

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 430/Mum/2023 (A.Y. 2010-11)

Biju Abraham Meppurathu Pactel, 114-116, Mody Street Fort, Mumbai-400 001. PAN : AJEPM7874M	Vs.	ITO, Ward 1(1) 6 th Floor, Ashar IT Park, Road No. 16Z Wagle Estate Thane-West Pinocode No. 400604.
(Appellant)		(Respondent)

Assessee by	Shri Subodh Ratnaparkhi
Department by	Ms. Naina K. Kumar
Date of Hearing	18.04.2023
Date of Pronouncement	18.04.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 12.01.2023 passed by National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition relating to the alleged bogus purchases.

2. We have heard the parties and perused the record. The assessee is engaged in the business of trading in computer and also undertakes computer related services. Based on the information received from the sales tax department of Maharashtra Government that certain dealers are providing bogus purchase bills without actually supplying the material, the Assessing Officer reopened the assessment of the year under consideration by issuing notice under section 148 of the Act, on noticing that the assessee has purchased from one of such dealers materials worth Rs. 6,13,125/-. In the reopened assessment proceedings, the Assessing Officer disallowed the

entire purchase amount, referred above and same was also confirmed by the learned CIT(A).

3. The Learned AR submitted that the assessee has purchased second hand copier and printing machines and sold all of them during the year under consideration. Inviting our attention to page No. 14 & 15 of the order of the learned CIT(A), the learned AR submitted that the assessee has purchased five quantities of “used copier machines” and ten quantities of “used printing machines”. The entire fifteen quantities have been sold during the year under consideration. These facts have been noted down by the learned CIT(A) in his order. However, the learned CIT(A) did not accept the above said explanations for the reason that the description of products mentioned in sales invoices did not match with the description given in purchase invoices.

4. The Learned AR submitted that the purchase invoices mentioned only “used copier and used printer”. After refurbishing them, the assessee has sold them by mentioning the brand name of the product. He submitted that the examination of the quantity details would show that the aggregate quantity of purchases and sales would tally. He further submitted that the assessee does not have control in preparation of bills issued by the suppliers and hence the assessee cannot be found fault with for not mentioning exact product brand names. He submitted that the products purchased through the alleged bogus bills have been sold in entirety during the year under consideration. He further contended that, since the sales have been accepted, the tax authorities are not justified in disallowing the entire amount of purchases.

5. The Learned DR on the contrary, supported the order passed by the learned CIT(A).

6. Having heard the rival contentions, we are of the view that there is merit in the submissions made by learned AR. When the sales and quantity, details have been accepted, then it is not proper to disallow entire amount of purchases. In the case of alleged bogus bills, the presumption is that the assessee would have purchased goods from the grey market and obtained accommodation bills from the dealers. In that kind of situation, at the most, the profit element involved in making such kind of purchases from the grey market can be added to the income of the assessee. Accordingly, in the facts and circumstances of the case, we are of the view that the profit element involved in the alleged bogus purchases may be estimated at 5% of the value of purchases and the same would meet the ends of justice. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to restrict the addition to 5% of the value of alleged bogus purchases. We order accordingly.

7. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open court on 18.4.2023.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 18/04/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai