

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7523 & 7525/मुं/2019 (नि.व 2010-11 & 2011-12)
ITA NO.7523 & 7525/MUM/2019(A.Y 2010-11 & 2011-12)

Satyanarayana Narsaiah Veerabathini,
Room No.44, B.D.D. Chawl, No.112, Worli,
S.S.Amrutwar Marg, Mumbai 400 018.

PAN: ACVPV-3607-P

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer – 21(3)(2),
Room No.117, 1st Floor,
Piramal Chambers, Parel,
Mumbai 400 012

..... प्रतिवादी/Respondent

आअसं. 7524 /मुं/2019 (नि.व. 2011-12)
ITA NO.7524 /MUM/2019(A.Y 2011-12)

Satyanarayana Narsaiah Veerabathini(HUF),
Room No.44, B.D.D. Chawl, No.112, Worli,
S.S.Amrutwar Marg, Mumbai 400 018.

PAN: AADHV-6644-Q

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer – 21(3)(2),
Room No.117, 1st Floor,
Piramal Chambers, Parel,
Mumbai 400 012

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Neha Paranjpe

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 22/07/2021

घोषणा की तिथि/ Date of pronouncement : 04/10/2021

आदेश/ ORDER

ITA No.7523 & 7525/Mum/2019 by the assessee (Individual) are directed against the order of Commissioner of Income Tax (Appeals)-33, Mumbai [in short 'the CIT(A)'] dated 30/05/2019 common for the assessment years 2010-11 and 2011-12. Appeal in ITA No.7524/Mum/2019 by the assessee (HUF) is against the order of CIT(A) -33, Mumbai dated 30/05/2019 for the assessment year 2011-12. Since, the facts germane to all these three appeals and the grounds raised by the assesseees in their respective appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience, facts are extracted from the appeal in ITA No.7523/Mum/2019 for assessment year 2010-11.

ITA NO.7523/Mum/2019, A.Y. 2010-11 :

3. Ms. Neha Paranjpe appearing on behalf of the assessee narrating the facts submitted, that the assessee is having sole proprietary business in the name and style of M/s. Arkey Trading Company. The assessee is engaged in trading of Photocopier and its parts, tonner and general supplies. The assessment for any 2010-11 in the case of assessee was reopened on the basis of information received from DGIT(Investigation), Mumbai. As per the information received the assessee had obtained bogus purchase bills aggregating to Rs.26,57,620/- from the following dealers during the period relevant to the assessment year under appeal:

S.No.	Name of the party who has issued bogus bills to the assessee	F.Y	Amount of such bogus bill in Rs.
1.	Sthapna Trade Impex Pvt. Ltd.	2009-10	2,41,925
2.	Laxman Sales Pvt. Ltd.	2009-10	1,07,039
3.	Mihir Sales Pvt. Ltd.	2009-10	17,01,296
4.	Kalptaru Trading Co.	2009-10	6,07,360
	Total		26,57,620

As per the case of Revenue the aforesaid dealers were declared as hawala operators by Sales Tax Department, Government of Maharashtra. During the course of assessment proceedings the assessee furnished various documents viz. bank statement, copies of ledger account of suspicious dealers, purchase invoices, etc. to substantiate genuineness of the purchases. The assessee had made payments to the aforesaid dealers through account payee cheques and the cheques were duly encashed and the bank account of the assessee was debited. This fact is evident from the bank statement furnished by the assessee. Further, the assessee furnished details of corresponding sales as against the alleged bogus purchases. The assessee had also furnished details of stock indicating inward and outward movement of stock. The sales turnover declared by the assessee was accepted by the Assessing Officer. The assessee had declared G.P of 4.92% during the period relevant to the assessment year under appeal. Despite having furnished sufficient evidence the Assessing Officer held the purchases from the aforesaid dealers as bogus and made addition of Rs.3,32,203/- by estimating G.P on alleged bogus purchases @ 12.5%.

Aggrieved by the assessment order dated 19/02/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act,1961 (in short 'the Act'), the

assessee filed appeal before the CIT(A). The CIT(A) without appreciating the documents on record and submissions by the assessee, confirmed the addition made in assessment order. The Id.Authorized Representative of the assessee submitted that since all the relevant documents to substantiate genuineness of purchases were furnished before the Assessing Officer, the entire addition made on account of bogus purchases should be deleted.

4. Per contra, Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for dismissing the appeal by the assessee. The Id.Departmental Representative submitted that assessee has failed to produce dealers. The Assessing Officer had issued notice under section 133(6) of the Act to the dealers from whom the assessee had made alleged purchases. The said notices were returned back by the Postal Authorities unserved. No confirmations were either filed by the assessee from the said dealers and no documents were furnished by the assessee to prove transportation of goods. Thus, the assessee had miserably failed to discharge his onus in proving genuineness of the transactions with the declared hawala operators.

5. Submissions made by rival sides heard and orders of the authorities below examined . The solitary issue in the present appeal by the assessee is addition of Rs.3,32,203/- on account of alleged accommodation entries obtained by the assessee from suspicious dealers. Undisputedly, the assessee failed to discharge its onus in proving genuineness of the dealers and purchases made from them. At the same time it is observed that the sales turnover and inventory declared by the assessee has been accepted by the Revenue. It is only the profit element embedded in such like transactions that

can be brought to tax. Estimation of suppressed profit margin on unproved purchases at 12.5% by the authorities below appears to be on higher side. The assessee has declared G.P of 4.92% during the financial year 2009-10 relevant to assessment year 2010-11. Taking into consideration entirety of facts I am of the considered view that estimation of suppressed profit margin on unproved purchases if restricted to 6.0% would meet the ends of justice. I hold and direct accordingly. This appeal by the assessee is partly allowed.

ITA No.7525/Mum/2019,A.Y.2011-12:

6. The Id.Authorized Representative of the assessee stated that the facts in assessment year 2011-12 are identical to assessment year 2010-11. The nature of transactions and the manner of disallowance in assessment year 2011-12 are on same lines as was made in assessment year 2010-11. The Id.Authorized Representative of the assessee pointed that the G.P declared by the assessee in assessment year 2011-12 is 4.10%.

7. The Id.Departmental Representative concurred with the statement made by Id.Authorized Representative of the assessee that the facts in assessment year 2010-11 and 2011-12 are similar.

8. Since, the facts germane to the issue raised in the present appeal and the ground of appeal are identical to assessment year 2010-11, the detailed finding given while adjudicating appeal of the assessee for assessment year 2010-11 would mutatis mutandis apply to the present appeal. For parity of reasons, appeal by the assessee is partly allowed.

ITA No.7524/Mum/2019, A.Y.2011-12:

9. The Id.Authorized Representative of the assessee submitted that the facts in present appeal are same as in the case of assessee(individual) except that the

present appeal is by the HUF. The earlier two appeals were filed by the assessee in individual capacity. The nature of business and the transaction involved is identical to the one in ITA No.7523 & 7525/Mum/2019. The submissions made for the earlier appeals would equally apply to the present appeal. The Id.Authorized Representative of the assessee pointed that the G.P declared by the assessee (HUF) for the relevant period is 4%.

10. Both sides are unanimous in stating that the facts in the present appeal are identical to the facts in the appeals filed by the assessee in individual capacity. Here the assessee/appellant is HUF. In the present appeal addition has been made in the hands of assessee (HUF) on account of bogus purchases during the period relevant to the assessment year under appeal aggregating to Rs.12,98,401/- from four dealers. All the four dealers were declared as hawala operators. The Assessing Officer made estimated addition of 12.5%. The CIT(A) sustained the same. On parity of facts the detailed findings given while adjudicating appeal in ITA No.7523/Mum/2019 would mutatis mutandis apply to the present appeal. In the result, appeal is partly allowed.

11. To sum up, the three appeals, two by the assessee in individual capacity and one appeal by the assessee as HUF are partly allowed.

Order pronounced in the open Court on Monday the 4th day of October, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/10/2021
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai