

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 676/Mum/2020
(A.Y: 2009-10)

Shri Balkrishna Abaji Rane (HUF) 5-B, Arun, 278, Mogal Lane, Mahim, Mumbai – 400016.	Vs.	ITO- 21(1)(2), Aayakar Bhavan, M.K.Road, Church Gate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHB7531B		
Appellant	..	Respondent

Appellant by :	Shri.Ronak Doshi.AR
Respondent by :	Shri.Brajendra Kumar.DR

Date of Hearing	02.02.2022
Date of Pronouncement	09.02.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the CIT(A)-48, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Income Tax Officer Ward 21(1)(2), Mumbai ("the AO") of adding Rs. 3,07,273/- (22% of Rs. 13, 96,695/-) as estimated*

profit on the alleged bogus purchases merely on the background that the supplier is not reachable or contactable.

2. On the facts and circumstances and in law, the Learned CIT(A) erred in confirming the action of the AO of adding Rs. 3,07,273/- (22% of Rs. 13,96,695/-) by applying explanation u/s. 143(3) of the Act and by ignoring related legal decision cited by the Appellant.

3. The Appellant prays that the addition of Rs.3,07,273/- (22% of Rs. 13,96,695/-) made out of purchases be deleted.

4. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above Grounds of Appeal.

At the time of hearing, the Ld.AR submitted that there is a delay of 276 days in filing the appeal. The assessee has filed the application for condonation of delay along with an affidavit. We found the facts mentioned in the affidavit are reasonable and the delay is neither willful nor wanton, accordingly we condone the delay and admit the appeal. Contra, Ld. DR has no specific objections.

2. The Brief facts of the case that, the assessee is engaged in the business of manufacturing and maintenance of electric furnace. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 disclosing a total income of Rs.14,97,160/-. The return of income was processed u/s 143(1) of the Act. The Assessing Officer (A.O) has received the information from DGIT(Inv) and sales Tax Department Mumbai that the assessee was indulged in obtaining of bogus purchase bills without actual delivery of goods. The A.O found that the assessee is a beneficiary and obtained the bogus purchase bills from five parties aggregating to Rs.13,96,695/-.The A.O has reason to believe that there is a income escaped the assessment and after recording the reasons has issued the notice u/s 148 of the Act. The assessee has filed a letter dated 21.03.2014 to treat the return of income filed on 30.09.2009 as a compliance to notice u/s 148 of the Act. Subsequently, the notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued.

3. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details. The Assessee vide letter dated 14.10.2014 has furnished copy of audited accounts along with audit report, purchase invoice, delivery challans, copy of the ledger accounts, details of goods and bank statement etc. The A.O to test check the genuineness of the transactions has issued notice u/s 133(6) of the Act on the five parties and the said notices were returned unserved with a remark of 'not known' by the postal authorities. The A.O has issued a show cause notice for submitting the additional details but the assessee could not substantiate with proper evidence in respect of the maintenance of stock register and production of the parties. Finally, the A.O. has dealt on the information and the available evidences and is of the opinion that the assessee has indulge in bogus purchases and estimated the income considering the profit element @22% on bogus purchases which worked out to Rs.3,07,273/-and assessed the total income of Rs. 18,04,430/- and passed the order u/s 143(3) r.w.s 147 of the Act.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O but was not satisfied with the explanations and material submitted. The CIT(A) observed that the assessee has indulged in obtaining the bogus purchase bills and the profit embedded has to be added. The CIT(A) considered the stock statement filed and came to a unilateral conclusion that the A.O. has properly dealt on the facts and estimated income @ 22% which is reasonable and confirmed the addition and dismissed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the ld. AR submitted that the CIT(A) has erred in confirming the addition made by the A.O estimating the income @ 22% of bogus purchases, whereas the profit element from the assessee's transactions is less and the addition is on higher side. The Ld.AR has substantiated his arguments relying on the chart and explained that the

assessee has maintained the stock register and the profit range is between 5% to 12% and supported with judicial decisions and paper book.

6. Contra, the Ld.dR submitted that the assessee has not proved the genuineness of the purchases and has not produced the parties in the assessment proceedings and supported the order of the CIT(A).

7. We heard the rival submissions and perused the material available on record. The sole disputed issue is in respect of addition of bogus purchases made by the A.O. and confirmed by the Ld.CIT(A). We find on perusal of the Assessment Order, the Assessing Officer has made addition @22% of the purchases as there is no compliance to the notice u/s. 133(6) of the Act. Whereas the assessee has made bogus purchases from the dealers and in turn it provides savings to the assessee in nonpayment of state taxes. We considered the facts and circumstances and the decisions of the Honble High Court and the Honble Tribunal in the identical cases and the judicial precedence were estimating the profit element embedded @ 12.5% of

doubtful/ bogus purchases was accepted. We find that the assessing officer has not doubted the sales and we rely on the ratio of decision of Hon'ble Jurisdictional High Court in the case of CIT v. Nikunj Eximp (216 Taxman.com 171)) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451). Accordingly, we restrict the addition to the extent of 12.5% of the bogus purchases and modify the Ld.CIT(A) order sustaining the addition @ 12.5% of purchases and partly allow the grounds of appeal of the assessee.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 09.02.2022.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.02.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

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3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai