

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA Nos. 939 to 941/Mum/2022
(Assessment Years 2008-09 to 2011-12)

Income Tax Officer
Ward 25(3)(1)
Room No. 233, 2nd Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
Bandra (E), Mumbai-400 051

Vs.

Vikas Manohar Bafna
Unit No.75, 2nd Floor,
Ratanajyot,
Industrial Estate, Irla
Gaothan Lane,
Vile Parle (West),
Mumbai-400 053

(Appellant)

(Respondent)

PAN No. AABPB 8501 E

Assessee by : None
Revenue by : Shri Vranda U Matkari, DR

Date of hearing: 27.07.2022
Date of pronouncement : 27.07.2022

ORDER

PER BENCH:

01. These are the three appeals filed by the Income Tax Officer, Ward 22(3)(1), Mumbai (the learned Assessing Officer) in case of Vikas Manohar Bafna for A.Ys. 2009-10, 2010-11 and 2011-12 on the same issue. Despite notice assessee did not turn up and therefore, the appeals are decided on the merits of the case as per information available on record.
02. For A.Y. 2009-10 in ITA No.939/Mum/2022, the learned Assessing Officer has raised following three grounds of appeal:-

"1 Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in

restricting the disallowance to 6.5% of accommodation entries of purchase bills, which according to information received from Sales Tax Department were issued by dealers who are indulging in issuing bogus bills and not disputed by CIT(A), as against addition of 100% on total bogus purchase by A.O. ignoring that the assessee was unable to submit purchase invoice issued by the said parties, stock register to prove that the movement of goods, transport receipts, delivery challans and goods receipt note in proof of having taken delivery of goods etc. thereby failing not only to prove genuineness of purchase but also the utilization of the purchases shown from bogus parties.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in restricting the disallowance to 6.5% of accommodation entries of bogus purchase bills as against addition of 100% on total bogus purchase by A.O. by taking stand that when the total sales is accepted by the AO then entire purchase cannot be added without appreciating the fact that the assessee did not even produce the stock register and, therefore, purchases in quantitative terms were never tallied with sales and, therefore, it was possible for the assessee to inflate the purchases by the complete amount in bogus purchase bills.

3 And without prejudice to the ground No. (i) & (ii), whether, on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in not going

into the source of purchases outside the books while restricting the disallowance to 6.5% of accommodation entries of bogus purchase bills as against addition of 100% on total bogus purchase by A.O. after having upheld that the impugned purchases were from entry providers which implied by means that the corresponding purchases were made from unknown parties and therefore even the source of purchases from such unknown parties ought to have been added u/s.69C of the Income Tax Act, over and above the addition made on profit having given above finding."

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

03. The identical grounds were also raised for A.Y. 2010-11 and 2011-12.
04. We first take up the appeal of the learned Assessing Officer for A.Y. 2009-10.
05. Brief facts of the case shows that assessee is an individual engaged in the business of trading in imitation jewellery. He filed his return of income on 18th September, 2009 at ₹ 9,98,340/-. Subsequently, information was received by Commissioner of Income-tax (Appeals)-21, Mumbai (the learned CIT (A)) from sales tax department that the assessee has obtained accommodation entries. Accordingly, the reasons were recorded and notice under Section 148 of the Act was issued on 18th March, 2013. According to the information assessee has obtained accommodation entry from three different entities whose

permanent account number and Tin number was mentioned. The total amount of accommodation entry is ₹27,25,493/-. The bill providers also in the statement have admitted so.

06. In response to the notice under Section 148 of the Act, on 8th April, 2013, assessee reiterated the original return filed on 18th September, 2009. During the course of assessment proceedings, assessee filed ledger account of the parties but did not furnish purchase invoices, bank statements, stock register, transportation receipts and delivery challans to substantiate the purchases. The show cause notice was issued on 5th March, 2014, which was not responded to and therefore, the learned Assessing Officer made an addition of ₹27,25,493/- of the bogus purchases. During the course of assessment proceedings, it was also found that assessee has made payment of ₹19,02,900/- in violation of the provision of Section 40(A)(3) of the Act in excess of ₹20,000/- and therefore, same was also added.
07. The total income was computed at ₹56,25,840/- by passing an order under Section 143(3) read with section 147 of the Act on 19th March, 2014.
08. Assessee aggrieved with the order preferred the appeal before the learned CIT (A). With respect to bogus purchases of ₹27,25,493/-, the learned CIT (A) held that 100% of the bogus purchases cannot be added in the hands of the assessee but only profit embedded therein is the income. He computed the profit of the assessee at the rate of 6.5% of the transaction of ₹27,25,493/- amounting to ₹1,77,157/- and sustained the addition to that extent.

He also deleted the disallowance under Section 40A(3) of the Act . In this year, he held that though purchases have been made during this year, but payments have been made subsequently, and therefore, it should be chargeable to tax as income of the subsequent years.

09. The learned Assessing Officer aggrieved with the order of the learned CIT (A) with respect to restricting the addition on account of bogus purchases at 6.5% of accommodation entries. All the three grounds are related to that.
010. The learned Departmental Representative vehemently submitted that the assessee has failed to show the purchases and its genuineness and therefore, only 100% of the accommodation entries are required to be added. She further submitted that the learned CIT (A) restricted the addition to the profit embedded therein by not considering the decisions of Hon'ble Supreme Court. Therefore, according to her, the order of the learned CIT (A) is not sustainable.
011. We have carefully considered the contentions of the learned Departmental Representative and the orders of the lower authorities.
012. The fact shows that assessee is an individual, obtained the purchase bills from three different parties amounting to ₹27,25,493/-. These parties have admitted that they have not supplied the goods, therefore, the only issue is that in this circumstances whether 100% of the purchases should be added as income of the assessee or merely the profit embedded therein is the income. The learned CIT (A)

relying on the decision of Hon'ble Gujarat High Court in case of CIT vs. Smith P Seth 356 ITR 451, wherein, it has been held that once the sale is accepted, the purchases cannot be questioned and entire purchases cannot be added but only profit element embedded therein could be added. The learned CIT (A) therefore has computed the profit margin at the rate of 6.5% of the purchases.

013. The learned Departmental Representative did not question the profit rate of 6.5%. We also find that the learned CIT (A) has taxed the element of profit therein. There cannot be any standard or fixed benchmark of such estimate disturbing sales, we disagree with that because some profit has already been offered by assessee by showing sales. Further, 6.5% of profit in Imitation Jewellery business also cannot be said either too low or unreasonable. In view of this, the order of the learned CIT (A) is upheld. Accordingly, Ground nos. 1 to 3, are dismissed.

014. In the result, appeal of the learned Assessing Officer is dismissed.

015. For A.Y. 2010-11, on identical facts the learned Assessing Officer made an addition of bogus purchase of ₹92,67,852/-. He also made an addition of commission expenditure for obtaining such accommodation entries. The learned CIT (A) restricted the addition to the extent of 6.5% of the accommodation entries. On similar grounds, the learned Assessing Officer challenged the order of learned CIT (A).



016. Similarly, in A.Y. 2011-12, the learned Assessing Officer made an addition of ₹1,68,50,694/- of bogus purchases, which were restricted by the learned CIT (A) to 6.5% of the profit and the order of the learned CIT (A) is challenged before us.

017. In view our decision in appeal of the learned Assessing Officer for A.Y. 2009-10, for the same reason, we dismiss the appeal of the learned Assessing Officer for A.Ys. 2010-11 and 2011-12.

018. In the result, all these three appeals filed by the learned Assessing Officer are dismissed.

Order pronounced in the open court on 27.07.2022.

Sd/-
(KULDIP SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.07.2022

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.

BY ORDER,

True Copy//

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