

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 6830/Mum/2019 (A.Y. 2009-10)

New India Roadways & Sunrise Stone Industries (JV) 1 st Floor, 245, 2 nd Kumbharwada Lane Mumbai-400 004. PAN : AAAAN4215B (Appellant)	Vs.	ITO-19(2)(4) Matru Mandir Nana Chowk Opp Bhatia Hospital, Grant Road West Mumbai-007. (Respondent)
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Assessee by	Shri Anant Pai
Department by	Shri Abhirama karthikeyan
Date of Hearing	16.12.2022
Date of Pronouncement	01.03.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 25.9.2019 pertains to A.Y. 2009-10.

2. The grounds of appeal read as under :-

"1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 15,85,471/- made by the learned Assessing Officer in assessment order towards unexplained expenditure on account of alleged bogus purchases without any evidence on hand.

The learned Commissioner (Appeals) here, more particularly, erred in ignoring the Appellant's submission that it had not made the alleged purchases at all during the year under appeal.

The impugned addition of Rs. 15,85,471/- may, therefore, please be deleted in appeal.

2. Both the lower authorities erred in passing their respective orders without granting the Appellant an adequate opportunity of being heard.

The orders passed by them are in contravention of the principles of natural justice and are hence bad in law."

3. Brief facts of the case are that the Assessing Officer noted that the assessee is a firm engaged in the business as contractor. The Assessing Officer noted that the information has been received from the Investigation Wing, Mumbai that there was information from the sales tax department about some of the dealers providing bogus bills. From the said document the Assessing Officer noted that the assessee has also entered into transactions with hawala parties which were three in numbers and the total was at Rs.15,85,471/-. In response the assessee submitted that the total purchases in the current year at Rs. 5,37,200/- and that too only from one party namely M/s. Tirupati Concrete. That there was no other purchase made from any of the parties. The amount referred to above have not at all been debited to the profit and loss account. The assessee also submitted profit and loss account and balance sheet to the Assessing Officer. However, the Assessing Officer was not satisfied. He noted that sales tax department made detail inquiry. The Assessing Officer further observed as under :-

This fact is further seen by verification of bank statement of assessee's Bank a/c. no 502000301000075 with Vijaya Bank. It is seen from the above bank statement that the assessee has made payments to M/s. Kesar Enterprises of Rs. 2,39,751/- on 31/04/2008 Rs. 2,39,751/- on 31.04.2008 Rs. 25,56,355/- on 8.4.2008 and Rs. 2,77,639/- on 15/04/2008. The assessee has not furnished Bank statements of his other Bank accounts. Thus the assessee's reply that he has not made any purchase/transactions with the said three parties is totally false and contradictory to the facts. Therefore, the out of books purchases/transactions made by the assessee with M/s. Jain Enterprises, M/s. Kesar Enterprises and M/s. Dimple Enterprises totalling to Rs. 15,85,491/- is added as assessee's income u/s. 69C of the I. Tax act as unexplained expenditure. Penalty u/s. 271(l)(c) of the I. Tax Act is initiated separately for concealment of income and for furnishing inaccurate particulars of income.

4. Against the above order assessee appealed before learned CIT(A). Learned CIT(A) concluded as under :-

From the above it is clear that the addition is not based on report of Sales Tax Department. The AO has conducted its own enquiry and his findings are based on detailed enquiry conducted by himself and during search operation. The appellant has failed to establish the claim of purchase. The AO has given factual and legal matrix and expenditure on purchases has been treated as an attempt to reduce the taxable profit. Relying on recent decision of Mumbai

Tribunal in case of Pratibha Pipes & Supra and other judgments in the background the enquiry conducted by the AO and conclusion of the assessment order, I have no reasons to interfere with the findings of the AO, Thus the disallowance of purchase of Rs. 15,85,471/- is upheld. The AO has justifiably disallowed Rs. 15,85,471/- claimed on account of purchase from suspicious dealers. The grounds of appeal are, therefore Dismissed.

5. Against the above order the assessee is in appeal before the ITAT. I have heard both the parties and perused the record. I note that the Assessing Officer has noted information from the sales tax department that the assessee has obtained bogus accommodation bills from three parties as above. However, the assessee has responded that these purchases are not at all debited in the books of account. The assessee has submitted the profit and loss account and balance-sheet. The Assessing Officer has held that since he has noted two payments from assessee's bank account to two of the same parties, assessee's submission cannot be accepted. Further the Assessing Officer has held that the assessee has not produced other bank statements. I am of the considered opinion that this observation of the Assessing Officer is only surmise and conjecture. The fact that the payments have been made to two parties cannot lead to the conclusion that the assessee has made bogus purchase from these two parties. When the Assessing Officer has books of account and balance sheet of the assessee he can very well examine instead of making conjecture. Further Assessing Officer's statement that assessee has not submitted other bank statement is also hypothetical statement. There is no mention whatsoever as to which bank account statement has not produced before him. Hence, addition by the Assessing Officer is dehorse any appropriate evidence and cannot be sustained. The order of the learned CIT(A) shows lack of application of mind. None of the fact mentioned hereinabove are dealt with by learned CIT(A). His order is dehorse issues referred by the Assessing Officer. In my considered opinion orders of the authorities below are not sustainable. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

6. In the result appeal of the assessee stands allowed.

Order pronounced in the open court on 1.3.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/03/2022

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

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