

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI AMARJIT SINGH, JM

ITA No. 1533/Mum/2021

(Assessment Year 2017-18)

The Dy. Commissioner of Income-tax, Central Circle 7(4), Room No. 658, Aayakar Bhavan, M.K. road, Mumbai-400 0059	Vs.	M/s Banbury Impex Pvt. Ltd. 41, Apoorva Industrial Estate, Off. Andheri Kurla Road, Makwana Road, Andheri East, Mumbai-400 059
(Appellant)		(Respondent)
PAN No.AAACB5754Q		

Assessee by	:	Shri Gaurav Kabra, CA
Revenue by	:	Shri Dr. Mahesh Akhade, CIT DR

Date of hearing:	13.04.2022
Date of pronouncement :	28.04.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of income-tax, Central Circle 7(4), Mumbai (the learned Assessing Officer) against the appellate order dated 22nd June, 2021 of the Commissioner of Income Tax (Appeals)-49, Mumbai [the learned CIT(A)] for Assessment Year 2017-18.
02. The learned Assessing Officer has raised solitary issue in this appeal regarding deletion of addition of ₹5,10,43,140/- made by the learned

Assessing Officer on account of bogus purchases from M/s Neelanchal Sales & Suppliers Pvt. Ltd.

03. The assessee is a company engaged in the business of manufacturing and trading and export of fabrics. It filed its return of income on 31st October, 2017 at ₹ 51,61,430/-. The return was processed under section 143(1) of the income-tax Act, 1961 (the Act).
04. A search under section 132 of the Act on Indo Count Industries Ltd. on 1st February, 2018, assessee was also covered in that search. Consequently, notice under section 153A of the Act was issued on 18th February, 2019. Assessee filed its return on 20th March, 2019 at ₹51,61,430/-.
05. During the course of assessment proceeding, the learned Assessing Officer found that M/s La Trendz Fabrica Private Ltd. is a company performing job work for M/s Indo Count Industries Ltd. Large payments have been made by this company to its associated enterprises for purchase, etc. Learned Assessing Officer noted that payments by this company to its associated entities are without delivery of services and receipt of goods. Learned Assessing Officer recorded various such payments. During the course of search, statement of accountant of one associate concern was recorded on oath on 3rd February, 2018. Statements of other persons were

also recorded. As per the statement of Shri Suhel Saraf, it was found that M/s Neelanchal Sales & Suppliers Pvt. Ltd. during the FY 2016-17 has purchased fabric of ₹5.67 crores from La Trendz Fabrica Private Ltd. and sold to Banbury Export which is one of the division of the assessee company. This was the only purchase made by M/s Neelanchal Sales & Suppliers Pvt. Ltd. The assessee was asked to establish the genuineness of the purchase transactions. A show cause letter dated 18th December, 2019, was issued.

06. In response to that assessee submitted on 20th December, 2019, sale is genuine and same is reported in the audited financial statements. Assessee also filed copies of invoices, bank statements and transportation receipts.
07. Learned Assessing Officer noted that most of the purchases are in the month of April and May. M/s Neelanchal Sales & Suppliers Pvt. Ltd. did not have any godown for storage of fabrics. The learned Assessing Officer therefore held that purchase made by assessee from M/s Neelanchal Sales & Suppliers Pvt. Ltd. is only an accommodation entry. Accordingly, he disallowed total purchase of ₹5,10,43,140/-.
08. The assessment order under section 143(3) read with section 143A of the income tax Act, 1961

(the Act) was passed on 26th December, 2019, determining the total income of the assessee at ₹5,62,04,570/-.

09. On appeal before the learned CIT(A), the addition was deleted. Therefore, learned Assessing Officer is in appeal before us.

010. The learned Departmental Representative submitted that

- (i) the material purchased by M/s Neelanchal Sales & Suppliers Pvt. Ltd. from La Trendz Fabrica Private Ltd. is bogus and therefore sale of goods by M/s Neelanchal Sales & Suppliers Pvt. Ltd. to the assessee company is also bogus.
- (ii) He submitted that M/s Neelanchal Sales & Suppliers Pvt. Ltd. did not have any godown for storage of fabrics and therefore, the addition made by the learned Assessing Officer is correct.
- (iii) He submitted that the learned CIT(A) has deleted the addition merely on the basis of documentary evidence without looking into the surrounding facts.

011. The learned Authorised Representative submitted 166 pages Paper Book and submitted that purchases are supported by proper invoices along with delivery challans placed at page nos. 29 to 156 of the Paper Book. He also

submitted that all transport bills are placed at page nos. 157 to 163 of the Paper Book. He further referred that all the payments have been made through account payee cheque and confirmation of the seller is also submitted. He further relied on the letter dated 20th December, 2019, submitted before the learned Assessing Officer. He supported the order of the learned CIT(A).

012. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that assessee is engaged in the business of manufacturing of textile along with trading and its job work. During the course of search of Indo Count Industries Ltd. it was found that one company M/s La Trendz Fabrica Private Ltd. performing the job work and has also entered into transactions with other companies of group entities. During the course of search and survey on the assessee company, statement of Shri Suhel Saraf, was recorded which showed that assessee had purchased fabric of ₹ 5,10,43,140/- from M/s M/s Neelanchal Sales & Suppliers Pvt. Ltd. Assessing Officer held it to be bogus. The Id AO was shown invoices, confirmation, delivery challan, transportation bills and proof of payments to M/s Neelanchal Sales & Suppliers Pvt. Ltd.

013. The learned CIT(A) has deleted the addition for following reasons

- (i) all the purchases are duly supported with purchase bills, delivery challan, transportation bill and confirmation of the parties.
- (ii) Shri Suhel Saraf has never stated that purchases made by the assessee were not genuine. He merely stated that he was not aware of the details of the transactions.
- (iii) Further, Shri Suhel Saraf was not allowed to be cross-examined by assessee
- (iv) sales made by the assessee have not been doubted and there are confirmation letters by the suppliers which show that purchases were made.
- (v) Evidence produced by the assessee though recorded in the assessment order were not at all examined and rejected by the learned Assessing Officer. The learned Assessing Officer has completely ignored the documentary evidences. Therefore, without checking those evidences it cannot be said to be bogus.
- (vi) As the issue involved is on account of survey and search, no evidences were found from any of the premises that purchases made by the assessee are non-genuine.
- (vii) The statement of Shri Suhel Saraf, in fact supports stand of the assessee. Learned CIT(A)

referred to question no. 26 where the source of purchase by M/s Neelanchal Sales & Suppliers Pvt. Ltd. and subsequent sales to the assessee was shown. There is no evidence that the purchase made by the assessee is bogus.

(viii) The addition made by the learned Assessing Officer is purely on the basis of guess work, conjunctures and surmises.

014. We find that the reasons given by the learned CIT(A) do not suffer from any infirmity. Further, the learned Assessing Officer has raised categorical point that the suppliers of the goods M/s Neelanchal Sales & Suppliers Pvt. Ltd. did not have any godown. We find that in all the invoices, delivery is shown from La Trendz Fabrica Private Ltd., Kolhapur to Banbury Export at Tarapur. Thus, the goods were delivered to the assessee from the party who sold goods to Neelanchal Sales & Suppliers Pvt Ltd. Therefore, not having any godown facility by M/s Neelanchal Sales & Suppliers Pvt. Ltd. cannot make sales to assessee bogus . Further, during the course of hearing before us, the learned Departmental Representative could not produce any other evidence to show that purchases are not genuine.

015. In view of this, we confirm the order of the learned CIT(A). Accordingly, ground no.1 and 2 of the appeal of the learned Assessing Officer are dismissed.



016. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 28.04.2022.

Sd/-
(AMARJIT SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.04.2022

Sudip Sarkar, 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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai