

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

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 7041/MUM/2019
Assessment Year: 2009-10**

Income Tax Officer-31(2)(5),
Room No. 611, 6th floor, Kautilya
Bhavan, B.K.C. Bandra (E),
Mumbai-400051.

Appellant

Vs. M/s Press Kunj,
Unit No. 2, New Satguru Nanak
Indl. Estate Near Jay Coach, Opp.
W.E. Highway, Goregaon (E),
Mumbai-400063.

PAN No. AAHFP 1849 D

Respondent

Revenue by : Ms. Shreekala Pardeshi, DR
Assessee by : None

Date of Hearing : 25/08/2021
Date of pronouncement : 14/10/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-42, Mumbai [in short 'CIT(A)'] for the assessment year 2009-10 dated 29.08.2019 and arises out of assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have

decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. Brief facts of the case are, the assessee is a firm engaged in the business of manufacturing and printing of packaging materials like cartons labels etc. which are mainly used in pharmaceutical industries. The assessee filed return of income for this assessment year 2009-10 on 02.09.2009 and declared total income at ₹8,14,180/-. The return was processed u/s 143(1) of the Act. Subsequently, the case was reopened by issue of notice u/s 148 of the Act on 26.03.2013 based on the information received from DGIT (Inv.), Mumbai that the assessee is a beneficiary of the accommodation entries provided by some of the MVAT dealers who had indulged in issuing bogus purchase bills without giving delivery of goods. The Assessing Officer observed that the assessee has purchased alleged bogus purchases from the following parties :

S. No.	Name	Amt. (in ₹)
1.	Raj Traders	8,23,672/-
2.	Bright Corporation	33,29,672/-
3.	Nisha Enterprises	8,22,219/-
	Total	49,75,563/-

4. After considering the submissions of the assessee and the Assessing Officer considered the above purchases as bogus purchases and made 100% of the above purchases as income of the assessee by disallowing the entire purchases.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) after considering the detailed submissions of the assessee, adjudicated the issue partly in favour of the assessee by restricting the disallowance to the extent of 12.5% of the bogus purchases with the following observation:

"6.3.16 Apparently, the motive behind obtaining bogus bills is inflation of purchase price so as to suppress the profits and the profit from such transactions varies with nature of business and no uniform yardstick can be adopted for estimation of such profit. Therefore, in light of the above decisions, taking in to account the totality of the facts, it will be reasonable to estimate the profit embedded in the accommodation entries of bogus purchases as undisclosed profit of the appellant.

6.3.17 The estimations of profit embedded in accommodation entries of bogus purchases transactions @ 12.5% out of purchase price accounted, through bogus invoices have been upheld as the fair profit rate out of the bogus purchases by the Hon'ble Courts and Tribunals. Under identical facts, the Hon'ble ITAT has upheld disallowance @12.5% of such purchases in the case is of M/s Packwell Service, in ITA No, 6544/Mum/2016 The Gross Profit Ratio of the appellant has it also increased from 17.63 % to 22.37 % during the year. The Net Profit Ratio has increased from 0.48% to 2.18 %. Therefore, in light of the above decisions, taking in to account the totality of the facts, it will be reasonable to estimate the profit embedded in the accommodation entries of bogus a purchases @12.5% of the purchase amount, As it is an estimate of the profit embedded in purchase, it cannot be subject to any adjustment on account of any subsequent profit arising from the sale of the materials as held by the Hon'ble ITAT, Mumbai Bench in the decision in ITA No. 6555/Mum/2017 for AY 2009-10 in the case of M/s Muhta Markfin (P) Limited Vs. ITO-5(2)(3), has held as under:

"We are of the considered view that as the profit element accounted for by the assessee in its regular books of accounts pertains to the profit which it would have made from selling the goods under consideration, therefore, the same would have no bearing on the qualification of the monetary benefit involved in making of purchases by the assessee at a lower price from the open/grey market, as in comparison to purchases made from registered dealer"

6.3.18 However, as observed earlier that no payments were made to M/s Raj Traders and M/s Nisha Enterprises during the year under consideration and the payments have been made to these parties after a long gap of about an year. In the case of M/s Bright Corporation, a part payment was made in cash during the year and an amount of Rs.12,91,022/- was paid by cheques after. Again, a long gap of about an year. Therefore, in my View, the source of expenditure incurred on the purchases corresponding to the purchases recorded in the books of account, remains unexplained. Hence, the expenditure incurred on purchases shown from M/s Raj Traders Rs.8,23,6721- M/s Nisha Enterprises, Rs.8,22,219/- and M/s Bright Corporation Rs.12,91,022/- are held as unexplained expenditure u/s 69C of the Act and consequently an addition of Rs.29,36,913/- is sustained us 69C of the Act. Further, the profit embedded in the accommodation entries of 'balance amount bogus purchases amounting to ₹5,20,150/-from M/s Bright Corporation (The expenses claimed by the appellant on account of purchases from M/s Bright Corporation Rs.18,11,172/- only, hence any disallowance has to be restricted to the extent of ₹ 18,11,172/- only) is estimated @12.5 % on such purchases and an addition

of Rs.65,019/- is sustained on account of undisclosed profit. The appellant gets relief of Rs.19,73,631/- (Rs.49,75,563/- less Rs.29,36,913/- less Rs.65,019/-).

6.3.19 Consequently, the grounds 1, 2, 3, 4, 5, 6, 7 8 8 of the appeal are partly allowed.”

6. After considering the submissions of the Ld. DR and material on record. We noticed that the Ld. CIT(A) restricted the estimation of profit embedded in accommodation entries of bogus purchases transactions @ 12.5% of the purchase price accounted in the bogus invoices and the same view was upheld as the fair profit rate out of the bogus purchases by various Courts and Tribunals. It is well settled proposition that the estimation of profit is very much restricted to the benefit taken by the assessee by availing accommodation entries. In our considered view, the Ld. CIT(A) has adjudicated the issue and reached the conclusion to estimate the income @ 12.5% is proper and just. Therefore, we are inclined not to interfere with the findings of the Ld. CIT(A) and accordingly, grounds raised by the Department are hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 14/10/2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 14/10/2021
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./Assistant Registrar)
ITAT, Mumbai