

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND

MS. KAVITHA RAJAGOPAL, JM

ITA No. 84/Mum/2022

(Assessment Year 2009-10)

The Income Tax Officer,
Ward 33(1)(1)
Kautilya Bhavan, 9th Floor,
Room No. 945, BKC, Bnadra (E), Vs.
Mumbai-400 051

Smt. Taruna R. Dalal
107, Sanjay Mittal Indl.
Estate Bldg, Marol Naka,
Andheri East,
Mumbai-400 059

(Appellant)

(Respondent)

PAN No. AELPD2969N

Assessee by : None

Revenue by : Shri Himanshu Sharma, AR

Date of hearing: 26.05.2022

Date of pronouncement : 31.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Income Tax Officer-33(1)(1), Mumbai against the order dated 20th November, 2021 passed by National Faceless Appeal Centre, Delhi [the learned CIT(A)] for Assessment Year 2009-10 raising the following ground of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that estimation of GP rate of 15% instead of 100% of bogus purchases, being an addition of Rs. 26,82,617/- is fair and justified and failing to appreciate that the assessee had failed to establish the genuineness of the alleged party from whom purchases was claimed to have been made during the year?"

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in holding that estimation of GP rate of 15% instead of 100% of bogus purchases being an addition of Rs. 26,82,617/-, is fair and justified and failing to appreciate that the assessee could not produce the documentary evidences nor the books of accounts or could produce the alleged parties from whom purchases was claimed to have been made during the year?"*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CITA) erred in holding that estimation of GP rate of 15% instead of 100% of bogus purchases, being an addition of Rs. 26,82,617/-, is fair and justified and failing to appreciate that the Sale Tax Department, Mumbai during their course of investigation found the alleged parties to be provider of accommodation, bogus purchase bills and not a genuine business entities?"*

4. *The appellant craves leave to amend or to alter any ground or add a new ground which may be necessary."*

02. The brief fact of the case shows that assessee is an individual engaged in the business of manufacturing of Corrugated Box and sheet. She filed her return of income on 31st March, 2008, at a total income of ₹8,22,827/-. This return was processed under section 143(1) of the Act. Subsequently, information received from DGIT Investigation, Mumbai vide letter dated 26th December, 2013, relating to bogus purchase made by the assessee from certain parties who did not supply the goods but

merely supplied invoices. The assessee was found to have purchased invoices of ₹26,82,617/- from M/s Arun paper and Iron traders. Thus, notice under section 148 of the Act was issued on 14th March, 2014 and subsequently, the assessment order under section 143(3) read with section 147 of the Act was passed on 5th March, 2015, by making an addition of ₹ 100% of such bogus purchases of ₹26,82,617/- and determining total income of the assessee at ₹35,05,444/-. The reason for making the addition was that the learned Assessing Officer issued notice under section 133(6) of the Act to the bogus supplier, however, that supplier was not found in existence. The assessee was also asked to produce the above party but assessee failed. Therefore, the learned Assessing Officer rejected the documents produced such as invoices, bills, ledger account and copy of delivery challan. The learned Assessing Officer asked the assessee to produce stock register, quantitative details and reconciliation of purchases with corresponding sales but assessee failed.

03. Aggrieved with the order of the learned Assessing Officer, assessee preferred the appeal before the learned CIT(A). The learned CIT(A) restricted the addition to the extent of 15% of total purchases as in assessee's own case for Assessment Years 2010-11 and 2011-12 on similar facts and circumstances, the addition to the extent of 15% was retained. Therefore, the learned CIT(A) confirmed the addition to the extent of 15% of bogus purchases and deleted the balance disallowance. The learned Assessing

Officer is aggrieved with the same and has preferred an appeal before us.

04. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer.
05. Despite notice to the assessee, none appeared on behalf the assessee and therefore, the appeal of the learned Assessing Officer is decided on the merits of the case as per information available on record.
06. We have carefully considered the submission made by the learned Departmental Representative as well as the order of the lower authorities. In the present case, the assessee is found to have purchased bogus bills of purchase of material in the name of proprietary concern namely Productive and Packaging Industry from one M/s One Paper and Iron traders amounting to ₹26,82,617/-. As the party could not be produced before the learned Assessing Officer, the learned Assessing Officer made an addition to the extent of 100% of such purchases. The learned CIT(A) following his own order in assessee's own case for earlier two years retained such addition only to the extent of 15% of bogus purchases. The learned Departmental Representative could not controvert that the orders of the learned CIT(A) in assessee's own case for earlier years were on different facts or they have not been accepted by the Revenue. Therefore, we find that when on identical facts and circumstances in assessee's own case the addition retained to the extent of 15% of bogus purchases have been accepted by the Revenue, without any



compelling reason, the learned Assessing Officer should not have agitated this matter. Further, the learned CIT(A) followed only those orders in assessee's own case on similar facts and circumstances, which has been accepted by the Revenue. In view of this, following the rule of consistency, the learned CIT(A) has decided the appeal and therefore, it deserves to be confirmed. Accordingly, we confirm the order of the learned CIT(A) in retaining disallowance of bogus purchases to the extent of 15% thereof.

07. In the result, the appeal filed by the learned Assessing Officer is dismissed.

Order pronounced in the open court on 31.05.2022.

Sd/-
(MS. KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2022

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.

True Copy//

BY ORDER,

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