

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.298/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2010-11)

Satyaprakash Maruti Prasad Sharma 55/4, Rishikesh Bhawan, Aai Mai Merwanji Street, Parel, Mumbai-400012.	बनाम/ Vs.	ACIT-20(3) R. No. 615, 6 th Floor, Piramal Chambers, Lalbaug, Mumbai- 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALJPS5054L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Vimal Punamiya	
Revenue by:	Ms. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 12/04/2023
घोषणा की तारीख /Date of Pronouncement: 29/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 10.01.2023 passed for AY 2010-11.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.41,79,889/- on account of bogus purchases.

3. Brief facts as noted by the AO are that the assessee is an individual engaged in the business as works contractor (*for supply of display counters by making it at the site of customer*). The assessee had filed return of income on 12.10.2010 declaring total income of Rs.34,12,777/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). Later, an information was received from the office of DGIT(Inv.), Mumbai that the assessee was engaged in showing bogus purchases and is a beneficiary of such transaction. The AO has taken note of fifteen (15) parties from whom it was alleged



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

that assessee got bogus bills to the tune of Rs.47,52,240/-. (*The details of transaction with fifteen (15) parties are given page no. 2 of re-assessment order*). Based on the aforesaid information, the AO reopened the assessment for AY 2010-11 in the year 2017 u/s 147 of the Act and confronted the assessee with the adverse information about the assessee's dealing with fifteen (15) accommodation entry providers; and pursuant to which the assessee furnished copies of purchase invoice from the fifteen (15) parties along with bank statement reflecting payment to the said parties. However, according to AO, no other supporting documents were filed to verify the genuineness of the purchases. Accordingly, he issued notices u/s 133(6) of the Act asking the parties to provide all the details of the transaction along with the supporting documentary evidences. According to the AO, neither he received any reply from them nor the Inspector could trace the parties. And according to AO, he asked the assessee to produce the copy of stock register, inward outward register, transport details etc to substantiate the claim of purchase. And in response, the assessee submitted that the assessee being a works-contractor for supply of display counters for clients, used to get the work executed at the clients premises and therefore raw materials got delivered at the site of customer. Therefore, the assessee does not maintain the stock register. In such circumstances, since the raw materials for making display counters (viz plywood etc) were procured at the site of clients, assessee does not maintain the delivery challan, transport details etc. The AO did not accept the explanation given by the assessee and according to him, assessee failed to co-relate the alleged purchases with the job work done i.e. sale. And since the assessee failed to



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

furnish any documentary evidences, other than bills and bank statements, in support of his claim of purchase from the alleged fifteen (15) parties, the AO came to the conclusion (at para no. 7.1) *“In view of the fact that the assessee had failed to furnish any documentary evidences, other than bills and bank statements, in support of his claim of purchase from the said alleged parties, the undersigned has come to the conclusion that the said purchases were made from the grey market and had procured the bills from the said parties to make the purchases look genuine. The whole transaction by the assessee is nothing but to bring out of books income into the main stream and at the same time reduce tax liability”*. Thereafter, he computed the gross profit of this year by taking note of the G.P of earlier AY. 2009-10 wherein assessee had shown gross profit 27.08% whereas in the relevant assessment year 2010-11, the assessee had only shown 20.71%. Thus, according to the AO the lower G.P shows that the assessee has suppressed the GP by debiting bogus purchases. The AO relying on the decision of the Hon’ble Supreme Court in the case of M/s. N. K. Proteins Ltd. in SPL @ CC Nos. 769 of 2017 2017-TIOL-23 (SC) has added the entire amount of Rs.47,52,240/- and has held as under: -

“14. In view of the above discussion, I am satisfied that the transaction made by the assessee with the above said alleged party is covered by section 69C and the entire amount of Rs.47,52,240/- corresponding to the amount of purchases claimed to have made by the assessee from the non-existent/bogus purchase entry provider parties needs to disallowed as unexplained expenditure. The assessee vide letter dtd. 29.11.2017 has claimed that out of the total



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

amount of purchase of Rs.47,52,240/0, tax amount was Rs.4,37,224/-, set off for which was claimed by the assessee from the Sales Tax Department but the same was rejected and assessee had paid the Rs.4,72,351/- i.e. tax plus interest thereon, to the Sales Tax Department, copy of challan is on record. In view of the natural justice and to avoid double taxation to that extent, the purchase amount for the purpose of addition u/s 69C is taken at Rs.42,79,889/-.

15. Notwithstanding the above conclusion that the source of the purchases from the grey market are not explained and the amount is disallowable u/s 69C, it is also a fact that in the absence of any proof of payment by way of account payee crossed cheques for the grey market purchases, the assessee had made payments in cash only. These cash payments clearly attracts the provision of section 40A(3) of the Income Tax Act and are disallowable as such.”

4. Thus, AO made an addition of Rs.42,79,889/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the AO. Aggrieved, the assessee is before us.

5. Assailing the action of the Ld. CIT(A), the Ld. AR submitted that the assessee had filed all the documents before the AO *albeit* through the mode of email (*and not through the department portal since, this was the initially years of adjudication before the NFAC*). And therefore, the Ld. CIT(A) has observed that the assessee has not responded to the notices issued by him. Having said so, the Ld. AR pointed out that the AO has concluded at para no. 7.1 that the assessee might have purchased the goods from the grey market and has procured the bills from the said parties to make the purchase look



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

genuine. Accordingly AO was of the opinion that assessee has brought the un-accounted money into the main stream at the same time reduce its tax liability. And has made 100% addition of the entire purchase which action of the AO is erroneous, since AO by doing so did not disturb the sales/turnover shown by the assessee which is to the tune of Rs.5,93,32,705/-. Without doing so, according to Ld AR, the AO erred in making the disallowance of Rs.42,79,889/- (i.e, 100% disallowance). According to the Ld. AR, it is common knowledge that without purchases, there cannot be any sale. In the case of the assessee, the assessee is into works contract of display items and as per the job work order given by the customer, (based the design given), the assessee procures the raw material from dealers of plywood etc. And thereafter it gets delivered at the site of the customer and then assessee's employees would execute the job-work at the site of client. Therefore, stock- register as such is not maintained by the assessee, since it is not in the trading activity. We note that the AO has concluded at para 7.1 of assessment order that the assessee might have purchased raw material from the grey market and in order to legitimise the same, must have used the accommodation entry/bills for the purpose of reducing the tax liability. And thereafter went on to make 100% disallowance of purchases without disturbing the sales.

6. AO it is noted has made contradictory stand in this case. The AO on one hand came to the conclusion at Para 7.1 of his order wherein he observes *"In view of the fact that the assessee had failed to furnish any documentary evidences, other than bills and bank statements, in support of his claim of purchase from the said alleged*



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

parties, the undersigned has come to the conclusion that the said purchases were made from grey market and has procured the bills from the said parties to make the purchases took genuine. The whole transaction by assessee is nothing but to bring out of books in came into the main stream and at the same time reduce tax liability”. And thereafter AO made 100% disallowance of the expenditure of Rs. 42,79,888/- without disturbing the turnover of the assessee shown by assessee to the tune of Rs. 5,40,28,533/- (refer page 3 of PB). It is common knowledge that without purchases, no sales can be made. In such a factual sceneries, the Hon’ble Courts have held that only the profit embedded in such sale need to be added and not the entire purchases. It has to be kept in mind that the alleged events in question (i.e, bogus purchases) took place in AY 2010-11; and based on information received from office of DGIT (inv) that assessee has dealt with hawala operators for providing bogus bills, the AO re-opened the assessment and re-assessment was framed in 2017 i.e. after 7 years. When confronted with such adverse information (about dealing with hawala operators) the assessee filed Primary documents [*the assessee furnished copies of purchase invoice from the fifteen (15) parties along with bank statement reflecting payment to the said parties and the fact of making payment of VAT by assessee to suppliers*] to prove the Purchases & Sales of material with the 15 parties in question as well as the bank statements to prove the genuiness of the transaction. The AO’s conclusion (supra) reflects that he does not disbelieve the genuiness of the transaction with 15 parties, but AO erred in disallowing 100% disallowance of purchases when he accepts the turnover of assessee which action of AO cannot be countenanced.



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

Further, we find that AO erred in observing at Para 8 of his order that the assessee was not able to bring on record any documentary evidence which could have proved the genuineness of the said Purchases '*beyond doubt.*' According to us, such a '*standard of Proof*' is required only in Criminal Prosecution and not in the Income Tax proceeding wherein it is the "*Preponderance of Probability*". Thus it can be seen that AO's approach in this case was flawed and is fraught with inconsistencies and contradictions as noted supra. It suffers from non-application of mind. In such a scenario, as per the judicial precedent on the subject since AO has accepted the sales, 100% purchases need not be disallowed and instead, the profit embedded in the such purchases need only be taxed other than the entire disallowance of the purchases. Therefore, we set aside the impugned order of Ld. CIT(A) and taking note that the assessee has shown the 20.71% of gross profit, we direct the AO to re-compute the disallowance at 20.71% of Rs. 42,79,889/-.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 29/05/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/05/2023.
Vijay Pal Singh, (Sr. PS)



ITA No.298/Mum/2023

A.Y. 2010-11

Satyaprakash Maruti Prasad Sharma

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai