

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No. 1772/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Superflo Filters Pvt. Ltd. B-5, 103/104, Greenland Co. Op. Soc, Shrinivas Bagarka Road, J.B. Nagar, Andheri (East), Mumbai-400059.	बनाम/ Vs.	ITO-11(2)(4) Room No.349/477, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCS4955N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Jitendra Singh (AR)
Revenue by:	Shri T. S. Khalsa (DR)

सुनवाई की तारीख / Date of Hearing: 14/09/2021

घोषणा की तारीख /Date of Pronouncement: 20/10/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 28.01.2019 passed by the Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2011-12.

2. The assessee has raised the following grounds: -

"1. The Ld. Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter referred to as the "Ld. CIT(A)"] erred in passing the order dated 28.01.2019 upholding the reassessment order passed by Income Tax Officer, Ward — 11(2)(4), Mumbai [hereinafter referred to as 'Ld. AO' without appreciating the facts and circumstances of the



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case. Thus, the order dated 28.01.2019 passed by Ld. CIT(A) is bad in law and the same may be quashed.

2. Re-opening of assessment under section 147 of the Act is bad-in law:

The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in reopening the assessment by issuing a notice beyond the period of four years from the end of impugned assessment year under section 148 of the Act without recording proper and valid reasons to show that any income chargeable to tax has escaped assessment due to failure on the part of the Appellant to disclose any material facts fully and truly. Hence, the notice issued under section 148 and subsequent reassessment order passed under section 143(3) r.w.s 147 of the Act is bad in law and the same may be quashed.

The Ld. CIT(A) failed to appreciate that the notice under section 148 of the Act was issued merely on the basis of information received from Investigation wing who in turn gathered it from sales-tax department's MAIIAVAT list prepared under heading — suspicious hawala dealers. Entire proceedings were carried out on the basis of information from third party without making further independent inquiry. Thus, there is no application of mind by the Ld. A.O. to the evidence available on record. Hence, the notice issued under section 148 of the Act as well as subsequent reassessment order passed in pursuant to the above notice is bad in law and the same may be quashed.

Ad-hoc addition by treating the purchases as non-genuine unjustified - Rs.17,02,411/-



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i. The Ld. CIT(A) erred in making ad-hoc addition of Rs. 17,02,411/- being 12.5% of total purchases made from seven parties during the year under consideration by treating the same as non-genuine without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the addition of Rs.17,02,411/- is not at all justified and the same may be deleted.

ii. The Ld. CIT(A), further, erred in confirming the action of the Ld. A. O. in making the ad-hoc addition of Rs. 17,02,411/- without appreciating that the Appellant has proved the purchases made during the impugned assessment year with supporting evidence. Hence, the addition of Rs. 17,02,411/- is unjustified and the same may be deleted.

iii. The Ld. CIT(A), further, erred in upholding the action of the Ld. A.O. in rejecting the book results of the Appellant invoking the provisions of section 145(3) of the Act without appreciating that the Ld. A.O. has not pointed out any defect in the books of account regularly maintained by the Appellant. Hence, rejection of book of accounts and subsequent addition is unjustified and the same may be deleted.

iv. Without prejudice to the above the Ld. CIT(A) erred in confirming the action of Ld. A.O. in making addition of Rs. 17,02,411/- merely on the basis of certain investigation carried out by the Sales Tax Department without providing the Appellant an opportunity to cross examine the department's witnesses. Thus, the addition of Rs. 17,02,411/- is not at all justified and the same may be deleted.



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4. *The Ld. Assessing Officer erred in levying interest under section 234A, 234B and 234C without appreciating the fact that the appellant denies his liability to the same.*

5. *The Appellant craves leave to add, alter, amend, delete or rescind any of the above grounds of appeal mentioned hereinabove.”*

3. The brief facts of the case are that the assessee filed its return of income on 15.09.2011 declaring total income to the tune of Rs.31,32,010/- for the A.Y.2011-12 under normal provision. Thereafter, the assessment was completed u/s 143(3) of the I. T. Act, 1961 on 27.02.2014 assessing total income to the tune of Rs.31,32,010/-. Thereafter, the case was reopened u/s 147/148 of the Act by issuance of notice dated 26.12.2017. The notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The case of the assessee was reopened on the basis of the letter of DGIT(Inv.), Mumbai in which it was conveyed that the assessee has taken the bogus purchases entries of Rs.1,36,19,291/- from the following seven parties as under.:-

Name of Hawala dealer	PAN No. of the Hawala dealer	TIN No	Amount
Niddhish Impex	AACCN6984H	27600648257V	675000
Kotsons Impex Pvt. Ltd.	AACCK9104C	27940584729V	4473478
Tisha Enterprises	AGVPP0871D	27950739002V	55971E
Dharam Traders	AADCD5447J	27020798732V	1582875
Mahavir Sales Corp.	AMMPM3778R	27090707756V	2246625
Tulsiani Trading	AADCT0405G	27440688212V	2529000
Moksha Impex	ANFPD5613C	27630793110V	1552500
Total			13619291



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After the reply of the assessee, the AO raised the addition to the extent of 12.5% of the bogus purchases to the tune of Rs.1,36,19,291/-. The total income of the assessee was assessed to the tune of Rs.1,67,57,305/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied, therefore, the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record carefully. We find that the issue in questions have already been adjudicated by the Hon'ble ITAT in appeal bearing ITA. No.1920/Mum/2019 dated 28.10.2020. The relevant finding has been given as under: -

“3. We have heard the ld. DR and perused the materials available on record. At the outset, we find that it is not in dispute that assessee made purchases from seven parties as tabulated below to the tune of Rs.1,36,19,291/-, whose names appeared in the tainted list of hawala dealers in the website of Sales Tax department, Government of Maharashtra, which information was subsequently passed on to the DGIT (Investigation), Mumbai based on which the assessment for A.Y.2011-12 in the hands of the assessee had been reopened for the purpose of disallowing the purchases made by the assessee from those suppliers:-

Sr No	Name of Hawala dealer	PAN No of the Hawala dealer	TIN No	Amount
1	NIDDHISH IMPEX	AACCN6984H	27600648257V	675000
2	KOTSONS IMPEX PVT LTD	AACCK9104C	27940584729V	4473578
3	TISHA ENTERPRISES	AGVPP0871D	27950739002V	559713
4	DHARAM TRADERS	AADCD5447J	27020798732V	1582875



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5	MAHAVIR SALES CORP.	AMMPM3778R	27090707756V	2246625
6	TULSIANI TRADING	AADCT0405G	27440688212V	2529000
7	MOKSHA IMPEX	ANFPD5613C	27630793110V	1552500
	Total			13619291

3.1. In re-assessment proceedings, we find that the ld. AO sought to examine the veracity of the purchases. We find that the aforesaid tainted suppliers had deposited before the Maharashtra Sales Tax department that they are engaged in providing accommodation sale bills to various parties including the assessee and that they had not actually supply the goods. We find that before the ld. AO, the assessee did not furnish the purchase bills, delivery challans, proof of transportation of goods and copies of the relevant bank statements, where payments to alleged hawala dealers were reflected. However, the assessee produced stock register, books of accounts before the ld. AO which the ld. AO observed that they were not maintained properly and accordingly, proceeded to reject the same. Since, the veracity of the purchases were not proved by the assessee beyond doubt, the ld. AO proceeded to disallow the entire purchases, being 100% value of Rs.1,36,19,491/- in the assessment, despite the fact that the corresponding sales made by the assessee out of such purchases had been accepted. We find that the ld. CIT(A) thought it fit to bring to tax only the profit element embedded in the value of such purchases and restricted the addition to the extent of 12.5% by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth reported in 356 ITR 451 (Guj). Against the said direction of the ld. CIT(A), the assessee had not preferred any appeal before us and only the revenue had preferred this impugned appeal. We find that even though the assessee could not prove the genuineness of purchases made from the aforesaid suppliers, the corresponding sales made out of such purchases has not been disputed by the revenue before us. Hence, it could be



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safely concluded that assessee could have made purchases from the grey market in order to have some saving in indirect taxes and the incidental profit element thereon by way of making purchases in cash. We also find that this Tribunal in series of decisions had held that adoption of 12.5% as profit element embedded in non-genuine purchases would be reasonable. Hence, the adoption of profit percentage by the ld. CIT(A) @12.5% in the facts and circumstances of the instant case is very reasonable, which in our considered opinion, does not warrant any interference. Accordingly, the grounds raised by the revenue are dismissed.”

5. On appraisal of the above mentioned finding, it is quite clear that the Hon'ble ITAT has confirmed the addition to the extent of 12.5% of the bogus purchase in the appeal of the revenue for the same assessment year i.e. 2011-12. There is no reason to deviate the finding of the Hon'ble ITAT in the present case in the same assessment year. Accordingly, we decide this issue against the assessee. The present appeal filed by assessee is hereby dismissed.

6. In the result, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 20/10/2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/10/2021

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**