

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before Shri Shamim Yahya, AM and Shri Amarjit Singh, JM

I.T.A. No. 116/Mum/2021
(Assessment Year 2010-11)

DCIT, CC-1(4) 9 th Floor, 902 Prasthishta Bhawan Old CGO Building(Annexe) M.K.Road Mumbai-400 020	Vs.	Golden Seam Textiles Pvt.Ltd. 154-155, Kewal Industrial Estate, Senapati Bapat Marg, Lower Parel Mumbai-400 013 PAN : AACCG1114E
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri O.P.Sharma, CIT-DR
Date of Hearing	18.01.2022
Date of Pronouncement	29.03.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-47 dated 20.10.2020 and pertains to assessment year 2010-11. The issue raised is that ld.CIT(A) erred in restricting the addition to 12.5% of bogus purchases.

2. Brief facts of the case are that the appellant is a Private Limited Company and is engaged in manufacturing and trading in textiles and garments and is regularly assessed to tax. For the assessment year under consideration the appellant filed its return of income electronically on 29/09/2010 declaring total income at Rs. 72,36,285/- and book Profits of Rs. 1,62,30,339/-. A Search and Seizure action u/s. 132 of the Income Tax Act, 1961 was carried out on 11.01.2012 in the case of M/s

Mandhana Industries Limited. Simultaneously, survey action u/s 133A was carried out in the case of appellant on 11/01/2012 at the office premises of the appellant at Bangalore. The AO issued a notice issued u/s. 153C on 21/11/2012 and in response to the said notice, the appellant filed his return of income on 14/05/2013 declaring total Income at Rs. 72,36,285/-. Subsequently, survey action u/s 133A was conducted on M/s. Mandhana Industries Ltd. on 31/07/2013 mainly to verify the purchases of Rs. 5.97 Crores made by M/s. Jiny & Johny Pvt. Ltd from M/s Siddhpad Trading Pvt. Ltd. who in turn passed on the said bills to M/s. Mandhana Industries Ltd., who is the holding company of the appellant. The AO, however, rejecting the explanations of the appellant, has disallowed the entire purchases of Rs. 2,36,93,640/- made from M/s. Siddhpad trading Pvt. Ltd. Though the assessee claimed the same goods were sold to M/s. The Loot India Pvt. Ltd. and the bill wise purchases of readymade garments from M/s Siddhpad Trading Pvt. Ltd as sold to M/s. The Loot India Pvt. Ltd., were given but the AO did not accept the same. Further, the AO observed in para 12 (iii) (a) of the Assessment order that the investigation wing on the basis of the independent survey conducted has held that "M/s. Golden Seam Ltd has taken bogus purchase bills of Rs. 2,36,93,640/ from M/s. Siddhpad Trading Pvt. Ltd and subsequently, passed on the sales bills of Rs. 2,62,57,392/- to M/s Loot India Ltd

3. Against the above order, assessee appealed before the Id.CIT(A).

4. The Ld.CIT(A) held as under:-

“I have considered the facts of the case, submissions and contentions of the assessee and also order of the Assessing Officer. From the facts of the case, it appears that the assessee failed to prove the purchase of Rs.2,36,93,640/- made from M/s Siddhpad Trading P. Ltd. However, it appears the entire purchase made from Siddhpad Trading P. Ltd., were sold to Loot India P. Ltd. and complete details in this regard had been submitted by the assessee before the AO. However, the AO failed to look into the same. It may be mentioned that the assessee has furnished complete quantities details of purchases and sales and whatever was purchased was sold in entirety. Therefore, this may be a case where, the purchase are bogus as also the sales are bogus. However, assessee has not incurred any loss on such transactions and on the contrary

has shown profits of about Rs.26 Lakh, which looks reasonable considering the nature of the case. Therefore, what is liable to be taxed in the hands of the assessee is possible profits/savings derived by the assessee in making these purchases over and above, what is being disclosed in the regular books of accounts. Various Courts has examined this issue and upheld the profit raised to 5% to 12.5% in the case of bogus purchase where quantity details are available. Some of which have discussed as under.”

5. Thereafter, ld.CIT(A) referred to decision of Hon’ble Bombay High court in the case of PCIT vs Mohammad Hazi Adam & Co in ITA No.1064,1075,1095 of 2016. He also referred to Hon’ble Gujarat High court in the case of CIT vs. bholanath Polyfab Limited, 355 ITR 290 and Mayank Diamonds Pvt.Ltd. in ITA No. 200 of 2003 and conclude that it will be fair and reasonable, the profit rate of 12.5% to the bogus purchase.

6. Against the above order, revenue is in appeal before us. We have heard the Ld. DR and perused the record.

7. We find that in this case, the AO has made out a case that sales purchases both are bogus. If that be the case there is no rationale in not disturbing the sales, but treating the purchases bogus. Once there is no adjustment done in sales, the meaning is that the sales have not been doubted. It is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon’ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises(in Writ Petition No.2860, order dated 18.06.2014). In this case, the Hon’ble High Court has upheld 100% disallowance for the purchases said to be bogus, when sales are not doubted. However, the facts of the present case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation, in our considered opinion on the facts

and circumstances of the case, the disallowance out of the bogus purchases done by the Ld.CIT(A) meets the end of justice. Accordingly, We uphold the order of Ld.CIT(A).

8. The decision of N.K.Protiens relied by the revenue was a dismissal of SLP by the Hon'ble Supreme Court and has already been explained and distinguished by Hon'ble Bombay High Court in the case of Mohammad Hazi Adam & Co in ITA No.1004 of 2006, dated 11.02.2019.

9. In the result, this appeal filed by the revenue stands dismissed.

Pronounced in the open court on 29 .03.2022

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 29 .03.2022

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