

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2254/Mum/2021 (A.Y. 2009-10)
ITA No. 2255/Mum/2021 (A.Y. 2010-11)

Ram Ujagir Ram Sabda Pandey,
38, Sethia Compound,
Ram Sabda, Darukhana,
Mumbai-400010
PAN: AGUPP3934C

..... Appellant

Vs.

ITO, Circle-20(3)(1),
Piramal Chamber
Mumbai-400013

..... Respondent

Appellant by	:	None
Respondent by	:	Sh. Ashish Kumar, Sr. DR
Date of hearing	:	04/07/2022
Date of pronouncement	:	19/09/2022

ORDER

PER GAGAN GOYAL, A.M:

These appeals by the assessee are directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ('NFAC')] dated 05.10.2021 & 06.10.2021 for the Assessment Years (AY) 2009-10 & 2010-11 respectively. The assessee has raised similar grounds of appeal in both the AYs. Firstly, we are taking ITA No. 2254/Mum/2021 for A.Y. 2009-10 as lead case. The following grounds of appeal:

"In the facts and circumstances of the case and in law the Assessing Officer 20 (3) (1) erred in adding to Income U/s. 69C of the income tax act, 12.5% of the purchases made from following parties :

Sr.No.	Name of the Party	F.Y.	Amount (Rs.)
1.	M/s. Siddhivnyak Steel	2008-09	165052
2.	M/s Channel Tube corporation	2008-09	164944
3.	M/s. Asian Paint	2008-09	2911475
4.	M/s. Maruti Steel Traders	2008-09	284116
5.	M/s. Revati Steel Traders	2008-09	450260
6.	M/s. Shiv Industries	2008-09	56978
7.	M/s. Sairam Trading corporation	2008-09	762029
8.	M/s. Garima Steel Traders	2008-09	1787551

Total addition U/s. 69C of Rs. 886,900/- i.e. 12.5% of Rs. 7095207/- was made by assessing officer 20(3)(1). In the facts and circumstances of the case and in law, the commissioner of Income tax (Appeal) NFAC erred in confirming addition of Rs. 886,900/- made by assessing officer.

(B) RELIEF PRAYED

1. To delete the addition of Rs. 886,900/- made u/s 69c of the Income tax act."

2. Brief facts of the case are that the assessee had filed its return of income on 19-09-2009 declaring total income @Rs 3,29,060/-. Thereafter an information received from the office of DGIT (Inv.), Mumbai about various parties involved as hawala dealers involved as issuer of bogus purchase bills to various assesses of Mumbai to suppress the profit. Names of the parties involved in issuing the bills and beneficiaries also confirmed by the sales tax authorities of states. The details of bills and parties from whom bills have been taken are as provided in the grounds of appeal supra.

3. Based on above information a notice u/s 148 was issued to the assessee on 29-03-2016. In response to the said notice assessee vide letter dated 20-07-2016 requested to treat the original return filed as a return in response to notice u/s 148.

During the year under consideration assessee was engaged in the business of trading in iron and steel items.

4. During the course of assessment proceedings notice u/s 33(6) were issued to the parties involved in issuing the bills to the assessee. But none of the party came forward in response to notice u/s 133(6). Then A.O asked the assessee to produce the parties for verification but assessee also expressed his inability to produce those parties. During the assessment proceedings assessee has merely furnished ledger accounts and invoices of the relevant purchase. Despite of specific query from A.O about delivery challans and details of transportation, assessee failed to produce the same. In addition to above the defaulter parties confessed before the sales tax authorities that they are in the business of issuing bills without actually selling any materials. In view of this A.O treated these transaction of purchase as in-genuine and applying the decision in the case of M/s Vijay Proteins Ltd (1996 58 ITD 428 Ahd) 12.5% of these transactions is disallowed amounting to Rs 8,86,900/- u/s 69C.

5. Being aggrieved with the order of A.O assessee preferred an appeal before the Ld. CIT(A)-32,Mum(NFAC). Ld. CIT(A) also endorsed the views of A.O and dismissed the appeal of assessee.

6. Against this order of Ld. CIT(A) assessee preferred an appeal before us . we have gone through the order of the A.O, order of the Ld. CIT(A) and arguments

and submissions of the assessee emanating out of various orders and paper-book submitted by the assessee. Following facts are being emerged out of above in the matters as under:

- a) Assessee's case was assessed u/s 147 based on inputs received from state sales tax department and DGIT (Inv.), Mumbai ;
- b) Parties involved in issuing bogus purchase bills, confessed about their modus operandi before the state sales tax authorities
- c) Assessee was not able to produce any evidence about actual delivery of goods from these alleged parties.
- d) Vide page-no 14-20 of paper-book filed on 05-05-2022 assessee himself opted for amnesty scheme of state sales tax department and paid taxes voluntarily on the transactions entered into with the alleged party. Now the in-genuineness of the transactions entered into by the assessee with the alleged parties is not under doubt i.e. the purchases made by the assessee with the alleged parties were bogus.
- e) Department hadn't challenged the books of accounts and specifically the sales of the assessee.

7. In view of the above facts we can reasonably observe that assessee had made purchases in cash to avoid burden of indirect taxes. To introduce these transactions in regular books of accounts he entered into the bogus purchase transactions with

alleged parties. We confirm the findings of A.O treating these transactions as bogus purchase bills but we further relied on the decisions of Hon'ble jurisdictional high court in there following pronouncements as under.

- **[2019] 103 taxmann.com 459 (Bombay) Principal Commissioner of Income-tax-17 v. Mohommad Haji Adam & Co.**

Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessee was a trader of fabrics - In course of assessment, Assessing Officer noted that certain purchases made by assessee were bogus - He thus added said amount to assessee's taxable income - Tribunal noted that there was no discrepancy between purchases shown by assessee and sales declared - Accordingly, Tribunal restricted addition limited to extent of bringing gross profit rate on purchases at same rate as applied in other genuine purchases – Whether, on facts, no substantial question of law arose from Tribunal's order - Held, yes [Paras 8 and 9][In favour of assessee]

- **[2022] 141 taxmann.com 245 (Bombay) Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd.***

I. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2011-12 - Assessing Officer treated purchases made by assessee as bogus purchases and disallowed in totality - Commissioner (Appeals) directed Assessing Officer to disallow 12.5 per cent of bogus purchases and to add 12.5 per cent of amount of purchases to income of assessee - Tribunal upheld view of Commissioner (Appeals) - Revenue contended before High Court that bogus purchases ought to have been disallowed in totality - It was noted that if factum of sales had been accepted by department then even if it was established that there were bogus purchases, it was not necessary that entire amount of purchases should be added to income of assessee as there could not be a sale without purchase - In instant case sales effected by assessee had been accepted by department - Whether Tribunal was right in upholding view of Commissioner (Appeals) - Held, yes [Para 4] [In favour of assessee]

8. Accordingly, respectfully following the decisions of Hon'ble Jurisdictional High Court, we restricted addition limited to the extent of bringing gross profit rate on purchases at same rate as applied in other genuine purchases. We direct the A.O to re-

compute the disallowance on alleged bogus purchase at the rate on which assessee was chargeable to VAT in the relevant F.Y.

9. In the result, appeal filed by the assessee is partly allowed with the above directions.

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10. As the facts of the appeal, ground raised by the assessee and decision of the Hon'ble Jurisdictional High Court is equally applicable to this appeal also our findings are *mutatis mutandis* applicable. In the result, this appeal of the assessee is partly allowed.

Order pronounced in the open court on 19th day of September, 2022.

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Mumbai, दिनांक /Dated: 19/09/2022

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.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai