

आयकर अपीलिय अधिकरण
मुंबई पीठ "बी", मुंबई
श्री जी.एस. पन्नु, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " B", MUMBAI
BEFORE SHRI G.S.PANNU,PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 359/मुं/2021 (नि. व.2010-11)
ITA NO.359/MUM/2021(A.Y. 2010-11)

M/s. Nagardas Kanji Shah,
176, Magazine Street,
Darukhana, Mumbai 400 010.

PAN: AAAFN-1109-P

..... अपीलार्थी /Appellant

बनाम Vs.

Principal Commissioner of Income Tax-20,
Room No.418, 4th Floor,
Piramal Chamber, Lal Baug, Parel
Mumbai 400 012.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jitendra Singh, Advocate

प्रतिवादी द्वारा/Respondent by : Shri Mahesh Akhade, CIT-DR

सुनवाई की तिथि/ Date of hearing : 29/11/2021

घोषणा की तिथि/ Date of pronouncement : 17/12/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax-20, Mumbai [in short 'the PICT'] dated 23/02/2021 for the assessment year 2010-11 passed under section 263 of the Income Tax Act, 1961 (in short 'the Act').

2. Shri Jitendra Singh appearing on behalf of the assessee submitted that the PCIT has invoked revisional jurisdiction u/s 263 of the Act merely on the ground that the Assessing Officer has made estimated addition of 12.5% on bogus purchases instead of 100% addition. The learned counsel for the assessee submitted that on the basis of information received from Sales Tax Department, Government OF Maharashtra the assessment in the case of assessee for assessment year 2010-11 was reopened. The Assessing Officer completed the assessment by making addition in respect of alleged bogus purchases by estimating undisclosed profit margin of 12.5% on bogus purchases. The PCIT without appreciating the legal position laid down by the Hon'ble Bombay High Court in the case of PCIT vs. Mohommad Haji Adam & Co, in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019 has erred in holding that the Assessing Officer has failed to make addition of the entire alleged bogus purchases. The learned counsel for the assessee further pointed that the Co-ordinate Bench of the Tribunal in the case of M/s. Wood Shape Works vs. ITO in ITA No.2940/Mum/2018 for assessment year 2011-12 decided on 25/10/2019 in similar facts, wherein the PCIT had invoked the provisions of section 263 of the Act to hold the assessment order erroneous and prejudicial to the interest of Revenue, where the Assessing Officer had restricted the addition in respect of bogus purchases to 17%, the Tribunal quashed the order of PCIT passed u/s 263 of the Act. Similar view has been taken by the Tribunal in the case of M/s.Rajal Enterprises vs. Principal CIT - 29 in ITA No.2273/Mum/2018 for assessment year 2011-12 decided on 31/10/2018.

3. Per contra, Shri Mahesh Akhade, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative pointed that the Assessing Officer has passed the assessment order merely on assumption that the assessee has made purchases from grey market and thereafter, obtained accommodation bills from entry operators. In fact, during the assessment proceedings the assessee has failed to

discharge his onus in proving genuineness of the dealers and the alleged purchases made from them. In the facts of the case the PCIT was justified in invoking revisional jurisdiction and holding the assessment order to be erroneous and prejudicial to the interest of Revenue.

4. Both sides heard, orders of authorities below examined. The assessment for assessment year 2010-11 in the case of assessee was reopened on the basis of information received from DGIT (Investigation), Mumbai. As per information received, the assessee obtained bogus purchase bills from hawala operators. The Assessing Officer after examining the documentary evidences furnished by the assessee and placing reliance on various decisions disallowed 12.5% of alleged bogus purchases. The PCIT has invoked revisional jurisdiction u/s 263 of the Act and held that since the Assessing Officer has made addition by disallowing bogus purchases on estimated basis, the assessment order is erroneous and prejudicial to the interest of Revenue. According to PCIT the Assessing Officer ought to have disallowed entire bogus purchases. We find that in the instant case the sales declared by the assessee have been accepted by the Assessing Officer. Without purchases there cannot be sales. The Hon'ble Bombay High Court in the case of PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 has held that it is only the profit element embedded in such purchases that can be brought to tax, entire purchases cannot be disallowed. The Assessing Officer has taken a view which is supported by the judgment of Hon'ble Jurisdictional High Court. The two conditions mandatory for invoking revisional powers under section 263 of the Act are missing in this case. The action of the Assessing Officer in estimating escaped profit margin is supported by binding judgment of Hon'ble Jurisdictional High Court. Therefore, in our considered view the impugned order is unsustainable and thus, liable to be quashed.

5. We find that in somewhat similar circumstances the PCIT had invoked revisional powers under section 263 of the Act in the case of M/s. Wood Shape Works vs. ITO (supra). The issue travelled to the Tribunal. The Co-ordinate Bench quashed the order passed by the PCIT under section 263 of the Act by observing as under:-

“.....A reading of the impugned order of learned Principal Commissioner certainly gives an impression that certain judicial precedents including the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. (supra) have triggered the exercise of power under section 263 of the Act. In our view, the decisions referred to by learned Principal Commissioner have been rendered in the context of specific facts involved therein, hence, cannot apply uniformly to all the cases. Pertinently, in the decision of N.K. Proteins Ltd. (supra), in course of search conducted in the premises of the assessee incriminating material such as various cheque books in the name of different parties were recovered. Thus, on the basis of such facts the Hon'ble Supreme Court upheld the addition of the entire purchases. However, the facts involved in the present appeal are different as the basis of addition is the information received from outside source i.e., the Sales Tax Department. Even otherwise also, no fault can be found with the Assessing Officer in making addition by estimating profit on the non-genuine purchases, as the assessee was able to co relate the purchases with sales and the doubt, if any, was only with regard to the source of purchases. It is relevant to observe, the decision of the Assessing Officer in making disallowance @ 17% is in tune with the view expressed in various judicial precedents rendered in similar nature of dispute including the decisions of the Tribunal and the Hon'ble Jurisdictional High Court. In fact, the Hon'ble Jurisdictional High Court in Mohommad Haji Adam & Co. (supra) has held that even if the purchases are found to be bogus, however, the entire purchases cannot be added if the sales are not doubted or disputed. The Hon'ble Jurisdictional High Court held that in such circumstances, the addition can be made by applying the gross profit rate of normal purchases. Thus, in our considered opinion, the decision of the Assessing Officer in making addition applying the profit rate is in consonance with various judicial precedents available on the issue. Therefore, it cannot be considered to be an erroneous as it is a possible view. Moreover, the allegation of learned Principal Commissioner that the Assessing Officer has overlooked the material on record and has not made any enquiry which ought to have been made, appears to be on wrong assumption of facts, hence, not tenable. In view of the aforesaid, we hold that in the given facts and circumstances of the case, the assessment order passed cannot be held as erroneous and prejudicial to the interests of Revenue. That being the case, exercise of power under section 263 of the Act to revise the assessment order is neither justified nor valid. Accordingly, we are inclined to quash the impugned orders passed by learned Principal Commissioner under section 263 of the Act. Grounds raised by the assessee are allowed.”

Similar view has been taken by the Tribunal while quashing the order passed under section 263 of the Act in the case of M/s. Rajal Enterprises vs. PCIT(supra), wherein the PCIT had exercised revisional powers under section 263 of the Act, where the Assessing Officer had made addition by estimating escaped profit margin @ 10% on bogus purchases.

6. Taking into consideration facts of the case and in order to maintain consistency on account of the precedents discussed above, we find merit in the appeal filed by assessee. The impugned order is quashed and appeal by the assessee is allowed.

Order pronounced in the open court on Friday the 17th day of December, 2021.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 17/12/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai