

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

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3749/Mum./2019
(Assessment Year : 2009-10)

ITA no.3750/Mum./2019
(Assessment Year : 2010-11)

Challenger Computers
17, Ganga Building, 1st Floor
Opp. Police Station, Topiwala Lane
Mumbai 400 007 PAN – AACFC3477B

..... Appellant

v/s

Income Tax Officer
Ward-19(1)(3), Mumbai

.....Respondent

Assessee by : Shri K.J. Bafna
Revenue by : Ms. Indira Adakil

Date of Hearing – 15/02/2023

Date of Order – 20/02/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 08/02/2019, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-3, Mumbai, [*"learned CIT(A)"*], for the assessment years 2009-10 and 2010-11.

2. These appeals were listed for hearing before us pursuant to the order dated 03/01/2023, passed by the Co-ordinate Bench of the Tribunal in M.A.

no.297 & 298/Mum./2019, whereby the earlier common ex-parte order dated 18/01/2021, was recalled and the appeals were directed to be fixed for hearing afresh.

3. Since the present appeals pertained to the same assessee involving similar facts and issues, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2009-10 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2010-11.

4. In both appeals, the assessee has raised similar grounds of appeal. For reference, the grounds of appeal raised by the assessee in ITA No. 3749/Mum./2019, for the assessment 2009-10, are as under:--

"1. The learned ITO 19(1)(3) Mumbai (hereinafter referred to as learned I.T.O. only) erred in issuing notice u/s 148 of the Income Tax Act, 1961 without any basis & justification & hence order passed in bad in law & the learned CIT(A)-3, Mumbai (hereinafter referred to as learned CIT only) erred in confirming the same.

2. The learned Income Tax Officer erred in adding a sum of Rs. 4,30,861/- (Rs. Four lac thirty thousand eight hundred sixty one only) to the income being disallowance on account of alleged to be bogus purchase Rs. 34,46,888/- at 12.5% which is very very on higher side & also without any basis & justification & the learned CIT erred in confirming the same. They failed to understand that by adding @12.5% of G.P. to total income declared it amounts to double taxation & hence liable to be deleted.

3. The learned ITO as well as learned CIT (A) failed to considered the fact that the appellant has already declared GP on Purchase @ 1.59% They ought to have considered this G.P. ratio while making addition in income on estimated basis.

4. The learned ITO has not doubted / challenged genuineness of sales. He has accepted it in toto He has not even rejected the books of accounts and Purchase & other relevant supporting produced before him & thus he failed to understand that if no purchases are made how sale could be effected & the learned CIT(A) erred in not passing any speaking order of this point also.

5. The learned ITO erred in making the addition on suspicion & learned CIT(A) erred in confirming the addition. They failed to understand that suspicions however strong cannot form basis of our assessment as there are no evidence to conclude that transactions are bogus.

6. The learned ITO erred in levying interest u/s 234B & 234C of as well as & learned CIT (A).

7. Your appellant crave leave to add, alter and /or amend any ground of appeal on or before hearing."

5. The brief facts, as emanating from the record are: The assessee is a partnership firm engaged in trading in computers and its parts. For the assessment year 2009-10, the assessee filed its return of income on 30/09/2009, declaring a total income of Rs.7,59,369. The return of income filed by the assessee was selected for scrutiny and vide order dated 17/12/2011, the assessment was completed under section 143(3) of the Act assessing the total income of the assessee at Rs.8,08,380. Pursuant to the information received from DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of Maharashtra, that the assessee is a beneficiary of bogus purchases, the re-assessment proceedings under section 147 were initiated in the case of the assessee and notice under section 148 of the Act was issued on 06/03/2014. In response to the notice, the assessee requested that the return of income originally filed be treated as a return of income filed in response to the notice under section 148 of the Act. During the re-assessment proceedings, the Assessing Officer sought the details regarding the purchases as well as the corresponding sales made by the assessee. The assessee was also asked to produce the books of account, bills, and vouchers for verification. The Assessing Officer, vide order dated 11/03/2015, passed under section 143(3) r/w section 147 of the Act, held that few details were

furnished by the assessee but the same could not link the purchases with corresponding sales and the books of account were also not produced for verification by the assessee. However, the Assessing Officer proceeded to consider the profit element @ 12.5% of the total non-genuine purchases and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the appeals filed by the assessee both with respect to the issue of jurisdiction invoked under section 147 of the Act as well as the addition made on merits by the Assessing Officer. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned A.R.*") submitted that the purchases alleged to be non-genuine are in the regular/routine course of business of the assessee and the same amounts to 1.05% of the total purchases. The learned A.R. further submitted that these purchases are from the local market wherein the delivery is carried out by a delivery boy and hence no delivery challan or vehicle number is available. The learned A.R. also submitted that the details such as ledger account, purchase invoice, bank statement showing that purchases were made by account payee cheque, details of items purchased, and its corresponding sales to various parties with quantity were submitted before the lower authorities. However, these parties could not be produced as the assessee has no control over them.

8. On the contrary, the learned Departmental Representative by vehemently relying upon the order of the lower authorities submitted that the

Assessing Officer had conducted an independent enquiry and made the impugned addition.

9. We have considered the rival submissions and perused the material available on record. In the present case, after the completion of the original assessment under section 143(3) of the Act, the Assessing Officer received information from the DGIT (Inv.), Mumbai, as well as the Sales Tax Department, Government of Maharashtra, indicating that the assessee is a beneficiary of bogus purchase bills. On the basis of such information, which is a new and tangible material, the Assessing Officer had formed the belief that income chargeable to tax has escaped assessment requiring re-opening of assessment under section 147 of the Act. Therefore, in view of the above, we uphold the re-opening of assessment under section 147 of the Act in the facts of the present case. Accordingly, ground no.1, raised in assessee's appeal is dismissed.

10. From the record, it is evident that the assessee has alleged to have made bogus purchases from the following parties in the assessment year 2009-10.

<i>Sr. No.</i>	<i>Name of Parties</i>	<i>Bill Amount</i>
1.	<i>Rajshree Enterprises</i>	<i>Rs.3,66,675</i>
2.	<i>Ankita Impex</i>	<i>Rs.340</i>
3.	<i>Virani Enterprises</i>	<i>Rs.8,79,528</i>
4.	<i>Keligare</i>	<i>Rs.22,00,345</i>
	<i>Total:</i>	<i>Rs.34,46,888</i>

11. In order to determine the genuineness of the transaction, the Assessing Officer during the re-assessment proceedings, sought details regarding the purchases made from the aforesaid parties as well as the corresponding sales of goods and also directed the assessee to link the purchases with sales supported by bills and vouchers, we find that the Assessing Officer though concluded that the assessee could not link the purchases with corresponding sales and also could not produce the books of account for verification, however, proceeded to make the addition only to the extent of 12.5% of the alleged non-genuine purchases by considering the same to be the profit element involved in this transaction. We further find that despite the aforesaid findings, the Assessing Officer has not disputed the sales made by the assessee during the year. As per the assessee for the assessment year 2009-10, out of the total alleged bogus purchases of Rs.34,46,888, the assessee made sales of Rs.35,12,385, resulting in a gross profit of Rs.65,497. As per the assessee, the gross profit rate on these purchases, which are alleged to be bogus, is 1.86% which is higher than overall gross profit which is 1.56% declared by the assessee. We find that the Co-ordinate Bench of the Tribunal in ITA no.5156/Mum./2018, order dated 19/09/2019, for A.Y. 2010-11, in Shri Narpat H. Mehta v/s ITO, while dealing with a similar issue of bogus purchases observed as under:-

"4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in

writ petition no 2860, order dt 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However in that case all the supplies were to government agency. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 there off) the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

5. We respectfully following the aforesaid judgement of the Honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases, Needless to add the assessee should be granted adequate opportunity of being heard."

12. Thus, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal which in turn has followed the decision of the Hon'ble Bombay High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019, we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the Assessing Officer with the direction to restrict the addition as regard the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. Needless to mention that no order shall be passed without providing reasonable opportunity of being heard to the assessee. Accordingly, grounds no.2 to 5, raised in assessee's appeal are allowed for statistical purposes.

13. The issue arising in ground no.6, pertains to levy of interest u/s 234B and 234C of the Act, which is consequential in nature. Therefore, ground no.6, is allowed for statistical purposes.

14. In the result, the appeal by the assessee for the assessment year 2009-10 is partly allowed for statistical purposes.

ITA No. 3750/Mum./2019
Assessee's Appeal- A.Y. 2010-11

15. Since, similar issues arising from similar facts are raised in the appeal for the assessment year 2010-11, therefore, our findings/conclusions rendered in assessee's appeal for the assessment year 2009-10 shall apply *mutatis mutandis* to this appeal as well.

16. In the result, the appeal by the assessee for the assessment year 2010-11 is partly allowed for statistical purposes.

17. To sum up, both appeals by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 20/02/2023

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/02/2023

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai