

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

I.T.A. No. 348/Mum/2021
(Assessment Year 2010-11)

Triveni Filing Systems C/o Ashish Shah, B-309, Amarnath Apartment, 3 rd Gundvali Lane, Andheri(E) Mumbai-400 069 PAN : AAFT1586G (Appellant)	Vs.	ITO-25(1)(5) Kautilya bhavan BKC, Bandra Mumbai-400 051 (Respondent)
---	-----	--

Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	15.12.2021
Date of Pronouncement	14 .02.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-53 dated 15.10.2018 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under:-

Ground No.1

On the facts and circumstance of the case and in law the learned CIT appeal erred in confirming the re-opening of the assessment without appreciating. The fact that the re-opening of the assessment on the basis of change of opinion is bad in law. There is no valid reason recorded for re-opening of the assessment. And there is no' tangible material for re-opening of the assessment.

Ground No.2

On the facts and circumstance of the case and in law the learned CIT appeal erred in confirming 100% of suspicious purchases without appreciating the facts that:

1. The appellant is a Partnership Firm doing business of Trading of Second hand machinery and manufacturing of files, notebooks etc.

2. The Assessing Officer has made addition of Rs.8,23,875/- on account of bogus purchases.
 3. All the payment bills made by cross a/c payee cheques and payment are made to the same parties from whom the materials has been purchased.
 4. The appellant has declared Gross Profit @12.26 and Net Profit @5.95%
 5. In the Assessment Year 2009-10 the A.O. and CIT (A) has made addition of 12.5% of Purchases.
3. Brief facts of the case are that consequent upon receipt of information from Sales tax department that assessee is engaged into bogus purchases, AO made 100% addition, noting that assessee has not responded to the notices. Assessee in this case is a partnership firm doing business of trading of second hand machinery and manufacturing of files, notebooks etc. The AO has also issued notice u/s. 133(6) to the parties but which has returned unserved. In the appellate proceedings ld. CIT(A) noted that assessee was asked to furnish the bank statements of the impugned parties with assessee failed to do so. Taking adverse inference on these facts, ld.CIT(A) confirmed the addition.
4. Against the above order, assessee has filed an appeal before ITAT.
5. I have heard the ld. DR and perused the records. I note that in this case 100% addition has been done for bogus purchases. Sales have not at all been doubted. When, sales are not doubted, 100% disallowance is not sustainable on the touchstone of Hon'ble Bombay High Court decision in the case of Nikunj Exim Enterprises 372 ITR 615. However, the facts of the present case are slightly different inasmuch as in the case of Nikunj Exim Enterprises(supra) of all the suppliers were produced before department. On the facts and circumstances of the case, in my considered opinion, 12.5% disallowances shall serve the end of justice. I direct accordingly.
6. In the result, this appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 14 .02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14 .02.2022

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