

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.233 & 234/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11 & 2011-12

M/s. Shivam Construction Co.,
5, Nhavda Phata MIDC,
Taloja,
Panvel – 410 206

PAN : AAEFM8600L

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Panvel Circle

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 07.06.2022

घोषणा की तारीख / Date of Pronouncement : 20.06.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. These assessee’s twin appeals for assessment year 2010-11 and 2011-12 arise against the CIT(A)-2 Thane’s common order dated 30.11.2016 passed in case nos. 614 & 615/14-15, respectively, in proceedings u/s 144 r.w.s.147 of the Income Tax Act, 1961; in short the “Act”.

Heard both the parties. Case files perused.

2. The assessee's identical sole substantive ground raised in both these appeals challenges correctness of the lower authorities action disallowing its purchases of Rs.32,04,837/- and Rs.16,27,002/-; respectively thereby terming the same as bogus in light of the sales tax department investigation that the same had been sourced through hawala operators only. The CIT(A)'s detailed discussion affirms the Assessing Officers action that the assessee's suppliers concerned had been issuing bogus bills only wherein the former had never made any actual purchases from them at all.

3. Mr. Walimbe vehemently supported both the learned lower authorities action herein as per their respective detailed findings. He fails to dispute that the assessee's corresponding stock items in the work -in-progress pertaining to civil contractor business already stood accepted as genuine. The fact also remains that the taxpayer only appears to have filed the corresponding purchase bills without proving the same by leading cogent supportive evidence. Faced with this situation, we find that hon'ble jurisdictional high court's recent decision (2019) 103 taxmann.com 95 (Bom.) PCIT v/s. Mohammed Haji Adam and Co. holds that such bogus purchases could be restricted only to the extent of GP addition therein as follows.

“2. The issues relate to the Assessment Year ("A.Y." for short) concerning the respondent - assessee who is a trader of fabrics. During the survey operations in case of the entities from whom the assessee had claimed to have made purchases, the department collected information suggesting that such purchases were not genuine. The Assessing Officer ("A.O." for short) noticed that the assessee had shown purchases of fabrics worth

Rs.29.41 Lacs (rounded off) from three group concerns, namely, M/s. Manoj Mills, M/s. Astha Silk Industries and M/s Shri Ram Sales & Synthetics. On the basis of the statement recorded during such survey operations, the A.O. concluded that the selling parties were engaged only in supplying the bogus bills, that the goods in question were never supplied to the assessee, and therefore, the purchases were bogus. He, therefore, added the entire sum in the hands of the assessee as its additional income.

3. *The assessee carried the matter in the appeal before the Commissioner of Appeals who accepted the factum of purchases being bogus. However, he compared the purchases and sales statement of the assessee and observed that the department had accepted the sale, and therefore, there was no reason to reject the purchases, because without purchases there cannot be sales. He, therefore, held that under these circumstances A.O. was not correct in adding the entire amount of purchases as the assessee's income. He, therefore, deleted the addition refreshing it to 10 % of the purchase amount. He also directed the A.O. to make addition to the extent of difference between the gross profit rate as per the books of account on undisputed purchases and gross profit on sales relating to the purchases made from the said three parties.*

4. *The assessee carried the matter before the Tribunal. The Revenue also carried the issue before the Tribunal. The Tribunal in the impugned Judgment allowed the appeal of the assessee partly and dismissed that of the Revenue. The Tribunal noted that the CIT(A) had not given any reasons for retaining 10% of the purchases by way of ad hoc additions. The Tribunal, therefore, deleted such additions, but retained the portion of the order of the CIT(A) to that extent he permitted the A.O. to tax the assessee on the basis of difference in the GP rates.*

5. *Learned counsel Mr. Chhotaray for the Revenue strenuously contended, that the CIT(A) and the Tribunal committed serious error. In the present case when it was established that the purchases are bogus, the entire amount should have been added to the income of the assessee.*

There is no question of granting any relief in the facts of the case. In this context he relied on a decision of the Division Bench of Gujarat High Court in the case of *N.K. Industries Ltd. v. Dy. CIT* [\[2016\] 72 taxmann.com 289](#). In such judgment the Court had observed as under —

"The Tribunal in the case of Vijay Proteins Ltd. v. CIT had observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25 % of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s. Indian Woolen Carpet Factory (supra) or M/s. Vijay Proteins Ltd. In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs. 2,92,93,288/- and taxing only 25 % of these bogus claim goes against the principles of Sections 68 and 69C of the Income-tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs.2,92,93,288/-represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs.73,23,322/-."

6. Counsel pointed out that the S.L.P. against such decision was dismissed by the Supreme Court.

7. On the other hand, Ms. Khan learned counsel for the assessee opposed the appeals contending that the Tribunal has given proper reasons. The assessee was a trader. Even if the purchases are found to be bogus, entire purchase amount cannot be added by way of assessee's income.

8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from

these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under—

" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. *In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs".*

4. We adopt the above extracted reasoning mutatis mutandis; in absence of any exceptional facts or law to restrict the impugned bogus purchases disallowance @ 10% GP margin only with a rider that the same shall not be treated as a precedent. Necessary computation shall follow as per law.

Learned counsel does not press for the assessee's identical legal ground challenging validity of section 148/147 proceedings at this stage. Rejected accordingly.

5. These assessee's twin appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on this 20th day of June, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 20th June, 2022.

Ashwini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Thane.
4. The Pr.CIT-2, Thane.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,
// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

ITA No.233 & 234/PUN/2017,
A.Y: 2010-11 & 2011-12
M/s. Shivam Construction Co.,

S.No.	Details	Date	Initials
1	Draft dictated on	07.06.2022	
2	Draft placed before author	20.06.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		