

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.1783/Mum/2020
(Assessment Year :2008-09)**

M/s. Gold Ancher Exim Pvt. Ltd., BA 205/206, 2 nd Floor Rajlaxmi Commercial, Kalher, Bhiwandi, Thane-421 302	Vs.	ACIT – 12(2)(3) Aaykar Bhawan Mumbai – 400 020
PAN/GIR No.		
(Appellant)	..	(Respondent)

Assessee by	Shri Hiro Rai
Revenue by	Shri Pankaj Kumar
Date of Hearing	05/10/2021
Date of Pronouncement	08/10/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1783/Mum/2020 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/IT-10179/2016-17 dated 27/09/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/03/2016 by the Id. Income Tax Officer – 12 (2)(3) (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made by the Id. AO by estimating profit @12.5% on alleged bogus purchases in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of trading in fabrics, readymade garments and sun glasses. The return of income for the A.Y.2008-09 was filed on 15/09/2008 declaring total income of Rs.16,33,487/-. The assessment was reopened u/s.147 of the Act after due recording of reasons for reopening. In the re-assessment proceedings, the Id. AO observed that assessee had made purchases from five parties listed hereinbelow to the tune of Rs.567,01,954/-:-

Sr. No.	Name of the party	Amount (in Rs.)
1.	Ansh Merchandise Pvt. Ltd. (Newplance Trading Co. Pvt. Ltd.)	19,32,232
2.	Atharv Business Pvt. Ltd.(Faststone Trading 1 Pvt. Ltd.)	30,01,605
3.	Mahalaxmi Trading Co.	55,40,211
4.	Mohit International	1,78,76,929
5.	Natasha Enterprises	2,83,50,977
	Total	5,67,01,954

3.1. The Id. AO observed that section 133(6) notices issued to the aforesaid parties in the addresses given by the assessee were returned unserved. The Id. AO pointed out various deficiencies in various

documentary evidences submitted by the assessee in connection with the purchases. Ultimately, the Id. AO observed that the concerns from which assessee has made purchases belong to Shri Pravin Kumar Jain who was known to be an entry provider and accordingly, concluded that assessee had obtained accommodation bills from the aforesaid suppliers. Having said so, the Id. AO duly appreciated the fact that assessee had indeed submitted the computer generated stock register, stock movement register and the corresponding sales made out of such ingenuine purchases. Accordingly, the Id. AO observed that only profit element embedded thereon could be brought to tax and considering the industry in which the assessee is involved i.e. trading in fabrics, he estimated the profit percentage to be at 12.5% and completed the assessment. This action of the Id. AO was upheld by the Id. CIT(A).

3.2. We find that the Id. AR vehemently argued that there is no dispute that the aforesaid five suppliers had only supplied fabrics to the assessee and in support of which he enclosed certain sample invoices from the aforesaid suppliers. He also drew our attention to the fact that on fabrics there is no eligibility for levy of value added tax (VAT). He explained the logic behind estimating the profit element at 12.5% to be the VAT rate at 10% + incidental profit arising to the assessee for making cash purchase from the grey market at 2.5%. Since, there is no levy of VAT on purchase of fabrics, only incidental profit could be brought to tax. He pleaded that the incidental profit may be estimated at 1% of the value of ingenuine purchases.

3.3. Per contra, the Id. DR vehemently relied on the order of the lower authorities by stating that the suppliers were not produced by the assessee before the Id. AO and notices u/s.133(6) of the Act were

returned unserved. Hence, the assessee has not discharged its onus at all to prove the veracity of the purchases.

3.4. We find that there is no dispute that assessee is trading in fabrics and that the purchases made from the aforesaid five suppliers were in respect of purchases of fabrics. It is not in dispute that the sales made out of purchases made from aforesaid five suppliers were not doubted by the Revenue. It is not in dispute that purchase of fabrics does not get eligible for levy of VAT. Hence, the profit element to be estimated on the value of ingenuine purchases should certainly exclude the VAT portion in the instant case and only incidental benefit that assessee derives by making purchases out of cash in the grey market should be ultimately brought to tax. We find that under similar circumstances, the Co-ordinate Bench of this Tribunal in the case of Max Realities LLP vs. DCIT in ITA No.7544/Mum/2019 and ITA No. 161/Mum/2020 for A.Y.2010-11 dated 16/08/2021 had estimated the incidental profit element at 1%. Respectfully following the said decision, we direct the Id. AO to add only 1% of value of ingenuine purchases of Rs.5,67,01,954/- (i.e. Rs.5,67,019/-) and delete the remaining portion. Accordingly, the ground raised by the assessee is partly allowed.

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

Order pronounced on 08/10/2021 by way of proper mentioning in the notice board.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/10/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai