

IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH

(At e- Court, Pune)

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.28/Nag/2019

निर्धारण वर्ष / Assessment Year : 2011-12

Pranav Nalin Mehta, Prop. M/s. Regal Marbles & Minerals, 101, 1 st Floor, Ramdeobaba Apartment, Bajaj Nagar, Nagpur 440 010 PAN : ACDPM8305P	Vs.	Pr.CIT-1, Nagpur
Appellant		Respondent

Assessee by : Shri K.P. Dewani
Revenue by : Shri Kailash Kanojiya

सुनवाई की तारीख / Date of Hearing : 22.08.2023

घोषणा की तारीख / Date of Pronouncement : 23.08.2023

आदेश / ORDER

PER R.S.SYAL, VP:

This appeal by the assessee is directed against the order dated 30-03-2018 passed by the Pr.CIT, Nagpur-1 u/s.263 of Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2011-12.

2. The appeal is time barred by 250 days. The assessee has filed an affidavit explaining the reasons for the delay. We are satisfied with the reasons. The delay in filing the appeal is, therefore, condoned and the appeal is admitted for disposal on merits.

3. Briefly stated, the facts of the case are that assessment in this case was completed by means of an order u/s.143(3) r.w.s.147 assessing total income at Rs.5,60,590/-. The Id. Pr.CIT, on perusal of records, observed that the assessee made unsubstantiated purchases amounting to Rs.6,37,988/- from M/s. Nisha Enterprises which were in the nature of accommodation entries. He noticed that the AO made an addition of Rs.51,677/- to the returned income on this score, being, the gross profit @8.10% on the unsubstantiated purchases of Rs.6,37,988/-. In his opinion, the addition ought to have been made for the full amount of purchases at Rs.6,37,988/-. That is how, he set-aside the assessment order by treating it as erroneous and prejudicial to the interest of the Revenue directing the AO to frame the assessment afresh.

4. After hearing the rival submissions and going through the relevant material on record, it is seen that the assessee recorded bogus purchases in respect of which the AO made an addition at the gross profit rate at 8.10%. The view point of the Id. Pr.CIT that the addition should have been made for the whole amount of purchases is contrary to various judgments of the Hon'ble High Courts, including, that of the Hon'ble Bombay High Court in *Pr.CIT Vs. M/s. Mohammad Haji Adam and Company (2019) 104 CCH 0391 Mum-HC* holding that addition cannot be made for the bogus amount of purchases. In *Pr.CIT*

Vs. Batilboi Environmental Engineering Ltd. (2022) 446 ITR 238 (Bom.), the Hon'ble Bombay High Court has held that only the profit element in the bogus purchases can be added and not the amount of purchases. Similar view has been canvassed in *PCIT Vs. Paramshakti Distributors Pvt. Ltd. (ITA No.413/2017 dated 15-07-2019)*.

5. In view of the above discussion, it is clear that the AO passed the correct order by making the addition towards gross profit on the bogus purchases. The view point of the ld. Pr.CIT that the addition should have been made towards the amount of purchases is, ergo, not sustainable. We, therefore, overturn the impugned order.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 23rd August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे / Pune; दिनांक / Dated : 23rd August, 2023
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “नागपुर” बेंच,
/ DR, ITAT, “Nagpur” Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	22-08-2023	Sr.PS
2.	Draft placed before author	23-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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