

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

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1321/Mum./2023
(Assessment Year : 2009-10)

Dharmesh Vinaykumar Shah
1403, Sugee Hights, Dwarkesh Nagar CHS Ltd.
Opp. St. Pius School, Nahur Road
Mulund (West), Mumbai 400 080
PAN – AAIPS1584R

..... Appellant

v/s

Income Tax Officer
Ward-41(2)(1), Mumbai

..... Respondent

Assessee by : Shri Aditya Ramchandran
Revenue by : Smt. Mahita Nair

Date of Hearing – 11/07/2023

Date of Order – 27/07/2023

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 23/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*] for the assessment year 2009-10.

2. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the additions of 96,79,247 made under Section 69C representing the whole of the purchases in respect of which the information about bogus purchases was received by the Assessing Officer from the sales-tax department.

2. On the facts and circumstances of the case and in law, the CIT(A) erred in not even considering the Honourable ITAT's decision on the same issue in the appellant's own case for AY 2010-11 wherein the addition was restricted to 2.5% of the alleged bogus purchases though it was cited before him in the written submission as well as during the personal hearing through video conferencing.

The Appellant craves leave to add, alter, amend, vary and/or withdraw any or all the above grounds of appeal."

3. The only dispute raised by the assessee is against addition on account of bogus purchases.

4. The brief facts of the case are that the assessee is an individual and is a proprietor of M/s Jatin International engaged in the business of trading in computer parts. For the year under consideration, the assessee filed his return of income on 30/09/2009, declaring a total income of Rs. 4,51,240. During the assessment proceedings, the assessee was asked to file the details of purchases, TIN, and names and addresses of parties from whom purchases were made. In response thereto, the assessee filed the details along with the documentary evidence. During the assessment proceedings, information was received from the Sales Tax Department, Mumbai regarding suspicious parties who are only providing accommodation entries without doing any actual business. On going through the details submitted by the assessee, it was found that the parties with whom the assessee had made purchases are amongst the list of bogus parties. It was observed that the total purchases of Rs. 96,79,247, by the assessee are from the following parties who are engaged in providing accommodation entries:-

<i>Sr. No.</i>	<i>Name of the Party</i>	<i>TIN</i>	<i>Amount (Rs.)</i>
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1.	SAVITA INTERNATIONAL	27460654736V	1162099
2.	SHAH INDUSTRIES	27750403201V	996863
3.	ARYAN SALES CORPORATION	27630522965V	665228
4.	SUBHLAXMI SALES CORPORATION	27490615192V	1197281
5.	RAJ TRADERS	27450262425V	563363
6.	RIVERGOLD ELEVATORS	27390325605V	781961
7.	BLUE NILE ENTERPRISES	27340548975V	1224833
8.	OM CORPORATION	27310540795V	1486166
9.	SHAKTI TRADING	27300350341V	530818
10.	NAVDEEP TRADING CORPORATION	27540616280V	1070635
	TOTAL:		9679247

5. During the assessment proceedings, notices under section 133(6) of the Act were also issued to the said parties, however, no such concern was found at the given address. Accordingly, the Assessing Officer ("AO") vide assessment order passed under section 143(3) of the Act treated the entire purchase of Rs. 96,79,247, from the said parties to be bogus/non-genuine and added the same to the total income of the assessee under section 69C of the Act as unexplained expenditure. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Dharmesh Vinaykumar Shah v/s ITO, in ITA No. 4881/Mum./2015, for the assessment year 2010-11, vide order dated 21/04/2017, restricted the addition in respect of non-genuine purchases to 2.5% under similar facts and circumstances, by observing as under:-

"7. From the record, we also found that AO has relied upon an affidavit dated 18.7.2011 of Pravin Meraj Bishnoi / Shah stating that he is the Proprietor of four concerns i.e. Blue Nile Enterprises, Raj Traders, Om Corporation & Shakti Trading Corporation. However, all these concerns are having different proprietors and different PAN. AO has also relied upon a visit report of Asst. Commissioner, Sanjay S. Pawar, Mumbai in respect of one concern namely Jitendra Enterprises. However, the assessee has not purchased any goods from the said concern at all. As per record, the assessee has asked for the copies of statements of the different persons upon which the AO was relying upon as well as their cross examination. It has been stated in the assessee's submission which is reproduced in the assessment order itself at Page 6 (top). This observation in AO's order clearly indicates that ground No.3 taken by revenue is not correct. Keeping in view totality of facts and circumstances of the case, we direct the AO to restrict the addition to the extent of 2.5% of such alleged purchases. We direct accordingly."

7. We further find that even the AO vide assessment order dated 22/03/2016, passed under section 143(3) read with section 147 of the Act for the assessment year 2011-12, has restricted the disallowance to 2.24% of the non-genuine purchases. Insofar as the decision of the Hon'ble jurisdictional High Court in Shoreline Hotel (P.) Ltd. v/s CIT [2018] 98 taxmann.com 234, relied upon by the learned CIT(A), we find the same to be factually distinguishable, as the taxpayer, in the said case, was engaged in running a hotel and there was no corresponding sales against the non-genuine purchases. However, in the present case, corresponding sales made by the assessee out of the disputed purchases have not been doubted by the Revenue. Thus, in the absence of purchases, the assessee could not have affected corresponding sales. Therefore, respectfully following the judicial precedent in the assessee's own case cited supra, we direct the AO to restrict the addition to 2.5% of the bogus purchases. Accordingly, grounds raised in the assessee's appeal are partly allowed.

8. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai