

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai  
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1503/Mum/2020  
(Assessment Year 2010-11)

Rikin Nitin Shah 603B,Lokhandwala Residency Manjrekar Lane, E Moses Road, Worli, Mumbai-400 018  PAN : AAEPS0404N (Appellant)	Vs.	ACIT-19(1) Matru Mandir, Tadeo Mumbai-400 007  (Respondent)
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Assessee by	None
Department by	Shri Milind S.Chavan-DR
Date of Hearing	01.11.2021
Date of Pronouncement	02 .11.2021

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-30 dated 09.12.2019 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under:-

1. The learned CIT (A) erred in dismissing the appeal on the wrong premise that the Appellant had not furnished documents to substantiate the purchases failing to appreciate that purchase invoices, corresponding sale invoices, confirmation and affidavit of the supplier, bank statements reflecting the payments made to the supplier, printouts of purchase register, sales register, stock register, etc. were furnished.

2. The learned CIT (A) erred on facts in observing that except invoices and bank statements no other supporting documents were submitted in respect of the impugned purchases which is not correct as the Appellant did furnish other documents in the

form of confirmation and affidavit from the supplier, printouts of purchase register, sales register and stock register, details of corresponding sales, etc.

3. The learned CIT (A) erred in upholding the action of the learned AO in disallowing the entire purchase from M/s. Nazarlmpex Private Limited when the Appellant had filed details of corresponding sales made of the purchased goods and such sales have been accepted by the learned AO, which is contrary to the binding judgment of the jurisdictional Hon. Bombay High Court in *M/s. Mohommad Haji Adam & Co. (Appeal No. 1004 of 2016)*.

4. The learned CIT (A) erred in disallowing the additional ground relating to failure of the learned AO to afford an opportunity to the Appellant to cross examine the party on the basis of whose statement the impugned addition has been made.

5. The learned CIT (A) erred in disallowing the additional ground relating to the validity of impugned addition which is made on the basis of a general statement given by a third party without mentioning the name of the Appellant and hence the said statement does not constitute good material for making the addition as held by the Hon. Supreme Court in *Lakhmani Mewal Das (1971) 101ITR 427*.

3. Brief facts of the case are that assessee in this case has framed pursuant to DGIT(Investigation) information that assessee has engaged into bogus purchase from Shri Rajendra Jain group companies amounting to Rs.4,83,340/-. AO in the assessment order noted the reasons for reopening inter-alia by observing as under:-

“In view of the above facts and circumstances of the case and after duly applying my mind, I have reason to believe that the income of the assessee **M/s. SAHJL STAR** is chargeable to tax for the A.Y. 2010-11 amounting to at least **Rs. 4,83,340/-** has escaped assessment due to failure of the assessee to disclose fully and truly all material facts necessary for the assessment in this case in terms of the provisions of section 147 of the I. T. Act, 1961.”

4. From above, it is apparent that AO has cut and pasted the reopening portion from the some other assessee’s case. Thereafter, in the assessment order AO only referred to the search in Shri Rajednra Jain Group and made the impugned addition despite noting as under-

“The assessee produced books of accounts, sale purchase register along with sale and purchase invoices trying to support his claim that the purchases are genuine, He also submitted that the transaction were made through bank accounts and therefore claimed that the purchases are genuine.”

5. Against the above order, assessee appealed before the Ld.CIT(A). Ld.CIT(A) confirmed the addition. Against the above order, assessee is in appeal before us.

6. I have heard the Ld. DR and perused the record. I note that assessee in the grounds of appeal has mentioned that assessee seeks the judgment of Hon'ble jurisdictional High Court in the case of Mohammad Hazi Adam & Co. (*Appeal No. 1004 of 2016*). being implemented.

7. Upon careful consideration, in the interest of justice. I remit the issue to the file of the AO, the AO directed to consider the issue afresh in light of decision of Hon'ble Bombay High Court in the case of Mohammad Hazi Adam & Co.(supra).

8. In the result, this appeal by the assessee is allowed for statistical purpose.

Pronounced in the open court on 02 .11.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02 /11/2021

*Thirumalesh, Sr.PS*

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,

