

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

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

**ITA No.159/M/2021
Assessment Year: 2009-10**

ITO Ward - 32(1)(1), Room No.703, Kautilya Bhavan, BKC, Bandra (E), Mumbai - 400051	Vs.	M/s. H.V. Goradia HUF, 704-B, Jash Enclave Sodavala Lane, Borivali (E), Mumbai – 400 068 PAN: AAAHH0473E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri Rajat Mittal, D.R.

Date of Hearing : 04 . 05 . 2022
Date of Pronouncement : 31 . 05 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

Delay in filing the present appeal is condoned in view of the order passed by the Hon'ble Supreme Court in MA No.665 of 2021 whereby period from 15.03.2020 to 02.10.2021 is excluded while computing the period of limitation for filing such appeal due to pandemic. So appeal is ordered to be registered and is being heard.

2. The appellant, ITO Ward - 32(1)(1), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 17.02.2020 passed by Commissioner of Income Tax (Appeals)-44, Mumbai [hereinafter

referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition to 6% on account of bogus purchases, without appreciating the fact that the Sales Tax Department, Maharashtra has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation for the purchases.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the fact that the assessee failed to produce the parties for verification, in spite of opportunity provided by the AO.

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the ratio of the decision of Gujarat High Court in the case of N. K. Proteins Ltd. wherein it was confirmed that in the event of bogus purchases, the addition on the whole of such purchases was required to be made and this particular ratio was confirmed by the Hon’ble Supreme Court in SLP No.CC No.769 of 2017 dated 16/01/2017, by dismissing the SLP of that assessee.

4. On the facts and in the circumstances of the case and in law, the Hon’ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT Circular no.17/2019 dated 08/08/2018 as the case falls in the exception provided in para 10€ of the said Circular in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities.

5. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored.

6. The appellant craves leave to amend or alter any ground or add a new ground.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : in the first round of litigation assessment has been reopened under section 147 of the Income Tax Act, 1961 (for short ‘the Act’) on the basis of intimation received from DGIT(Inv.) and Sales Tax Department, Government of Maharashtra that assessee has taken bogus purchase entry of

Rs.3,02,89,191/- from 16 parties. The Assessing Officer (AO) by declining the contentions raised by the assessee made addition of Rs.90,86,757/- i.e. @ 30% of total bogus purchases of Rs.3,02,89,191/- as the assessee has failed to prove the genuineness of the purchases made from the bogus parties.

4. Then assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same.

5. Thereafter, the assessee approached the Tribunal by filing appeal, wherein it has restored the matter back to the file of the AO to decide afresh after affording opportunity of being heard to the assessee by holding that the AO has not given any basis for adopting the profit rate @ 30%.

6. In the second round of litigation the AO provided opportunity of being heard to the assessee. Declining the contentions raised by the assessee the AO proceeded to estimate the gross profit @ 12.5% of the alleged purchases considered as suppressed profits for the year under consideration as against the assessee's gross profit/net profit percentage @ 1.64% and 0.17% respectively for the year under consideration and thereby made an addition of Rs.37,86,149/-. Accordingly, AO framed the assessment at total income of Rs.38,21,290/- under section 143(3) read with section 254 of the Act.

7. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal by restricting the gross profit to 6% of the alleged bogus purchases. Feeling

aggrieved the Revenue has come up before the Tribunal by way of filing present appeal.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, 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 law applicable thereto.

9. We have perused the impugned order passed by the Ld. CIT(A) who has thrashed the facts of this case and restricted the gross profit to 6% of the alleged bogus purchases as against 12.5% estimated by the AO keeping in view gross profit of the assessee over 19 years of business @ 1.95% by relying upon the decision rendered by the Tribunal mentioned in para 3.5 of the impugned order by returning following findings:

“3.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the assessment order that the appellant produced the details with regard to purchases made. Assessee also filec copies of purchases invoices, ledger account of parties and also the bank statement showing each and every payment for purchases. It is noticed that on account of non-production of suppliers, delivery challans, transportation bills etc. the AO added 12.5% as non genuine purchases. It is also an admitted fact that neither at the time of assessment proceedings nor during the appellate proceedings, the appellant could submit the evidences of actual movement of goods under consideration from said party, i.e. neither Lorry receipt nor any proof of transportation was submitted. Further, copy of inward register, stock register were also not maintained by the assessee as admitted. In absence of any third party evidences, it cannot be held that the appellant has proved that the goods/materials under considerations were purchased from the parties whose names are appearing in

books. In view of the above discussions, the appellant's contention to delete the additions is rejected.

3.3 Now the question arises that in the event of appellant not proving that it had purchased goods/materials from above referred dealers, whether entire such bogus purchases can be disallowed. The Ld. AO has also accepted the sales made by the appellant and since there cannot be sales without corresponding purchases, the AO has taxed the profit element of such suspicious purchases. From the above, it is evident that the AO neither has doubted nor has held the purchases under consideration are bogus. The only finding of the Ld. AO is that the said purchases were not made from the above referred dealers/parties, but were purchased from somewhere else, i.e. from open/grey market to inflate the purchases and suppress true profits. Further, the AO has not doubted the genuineness of sales effected and has taxed the same as such.

3.4 The facts and circumstances of the case suggest that the appellant had purchased the goods under consideration not from referred parties but from some other suppliers in grey market, may be without bills. Any person indulging in the practice of purchasing the goods from the grey market and obtaining bogus bills of some of the parties would do so for getting some benefits and what would be the magnitude of the benefit would depend upon the facts of the case. Hence, the purchase price mentioned in the alleged sales bills cannot be accepted. The obvious reason is that the assessee did make purchases but at a lower price so as to increase its overall profits. In these circumstances, the entire amount of alleged bogus purchases cannot be disallowed/added, but only profit element embedded therein needs to be taxed.

3.5 In its arguments the appellant submitted that the HUF is doing business of trading in Iron and Steel namely mild steel (MS) Angles, MS channels, MS bars, MS pipes etc since 1996-97 and GP of the business is 1.5 to 1.95 % for the last 19 years. In view of the profit percentage the AO was requested to estimate the profit on the bogus purchases at same percentage. Assessee also placed reliance on the ITAT decision in the case of Sonali A Shah vs ACIT-14(3) in ITA No. 6931/Mum/2011 for AY 2007-08

where in Hon'ble ITAT estimated the profit at 5%. He also relied on the ITAT decision in the case of ACIT(OSD), Ward 1 v Shri Akshay Rajesh Samdaria in ITA No. 2076/Pun/2016 dated 31.12.2018 for AY 2009-10 where in Hon'ble IT AT estimated the profit at 3% of the bogus purchases.

3.6 In the present case from the facts available on records, it is observed that the AO has neither disbelieved the purchases nor the corresponding sales made. The AO has held that the impugned purchases were not made from above referred dealers/parties but from somewhere else/open market. The facts and circumstances of the present case are similar to that of facts adjudicated by the Hon'ble ITAT, Mumbai in above cases referred by the assessee. The average GP of the assessee over 19 years of business is 1.95%, however the AO estimated the additional profit at 12.5%, which is on higher side for the business of the assessee. Therefore, considering the facts of the case, the profit is restricted to 6% of the alleged bogus purchases. The AO is directed add 6% of Rs.3,02,89,191 working out to Rs.18,17,351 and modify the addition accordingly. Appellant gets part relief. These grounds are partly allowed.”

10. Findings returned by the Ld. CIT(A) are on the basis of facts thrashed in the light of the settled principle of law in estimating the gross profit in case of bogus purchases by keeping in view the average gross profit in the business of the assessee. So finding no illegality or perversity in the impugned order, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 31.05.2022.

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

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

Mumbai, Dated: 31.05.2022.

* 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.