vouchers and stock register. However, the assessee could not produce the party before the Assessing Officer and also failed to produce the delivery challans or transportation details. Hence, the Assessing Officer treated the purchase as non-genuine but CIT(A) noted that assessee has shown corresponding sales as made out of these purchases, the only logical conclusion is that the assessee would have made purchases from undisclosed parties in the grey market at a lower rate and purchases were shown as being made from the above parties for obtaining bills only. Hence, he restricted the profit rate as disallowance at 12.5% and partly allowed the claim of the assessee.

6. Now the learned Sr. DR could not controvert the findings of CIT(A) which is given in Para 6.1 or could not produce any adverse materials before us. Hence, we find no infirmity in the order of CIT(A) and this appeal of Revenue is dismissed.

7. In the Result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 29.07.2021.

Sd/-

(एस रिफाउर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated. 29.07.2021

सुदीप सरकार ,व .निजी सचिव/ Sudip Sarkar, Sr.PS

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_ व .निजी सचिवyraterceS etavirP .rS /

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai