

THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND

ITA No. 7384/Del/2018
Assessment Year: 2010-11

Vinod Karsanbhai Patel, 208/2885, 2 nd Floor, Haryana Singh Road, Karol Bagh, Delhi 110005 PAN AACPP 0956 G	vs.	The ACIT, Central Circle-17, Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Hiren Mehta, CA Shri Nirbhay Mehta, CA
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	11.04.2023
Date of Pronouncement :	23.06.2023

ORDER

Per Chandra Mohan Garg:-

This appeal filed by the assessee is directed against the order dated 05.12.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2020-21.

2. The ld. assessee representative (AR) submitted that the assessee does not want to press ground no. 1 & 2 and hence the same are dismissed has not pressed. Ground no. 6 is general in nature which requires no specific adjudication. Remaining effective grounds for adjudication are as follows:-

3. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in sustaining 25% of addition made by the Ld. AO being 25% of 30,68,100/- by relying on the decision of Hon'ble High Court of Gujarat in the case of CIT vs. Bhlanath Poly Fab Pvt. Ltd. 355 ITR 290.*

4. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in sustaining the addition made by AO on account of alleged bogus purchase from M/s. Mani Prabha Impex Pvt. Ltd.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) was not justified and has erred in sustaining addition of Rs. 61,362/- on the presumption that commission of 2% was paid for arranging accommodation entries aggregating to Rs. 30,68,100/-.*

3. The Id. AR submitted that the Id. CIT(A) was not correct and justified in sustaining 25% of addition made by the Assessing Officer by relying on the decision of Hon'ble High Court of Gujarat in the case of CIT vs. Bholanath Polyfab P. Ltd. 355 ITR 290 (Guj.) amounting to Rs. 7,67,025/- being 25% of Rs. 30,68,100/- towards purchases made from M/s. Mani Prabha Impex P. Ltd. The Id. counsel also submitted that the Id. CIT(A) was also not justified in sustaining the addition on made by the Assessing Officer on account of alleged bogus purchases from M/s. Mani Prabha Impex P. Ltd. and also sustaining addition of Rs. 61,362/- on the presumption that the commission at the rate of 2% was paid for arranging accommodation entries of said amount of Rs. 30,68,100/-. The Id. AR submitted that the assessee submitted books of accounts during assessment proceedings which have not been rejected by the Assessing Officer and thus only on this count addition made by the Assessing Officer and partly sustained by the Id. CIT(A) is not sustainable in view of judgement of Hon'ble Gujarat High Court in the case of Yunus Hajiwala Ibrahim Fazalwala vs. ITO [2016] 70 taxmann.com 93 (Guj.).

4. The Id. AR submitted that the Hon'ble Bombay High Court in the case of PCIT vs. M/s. Mohammad Hazi Adam & company 103 taxmann.com 459 (Bom.) after considering the judgements of Hon'ble Supreme Court in the case of N.K Industries Ltd. vs. DCIT reported as [2017] –TIOL -23-SC-IT and judgment of Hon'ble Gujarat High Court in the case of Vijay Protein Ltd. vs. CIT 58 taxmann.com 44 (Guj.) held that when the Department has not disputed assessee's sales and there was no discrepancy between the purchases shown by the assessee and sale declared then the Tribunal correctly the addition limited to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases. The Id. AR submitted that in the present case no addition is warranted even if the purchases made from Mani Prabha Impex P. Ltd. are treated as bogus because the assessee before the authorities below as well as before this bench has submitted stock summary for FY 2009-10, ledger account & sales invoice issued by M/s Mani Prabha, stock register of LD-5 and LD-6 which is available at pages 63 to 67 of assessee paper book. He further submitted that the stock register shows that the goods purchased from M/s. Mani Prabha Impex P. Ltd. on 07.01.2010 was appearing in the closing stock as on 31.03.2010 and these items remained unsold at the end of financial period. The Id. AR further submitted that the stock register shows that this stock have been valued at cost and trading account debit side entry is tallying with the closing stock on credit side and there is no impact on the profit for the relevant period therefore no addition required to be made in the hands of assessee. The Id. AR submitted that maximum to maximum, without prejudice to the above, the only the profit element embedded in such purchases can be taxed, which is as per audited books of accounts was 4.08% GP in the case of assessee. The Id. AR prayed that entire

additions may kindly be deleted or alternatively GP rate of 4.08% as declared by the assessee may be applied to the impugned purchases.

5. Replying to the above, the Id. Senior DR strongly supported the orders of the authorities below.

6. First of all, from the assessment order, I note that the Assessing Officer made addition of Rs. 30,68,100/- on account of unexplained expenditure on bogus purchases u/s. 69C of the Act and also made addition of 2% of said amount on account of commission paid for obtaining accommodation entry amounting to Rs. 61,362/- u/s. 69C of the Act.

7. From perusal of first appellate order the Id. CIT(A) by relying judgment of Hon'ble Supreme Court in the case of N.K Proteins vs. DCIT (supra) and judgment of Hon'ble Gujarat High Court in the case of Vijay Proteins Ltd. (supra) restricted the addition to Rs. 7,67,025/- being 25% of allege purchases and also confirm addition of Rs. 61,632/- being 2% on account of commission paid for obtaining accommodation entries.

8. The main contention of assessee is that the Assessing Officer have not rejected books of accounts of assessee and therefore no addition can be made on estimation basis. Secondly, as per judgment of Hon'ble Bombay High Court in the case PCIT vs. M/s. Mohd. Hazi no addition is warranted even if the purchases are treated as bogus as the assessee did not sold the stock purchased from M/s. Mani Prabha during relevant period and same was shown as including in the closing stock as on 31.03.2010. Alternatively the Id. AR has contended that maximum to maximum GP rate declared by the assessee can be added as profit element embedded in the such purchases. In my humble understanding the quantum of purchases and the fact that at the end of year the entire impugned stock/purchases under allegation were not sold and thus including in the closing stock at the end of year. It is also not in dispute that the assessee has shown such purchases in the books of accounts and the same were also reflected in the P&L account on debit side as purchases and on credit side inclusive of closing stock. Therefore it is not a case of Assessing Officer that the assessee made purchases out of books of accounts by using unaccounted amount earned from undisclosed sources to attract charging provision of sec 69C of the Act.

9. In my humble view when the purchases have been shown in the books of accounts and the stock/goods purchases was remained unsold in the end of financial period thus including in the closing stock then no profit was flowing from such

transaction if it is gathered that the Assessing Officer alleged the same as bogus purchases. When the goods is physically available and shown in the stock register of assessee and even the assessee did not pay any sale consideration during the relevant financial period, in such a situation I am unable to see any accruing of any benefit or profit to the assessee which may attract charging provisions of tax. Therefore it is also not a case of the Assessing Officer that the assessee made payments against impugned purchases in cash out of unexplained and unaccounted income during the period and there is no adverse and positive material in the hands of Assessing Officer for alleging the same. These facts have not been controverted by the Id. Senior DR. In such a situation, in the totality facts and circumstances of the case I find that there was no logic or valid reason for the Id. CIT(A) to make disallowance of 25% of total purchases and to confirm addition on account of commission against accommodation entries in absence of any positive adverse material substantiating the factum of providing and receiving accommodation entry against commission payment in cash by the assessee.

10. However, to cover up all possible leakage of revenue I find it appropriate to follow the preposition rendered by Hon'ble High Court of Bombay in the case of PCIT vs. Mohd. Hazi Adam (supra) and restrict the addition to the element of profit embedded therein. The assessee contents that his declared GP rate as per audited books of accounts is 4.08% therefore alternatively the said percentage can be taken for restricting the addition. In my humble view the GP rate declared by the assessee as per audited accounts may be a relevant fact but the same is not suffice to meet the requirement of tax proceedings. Therefore keeping in view entire factual position and rival submissions of both the sides I find it appropriate to restrict the addition to the tune of 8% of total impugned sales which is sufficient to cover all possible leakage of revenue. Accordingly, additions upheld by the Id. CIT(A) are substituted by the 8% of total alleged purchases. Accordingly, the grounds of assessee are partly allowed.

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

Order pronounced in the open court on 23.06.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 23rd June, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft prepared direct on PC	22.06.2023
2.	Draft placed before the author	23.06.2023
3.	Draft placed before the other Member	.06.2023
4.	Approved Draft comes to the Sr.PS/PS	.06.2023
5.	Order uploaded on	.06.2023
6.	File sent to the Bench Clerk	.06.2023
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	