

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

I.T.A. No. 19/Mum/2021  
(Assessment Year 2009-10)

ACIT-27(3) Room No.423, 4 <sup>th</sup> Floor Tower No.6, Vashi Railway Station Complex, Vashi Navi Mumbai-400 703	Vs.	Vilas Somkant Chitnis 26/2d, Chitsons, Kachwadi, Govandi(E) Mumbai-400 088  PAN : AAEP3509Q
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Smita Verma-DR
Date of Hearing	13.10.2021
Date of Pronouncement	18 .11.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-25 dated 21.09.2020 and pertains to assessment year 2009-10.

2. Grounds of appeal read as under:-

- (i) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in deleting the addition of Rs.904800/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N.K. Proteins Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.
- (ii) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in estimating the profit from Hawala purchases by disallowing

only Rs.50000/-, being 12.5% of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc. were not fulfilled by the assessee.

(iii) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in deleting Rs, 5,04,800/- out of the bogus purchases of Rs.9,04,800/-on account of having offered this amount to tax in Assessment year 2012-13 is immaterial and beyond their scope of cessation of liability u/s.41(1) of the Act when the actual purchases made were by the assessee in Financial 2008-09 and should be taxed in Assessment Year 2009-10 itself

3. Brief facts of the case are that the return of income for the year under consideration was filed by the appellant on 30.09.2009 declaring total income of Rs.25,53,432/-. The appellant is proprietor of M/s,Chitsons engaged in the business of interior designing and manufacturer of wooden furniture. Subsequently, on the basis of information received from the Sales Tax Department, Mumbai as well as DGIT (Investigation), Mumbai, with regard to the bogus purchases made by the appellant, the case was re-opened by issuing notice u/s.148 on 13.03.2014. In response to the notice u/s.148 of the Act, the AR of the appellant stated that the return of income filed earlier on 30.09.2009 may be treated as the return filed in response to notice u/s.148 of the Act. An order u/s. 143(3) r.w.s. 147 of the Act was passed on 23.03.2015 determining total income of the Appellant at Rs.35,28,940/- after making addition of Rs.9,04,800/-, u/s.69C of the IT Act being bogus purchases treated as unexplained expenditure.

In order to ascertain the claim of purchases made by the appellant, the AO conducted enquiries by issuing notice u/s.133(6) of the Act to the above referred party calling for copies of ledger account of appellant in their books, nature of goods sold along with sample copies of bills issued, copy of delivery challans for goods dispatched alongwith transport bills, copy of bank statement showing the relevant receipts and outstanding payment received and copy of their return of income for the

relevant year. As the notice returned unserved, the appellant was asked by the Assessing Officer to produce the party alongwith the documents for verification. However, the appellant failed to produce the party, brokers or transporters in spite of specific opportunities provided to him. The appellant neither furnished change of address of the party nor submitted any evidences of purchases like delivery challans, transport bills etc. Neither had appellant made payment for purchases in the year. The Assessing Officer held that appellant had not made any effort to discharge the onus. On the other hand, the appellant claimed that the purchases were treated bogus merely on the basis of information received from Sales Tax Department. Accordingly, the AO held the purchases made from M/s.Sumeet Sales amounting to Rs.9,04,800/- as unexplained expenditure u/s.69C and disallowed the same.

4. Upon assessee's appeal Ld.CIT(A) gave the following finding.

“ I have very carefully considered the Appellant's grounds of appeal and statement of facts and the aforesaid order of the AO. It is observed from the assessment order that the AO has recorded the fact that appellant claimed that he is an interior designer who purchases goods from parties through representatives who offer their products to him which he purchases on credit. The AO has also discussed the modus operandi of the appellant's business in para 4.4 of his assessment order. Thus, it cannot be said that the appellant is not carrying out any genuine business, it is also observed that during the course of assessment the AO not verified the sales made by the appellant despite the appellant's claim that the goods received have been entered in stock register and sold to M/s,Akshay Enterprises. Hence, the sales remain uncontroverted and it cannot be said that purchases have not been made. Neither is the A.O. saying so. What he has outlined in para 4.4 is that the goods are purchased from someone else in cash while the bills are taken from Hawala operators.

In consideration thereof, it is also observed that the appellant has been unable to prove the purchase of goods from the identified bogus billers by either producing the parties, brokers, transporters or any other documentary evidences. It is also seen that the appellant had not made payment for the purchases during the year. The claim of payment of Rs.4,00,000/- to M/s.Sumeet Sales vide cheque No.772039 is made on 05.10.2009 i.e. F.Y. 2009-10 for the purchases made in F.Y. 2008-09. Therefore, it must be held that the theory outlined by the AO holds good and the goods have been purchased from grey market. Nevertheless, whereas out of the amount of Rs.9,04,800/- disallowed by the AO for A.Y. 2009-10, an amount of Rs.5,04,800/- is

claimed to have been offered by the appellant in A.Y. 2012-13 on account of creditors written off. The assessment for A.Y. 2012-13 was completed u/s.143(3) of the Act on 27.03.2015. It is observed that the appellant has filed a rectification petition before the Assessing Officer seeking reduction of Rs.5,04,800/- written back with regard to M/s.Sumeet Sales on the grounds that it has already been taxed in A.Y. 2009-10. Since the appellant has offered that amount to tax in A.Y. 2012-13, there is no question of reducing the same from his returned income. However, the same amount cannot be taxed twice in the hands of the appellant. Therefore, the appellant should get relief of Rs.5,04,800/- on this account. However, on the same page, the purchases; made of Rs.4,00,000/- from M/s.Sumeet Sales remains unproven.”

5. Thereafter, noting that sales are not doubted and placing reliance on record case laws, he concluded as under:-

“In view of the above discussed factual matrix and precedents, I am of the view that estimation of 12.5% as profit embedded in impugned purchases shown from the alleged hawala party and adding the same to the total income returned, would meet the ends of justice. Therefore, I direct the AO to estimate profit @ 12.5% of the alleged bogus purchases, which works out to Rs.50,000/- (@12.5% of Rs.4,00,000/-) and restrict the addition to Rs.50,000/-. The appellant gets a relief for the balance amount of Rs.3,50,000/- on this account and also of Rs.5,04,800/-on account of having offered this amount to tax in A.Y. 2012-13, subject to verification of the same by the Assessing Officer.

With regard to the second aspect of the ground i.e. the addition having been made u/s.69C as unexplained expenditure. It is observed that Section 69C is for unexplained expenditure which is incurred by an appellant i.e. out of books expenditure. It is not for bogus expenditure made in cash as alleged by AO. Hence, appropriate Section for making the disallowance is u/s.37(1) of the Act i.e. expenditure not being wholly and solely for the purpose of business. Hence, the appellant secures relief on this ground but as the error is one that can be condoned U/S.292B it win not affect the validity of the addition, which is sustained u/s. 37 of the Act.”

6. Against the above order, revenue is in appeal before ITAT.

7. I have heard the Ld. DR and perused the record. I note that Ld. CIT(A) has given a finding that out of disallowance of Rs. 9,04,800/- Rs. 5,04,800/- relating to M/s. Sumeet Sales has already been offered to tax in AY 2012-13 on account of

creditors written off. Hence, Ld.CIT(A) has held that the same amount cannot be subject to tax twice. Hence, he has reduced this amount. I find that basis of this adjustment is cogent. Nothing contrary has been submitted by revenue. As regards, the rest of the disallowance, I note that AO has not doubted the sales. Hence, 100% disallowance is not sustainable on the fact and circumstances of the case. Ld.CIT(A) is correct in disallowing 12.5% of the balance amount. For this proposition, I drew support from Hon'ble Bombay High Court decision in Nikunj Eximp Enterprises ( in Writ Petition No.2860, order dated 18.06.2014) and Shapoorji Pallonji & Co. Ltd. 117 taxmann.com 625 vide order dated 4.3.2020

8. Hence, I confirm the order of Ld.CIT(A). The decision of N.K.Protiens (Supra) referred by revenue, revenue has already been explained by Hon'ble Bombay High Court in the case of Mohammad Hazi Adam & Co in ITA No.1004 of 2006, dated 11.02.2019.

9. In the result, this appeal filed by the revenue stands dismissed

Pronounced in the open court on 18.11.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18 /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,

(Assistant Registrar)  
ITAT, Mumbai