

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.189/M/2021
Assessment Year: 2009-10**

DCIT 27(1), Room No.408, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai - 400703	Vs.	Shri Biju Joy Mathew, Flat No.1, Sai Prasad CHS, Sector – 48, Nerul, Navi Mumbai – 400 706 PAN: AFLPM2158P
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Rajat Mittal, D.R.

Date of Hearing : 04 . 05 . 2022
Date of Pronouncement : 27 . 05 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, Dy. Commissioner of Income Tax -27(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 21.09.2020 passed by Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

“(i) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.4,15,552/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the

assessee had failed to produce bills, vouchers and other documentary evidences in support of its claim and without considering the decision of the Hon'ble Allahabad High Court in the case of Ganesh Rice Mills Vs CIT, held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.

(ii) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs. 4,15,1447-being @ 25% of the bogus purchases as even the basic onus of producing delivery challans, transport bills etc. was not fulfilled by the assessee.

(iii) The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.

(iv) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is into the business of civil contracts and has shown his income from business, house property and other sources. Assessee has originally filed his return of income at the total income of Rs.8,06,850/- but subsequently it was reopened after recording reasons. During the reopening proceedings the Assessing Officer (AO) noticed that the genuineness of the purchases debited by the assessee in the P&L account needs to be verified. The AO issued notice to 7 parties under section 133(6) of the Income Tax Act, 1961 (for short 'the Act') who have provided accommodation bills to various entities as their names were mentioned in the list of suspicious dealers published by the Sales Tax Department. Out of 7 parties two parties did not reply to the notices and one party informed that it

has not entered into any transaction with the assessee during the year under assessment. Declining the contentions raised by the assessee that the goods have been received and the corresponding sales have been accounted for the AO proceeded to conclude that the amount shown as paid to the bogus parties came back to the assessee as no purchases were made and **peak** of the cumulative outstanding of all the above parties was computed and the same was found to be Rs.8,30,696/- as per table given in para 3.7 of the assessment order. The AO accordingly framed the assessment at the total income of Rs.1,36,37,550/- under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same by estimating the gross profit @ 12.5% of the alleged bogus purchases. Feeling aggrieved the Revenue has come up before the Tribunal by way of filing present appeal.

4. Despite issuance of the notice to the assessee none appeared on behalf of him, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly, the entire exercise of framing the assessment under section 143(3) read with section 147 of the Act by the AO is

based upon the information available at the website of Sales Tax Department of Maharashtra wherein list of suspicious dealers who have given accommodation bills to the traders and assessee was one such beneficiary, without conducting any independent enquiry. The AO has taken the peak of cumulative outstanding of all the above parties and made addition of Rs.8,30,696/- under section 69C of the Act. It is settled principal of law that in such like circumstances section 69 is not attracted, which only applies to purchases made outside the books of accounts. This aspect has been dealt with by the Ld. CIT(A) in para 6.16 of the impugned order.

7. We have perused the impugned order passed by the Ld. CIT(A) who has thrashed the facts in the light of the decisions rendered by Hon'ble Bombay High Court in case of CIT vs. Nikunj Eximp Enterprises (P.) Ltd., decisions rendered by the Hon'ble Gujarat High Court in case of CIT-1 vs. Simit P. Sheth in ITA No.553 of 2012 order dated 16.01.2013 and also in the case of CIT vs. Bholanath Poly Fab (P) Ltd. ITA No.63 of 2012 order dated 23.10.2012 and partly allowed the appeal by returning following findings:

***“6.14 In view of the facts, and: circumstances of the case and the judicial pronouncements cited above, what can be disallowed or taxed in the instant case, is the excess profit element embedded in such purchases shown to have been made from aforesaid parties. In cases where the parties from whom the purchases were made by the appellant were made by the appellant were found to be bogus, estimations ranging from 12.5% to 25% have been upheld by the Hon'ble Court, depending upon the nature of the business. The appellant has declared a gross profit of 12.93% for the year under consideration.*”**

6.15 In view of the above discussed factual matrix and precedents, an estimation of 12.5% as profit embedded in impugned purchases shown from the alleged hawala parties would meet the ends of justice. Therefore, the gross profit on purchases of Rs.33,21,154/- is brought to tax @12.5% and the addition is restricted to Rs.4,15,144/-. The appellant gets a relief for the balance amount of Rs.4,15,552/-. Accordingly, the Ground nos. 1 and 2 are 'Partly Allowed'.

8. When no enquiry has been conducted by the AO the only recourse left with the Revenue Department is to estimate the gross profit on purchase of the alleged bogus amount in the range of 12.5% to 25% as has been held by the Hon'ble High Courts in the decisions relied upon by the Ld. CIT(A). The Ld. CIT(A) has estimated the gross profit @ 12.5% of the bogus purchases of Rs.33,21,154/- and thereby restricted the addition to Rs.4,15,144/-. So finding no illegality or perversity in the impugned findings returned by the Ld. CIT(A) present appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 27.05.2022.

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 27.05.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.