

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

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 1577/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

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आयकर अपील सं/ I.T.A. No. 1076/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं/ I.T.A. No. 1077/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2011-12)

Biren Suresh Karani Flat No.1101, Shreyas Apartments, Sarjan CHSL, Lallubhai Shamaldas Road, Andhei West, Mumbai- 400058.	बनाम/ Vs.	ITO-31(1)(3) C-13, 3 rd Floor, Pratyakshakar Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMPK6502D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mehul Shah
Revenue by:	Shri Dharamvir D. Yadav (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 12/07/2023
घोषणा की तारीख /Date of Pronouncement: 04/08/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 05.04.2023 and order dated 21.09.2022 for AY. 2009-10 to 2011-12.

2. At the outset, the Ld. AR of the assessee submitted that the issue permeating in all the assessment years are the same except difference in sum/figures. And it is noted that even though, the assessee in AY. 2009-10, has raised ground no. 2, it has not been pressed [*i.e. for AY 2009-10, according to AO, the purchase made by*



assessee from M/s. Sthapana Trade Impex Pvt Ltd. was to the tune of Rs.2,79,346/-, whereas according to assessee, it was only Rs.7,78,881/-]. Therefore, this ground is not adjudicated. Further, it is noticed that in all the assessment years, the assessee has raised ground no. 1 which are similar and reads as under for AY. 2009-10: -

“1. On the facts and in circumstances of the case, and in law, the Ld. CIT(A)/NFAC erred in upholding the action of the Assessing Officer in disallowing purchases amounting to Rs.841,653/- being **37%** of total purchases of Rs.2,27,47,438/- without making any independent inquiry by treating the purchases as bogus in nature on mere suspicion that the parties were listed on website of M-VAT Department as suspicious dealers, and without appreciating the fact that the material sourced was in fact sold during the trading process.”

3. The assessee has raised ground no. 1 for AY. 20010-11 which reads as under: -

“1 On the facts, and in circumstances of the case, and in law, the learned Commissioner of Income-tax (Appeals), NFAC, erred in upholding action of the Assessing Officer in disallowing purchases amounting to Rs.15,04,545/- being **25%** of total purchases of Rs.60,18,183/- without making any independent inquiry by treating the purchases as bogus in nature on mere suspicion that the parties were listed on website of M-VAT Department as Suspicious dealers, and without appreciating the fact that the material sourced was in fact sold during the trading process.”



4. The assessee has raised ground no. 1 for AY. 20011-12 which reads as under: -

“1 On the facts, and in circumstances of the case, and in law, the learned Commissioner of Income-tax (Appeals), NFAC, erred in upholding action of the Assessing Officer in disallowing purchases amounting to Rs.5,40,644/- being **30%** of total purchases of Rs.17,90,144/- without making any independent inquiry by treating the purchases as bogus in nature on mere suspicion that the parties were listed on website of M-VAT Department as Suspicious dealers, and without appreciating the fact that the material sourced was in fact sold during the trading process.”

5. From a perusal of the aforesaid ground of appeal, it can be seen that ground no 1 is same/similar [*except GP % and sum of purchases*] for all the captioned AY's. In the appeal for AY 2009-10, the main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO wherein he disallowed purchases amounting to 37% of the purchases made from dealers listed in website of VAT Department of State of Maharashtra. The appeal of assessee for AY 2009-10 is taken as lead case [*and will include in the discussion the action of AO for AY 2010-11 & 2011-12*] and the result of which will be followed in other captioned two (2) years.



6. Brief facts are that the assessee had filed return of income for AY 2009-10 on 29.06.2009 declaring total income of Rs. 7,64,670/-. Later, the AO received information from DGIT (Inv.), Mumbai that Sales Tax Department [*of State of Maharashtra*] had black listed few dealers involved in issuing bogus bills to traders which included the assessee. According to the Maharashtra Sales Tax Department it conducted inquiries and found some parties/dealers indulged in hawala and suspicious activities. As per the information given by Sales Tax, the assessee had also transacted with these hawala dealers in AY. 2009-10 namely (i) M/s. Sthapna Trade Impex P. Ltd. of Rs.22,70,346/- and (ii) M/s. Mihir Enterprises of Rs.4,392/- (total of Rs.22,74,738/-). Armed with this information, the AO issued show cause notice to assessee and directed him to produce both parties named (*supra*) for verification or to show cause as to why the aforesaid transaction should not be taken as non-genuine purchases. Simultaneously, the AO also issued notice u/s 133(6) of the Income Tax Act, 1961 (hereinafter “the Act”) to the parties which were returned unserved. Pursuant to show cause notice, the assessee filed his reply as well as produced the books of account, which AO acknowledges. But the AO didn’t accept the explanation given by assessee because according to the AO, barring the ledger account and cheque payments, no other documents to substantiate the genuineness of the transaction (purchases) has been filed. According to the AO, the



Sales Tax Department (State of Maharashtra) has found that the dealers (M/s. Sthapana & M/s. Mihir) did not made any sale or purchases and only provided bills/accommodation entries. According to AO, this report of Sales Tax Department proves that the purchases shown to have been made by the assessee from these dealers are not genuine. And since the assessee has not maintained day to day quantity stock register therefore the purchases made from the two dealers were not verifiable. Therefore, according to AO, the only inevitable conclusion to be drawn is that the assessee must have made these purchases from open market from some other parties best known to him. According to the AO, taking into account the above facts and circumstances and comparative position of results, the only fair conclusion that can be reached is that the assessee was a beneficiary of the accommodation bills issued by the party mentioned wherein, there wasn't actual physical delivery of the goods. According to AO, accommodation bill has been obtained by assessee [from the black-listed dealers] for introducing the unaccounted goods into the accounted stream. However, the AO admits that the assessee was actually in possession of goods procured from Grey Market. By doing so, according to AO, the assessee has got benefit i.e. margin of buying from grey market. In the light of the facts discussed, AO was of the opinion that the purchase rate as mentioned in the suppliers sales invoice cannot be accepted and held that since purchases shown by the assessee remain unverifiable, there is a possibility of leakage of revenue and so he rejected the books u/s 145(3) of the Income Tax



Act, 1961 (hereinafter “the Act”). Thereafter, the AO held that the declared G.P. percentage for the year under consideration was low because assessee has arranged bills worth Rs. 22,74,738/- from the two dealers (supra) to suppress his true profits and estimated profit; and for that took note of the fact that the assessee has shown G.P. of Rs.41,63,474/- on the turnover of Rs. 1,20,76,373/- which works out to be 34.48 %. And since the assessee has resorted to obtaining bogus purchases bills therefore, the G.P. of the assessee should have been at the higher side, and opined that G.P. of 37.0% would be reasonable in the case of the assessee. Hence the GP of bogus purchase made of Rs.22,74,738/- was worked out to be Rs.8,41,653/- which was added back to the total income of the assessee.

For AY. 2010-11

7. The AO has made the G.P addition by observing as under: -

“After discussion taking into account all the facts and circumstances, I am satisfied that G.P of 25% of Rs.60,18,183/- as reasonable in the case of the assessee. The AR vide order sheet noting dated 19.01.2018 stated that purchase are genuine but the assessee is unable to produce the parties and offered 25% of G.P on the said purchase of Rs.60,18,183/- i.e. Rs.15,05,54/- to be added to the total income.”

For AY. 2011-12

8. The AO has made the G.P addition by observing as under: -



“As discussed above, the assessee has resorted to obtaining bogus purchase bills, therefore, the G.P of the assessee should have been at the higher side. Taking into consideration, the G.P of 30% is reasonable in the case of the assessee. Hence, the G.P of bogus purchase made from the parties in respect of cheque payment of Rs.17,85,000/-, which works out to Rs.5,35,500/- (30% of 17,85,000/- is added to the total income of the assessee.”

9. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of AO. Aggrieved by the decision of the Ld. CIT(A), the assessee is before this Tribunal.

10. I have heard both the parties and perused the records. It is noted that the assessee is an individual and dealer of pressure reducing valves. Based on information from the investigation wing (*which was in-turn based on information from the State of Maharashtra Sales Tax Department*) that certain dealers were indulging in the pernicious practice of providing accommodation entries (*providing bogus bills for commission without genuine transaction of purchase & sales of goods*), the AO, reopened the assessment of the assessee u/s 147 of the Act; and taking note that the assessee had shown to have transacted with the dealers (identified by the Sales Tax Department of Maharashtra), he directed the assessee to prove the genuineness of the transaction which took place in the three (3) captioned assessment years [*for AY. 2009-10 from two (2) parties M/s. Sthapna Trade Impex P. Ltd. Rs.22,70,346/- and M/s. Mihir Enterprises Rs.4,392/- total of*



*Rs.22,74,738/-, likewise, for AY. 2010-11 from four (4) parties total amount of Rs.60,18,183/- and for AY. 2011-12 from three (3) parties total amount of Rs.17,90,144/-]. Pursuant to the direction of AO, the assessee in order to prove the genuineness of the purchases from the parties/dealers [named supra] produced documents from which AO observed that the assessee has maintained books of account such as cash book, bank book, journal, purchase register and sales register etc., [refer assessment order AY. 2009-10]. Thereafter, he notes that the assessee has shown turn-over Rs.1,20,76,373/- and the gross profit was to the tune of Rs.41,63,474/- i.e, at G.P of 34.48%. But according to the AO, the assessee failed to maintain day to day quantity stock register, therefore, according to him, the purchases made from the black listed dealers (*as shown in their website of VAT Department*) were not verifiable. And therefore, he directed the assessee to produce them physically before him within the seven (7) days and simultaneously issued notice u/s 133(6) of the Act to the said parties which according to the AO, couldn't be served upon them. However, after verifying the books and other material produced before him, AO concluded that assessee had in-fact purchased the goods but not from the dealers [*who sells goods and remit tax to State Government*] but from the grey market and assessee has approached the black-listed dealers for providing him bills (*bogus/accommodation bills*) in order to introduce unaccounted goods into the accounted stream and by doing so, he got a margin of profit/saved purchase expenses. Therefore, he rejected the books and estimated the income for AY.*



2009-10 GP of 37% of Rs.22,74,738/- which is Rs.8,41,653/- [likewise for AY. 2010-11 G.P of 25% of Rs.60,18,183/- i.e. Rs.15,05,545/- and for AY. 2011-12, G.P of 30% of Rs.17,85,000/- i.e. Rs.5,35,500/-]. The main prayer of the assessee is that since the assessee has himself shown G.P of 34.48% for AY. 2009-10 and , G.P of 25% for AY. 2010-11 and G.P of 30% for AY. 2011-12, the action of the AO to have made addition of 37% for AY. 2009-10, 25% for AY. 2010-11 and 30% for AY. 2011-12 is unfair and unreasonable.

11. First of all, it is noted that the AO could not have rejected the books without notice for doing so as stipulated u/s 145 of the Act. Further, it is noted that AO has rejected the books of assessee without giving any finding that assessee has not regularly followed the method of accounting as mandated u/s 145(1) of the Act. It is also not the case of AO that assessee has not computed the income in accordance with the accounting standard notified u/s 145(2) of the Act. Therefore, condition for invoking section 145(3) of the Act as per section 145(1) & (2) of the Act was not satisfied. However, if the expenses/sales are not verifiable (*if there is deficiency in vouchers/bills supporting the incurrence of such expenses/sale*) then it cannot be the sole basis to hold that accounts maintained by the assessee are incorrect or incomplete. At the most then AO can disallow the expenses to the extent not supported by vouchers etc but it cannot be ground to hold



that accounts maintained by assessee are not correct or incorrect. Therefore, the action of AO to reject the books cannot be accepted.

12. Coming next to the action of Ld. CIT(A) confirming G.P of 37% for AY. 2009-10, GP of 25% for AY. 2010-11 and G.P of 30% for AY. 2011-12 of purchases from the parties named (supra), when the assessee has already shown G.P of 34.48% for AY 2009-10, G.P of 25% for AY. 2010-11 and G.P. of 30% for AY. 2011-12. In this context, it has to borne in mind that AO has accepted that assessee had purchased the goods [*albeit from grey market without bills*] and by doing so, he has made a margin (profit)/saved purchase price, which according to AO need to be taxed. In other words, the margin which assessee saved on purchases from grey market need to be taxed. The Ld. AR took us through the paper-book filed for all three (3) AY's to demonstrate that the goods purchased from these dealers named at (supra at para 10) has been sold and G.P of 34.48%, 25% & 30% has been already offered to tax in each assessment year respectively. So the addition of 37%, 25% & 30% on the purchases made from those dealers are un-reasonable, which, I find merit in such a contention of assessee and direct that the disallowance of purchases in this case be restricted to margin earned by assessee from such bogus purchases which I estimate it in the peculiar facts of the case be G.P of 5% of such purchases for all three assessment years as discussed (supra).



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13. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 04/08/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 04/08/2023.
Vijay Pal Singh, (Sr. PS)

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//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai