

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1775/Mum/2020 (A.Y. 2007-08)

Kanchi & Son Imports P. Ltd.
1501, Mahindra Heights,
Tardeo Road, Mumbai-400034.
PAN: AACCK0634K

..... Appellant

Vs.

ITO-6(3)(3),
524, Aayakar Bhavan,
M.K. Road, New Marine Lines,
Mumbai-400020.

..... Respondent

Appellant by	:	Sh. Dinesh Shah & Shreya Doshi
Respondent by	:	Sh. Pramod Nikalje
Date of hearing	:	15/06/2022
Date of pronouncement	:	08/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as ('CIT(A)'] dated 17.03.2020 for the Assessment Year (AY) 2007-08. The assessee has raised the following grounds of appeal:

"1. The ITAT had directed the A.O. to make additions to the extent of 6% of value of alleged bogus purchases (i.e 6% of Rs 1.17 crores = Rs 10.65 lakhs) and give

credit for NP already declared by the appellant (i.e. 2.38% of Rs 1.17 crores = Rs 4.22 Lakhs). The Learned CIT(A) & Assessing Officer have erred in giving effect to order of ITAT by estimating income at 6% of value of alleged bogus purchases (i.e. 6% of Rs 1.17 crores = Rs 10.65 lakhs) and not giving credit of GP of 2.38% (i.e. 2.38% of Rs 1.17 crores = Rs 4.22 lakhs) already declared by the assessee.

2. As per ITAT, set off and carry forward of business losses shall be made as per provisions of Income Tax Act, 1961. However, the A.O. has not considered the business loss of Rs 1.60 crores of the current year while making addition at the rate of 6% of the value of alleged bogus purchases (Rs 10.65 lakhs). The AO, has violated provisions of Section 70 & Section 72 by not considering set off of current year business losses and carry forward of business losses.

3. Section 115BBE came into force by Finance Act, 2012 which was prospectively applicable. By Finance Act, 2016; subsection (2) was amended and accordingly loss were not allowed to be set off against any income u/s 68,69,69A, etc. However, none of these provisions were applicable for AY 2007-08 and hence, non consideration of loss of Rs 1.60 crores against addition of Rs 10.65 lakhs is arbitrary.

4. On perusal of the assessment order, we conclude that the A.O. has passed a remark that books of accounts to the extent of alleged bogus purchases are rejected and CIT(A) in his order dated 17.03.2020 has rejected the books of the assessee. Assessee's total sales turnover for the year under consideration is Rs 17,17,42,292 and because of some alleged bogus purchases of Rs 1,77,50,000 whole books of accounts cannot be rejected. But, the A.O. has rejected the books of accounts partially i.e. only to the extent of alleged value of bogus purchases.

5. The appellant craves leave to add, alter or delete any grounds of appeal.”

2. This appeal of assessee instituted against the order of Ld. CIT (A)-12, Mumbai. It's a second round of appeal in the case of assessee for the same A.Y. Appeal of the assessee were heard earlier also by Mumbai ITAT in ITA No.2891/Mumbai/2017 and C.O No 247/Mumbai/2017. In this order of ITAT certain directions were given to the A.O to re-compute the income of the assessee.

3. A.O passed an order u/s 143(3) r.w.s. 254 of the Act. Assessee was not agreed with the order passed by the A.O in compliance to directions of the ITAT. Against this order of A.O assessee preferred an appeal before the Ld. CIT (A)-12, Mumbai. But here also assessee's contentions were not accepted. Hence, assessee again approached ITAT through this appeal.

4. Final hearing in this case was done on 15th June 2022. Before that hearing itself assessee opted for the direct tax Vivad Se Vishwas Act 2020(VSVS) and paid Rs 361994/- as full and final payment as quantified under the scheme of VSVS.

5. Assessee informs this bench vides its letter dated 14.05.2022 filed on 23.05.2022 about opting the scheme. With this letter assessee enclosed form-3, 4 and 5 with challan of Rs 3,61,994/-. In this letter, assessee requested for withdrawal of appeal, as the matter has already mutually settled under VSVS, 2020.

6. We have gone through the documents filed by the assessee and the Ld. DR also agreed with this request of the assessee. Hence, we accept this application of assessee.

7. In the result, appeal of the assessee is dismissed as withdrawn.

Order pronounced in the open court on 8th day of September, 2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 08/09/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai