

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 117/Mum/2021 (A.Y. 2009-10)

ITO, Ward 3(1) Kalyan West Maharashtra-421 301.	Vs.	Bharat Sanitary and Hardware Supplier A-31/101, Sugra Manzil, Dr. Ambedkar Road, Shivaji Chowk Kalyan West Maharashtra-421 301. PAN : AABFB2579C
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Naina Krishnakumar
Date of Hearing	19.07.2022
Date of Pronouncement	21.07.2022

ORDER

The Revenue has filed this appeal challenging the order dated 24.7.2020 passed by learned CIT(A)-1, Thane and it relates to A.Y. 2009-10. The Revenue is aggrieved by the decision of learned CIT(A) in restricting the addition relating to the bogus purchases to 12.5%.

2. None appeared on behalf of the assessee even though the notice of hearing was sent to the assessee by registered post on several occasions. Hence, I proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. Facts relating to the issue are stated in brief. The assessee is engaged in the retail business of plumbing, hardware and sanitary items. Income tax department received information from the Sales tax department that there are hawala operators who are providing fake sale bills, without actually supplying goods. It was found that the assessee was listed as one of the beneficiaries of

the hawala trade. It was noticed that the purchases to the tune of Rs. 18,07,546/- have been made by the assessee from hawala operators. The Assessing Officer assessed the above said sum of Rs. 18,07,546/- as income of the assessee by treating it as bogus purchases.

4. The Learned CIT(A), however, restricted the addition to 12.5% of the amount of alleged bogus purchases by following the decision of the Mumbai Bench of the ITAT in the case of ITO Vs. Actube Enterprises and also decision of Hon'ble Bombay High Court in the case of Pooja Paper Trading Company Pvt. Ltd. Vs. ITO (2019) (104 taxmann.com 95)

5. The revenue is aggrieved by the decision rendered by learned CIT(A)

6. At the time of hearing, the learned DR placed her reliance on the decision rendered by Hon'ble Supreme Court in the case of N.K. Proteins Ltd. (292 CTR 354). However, I find that the facts prevailing in the case of N.K. Proteins Ltd. (supra) are totally different from the facts available in the present case. In the instant case addition has been made on the basis of information received from the sales tax department and there was no credible evidence to prove in foolproof manner that the purchases made from the alleged hawala trader are in fact bogus in nature. The revenue has only entertained presumption on the basis of information received from the Sales tax department. However, in the case of N.K. Proteins Ltd. (supra) element of bogus purchases was proved on the basis of evidences found from the assessee itself. Accordingly I am of the view that the department cannot take support from the decision rendered by Hon'ble Supreme Court in the case of N.K. Proteins Ltd. (supra). I noticed that the learned CIT(A) has rendered its decision by following decision rendered by Hon'ble Bombay High Court and the Coordinate Bench in the cases referred supra. Accordingly I do not find any reason to interfere with the decision rendered by learned CIT(A). Accordingly I confirm his order.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 21.07.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/07/2022

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,

(Assistant Registrar)
ITAT, Mumbai

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