

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

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 2069/MUM/2023 (A.Y: 2009-10)

Pankaj P. Mehta Flat No. 301, Plot No. 289 Ahinsa Sadan Co-op Housing Society Road No. 3 Opp. Suvidha Hospital & Polyclinic Jawahar Nagar, Goregaon (W) Mumbai - 400102 PAN: AGDPM3309H	v.	CIT (Appeals-36) National Faceless Appeal Centre Delhi
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vimal Punmiya
Department Represented by	:	Shri H.M. Bhatt
Date of conclusion of Hearing	:	12.09.2023
Date of Pronouncement	:	20.09.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 29.03.2023 for the A.Y.2009-10 in sustaining the action of the Assessing Officer.

2. Briefly facts of the case are, assessee an individual engaged in the business of manufacturing of Babycare textile products and filed return of income on 27.09.2009 declaring income of ₹.2,71,230/- for the A.Y.2009-10, and the return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened u/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from M/s. Manshi Traders who is said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was asked to prove the genuineness of the purchases made from M/s. Manshi Traders. The notices issued to the assessee were returned unserved. Assessing Officer passed the Assessment Order u/s. 144 r.w.s. 147 of the Act as the proceedings are getting time barred by limitation.

3. During the assessment proceedings, Assessing Officer issued notice u/s. 133(6) of the Act to M/s. Manshi Traders in order to verify the genuineness of the purchases made by the assessee and the notice was returned unserved by the Postal Authorities as not known. Assessing Officer treated the purchases as non-genuine and he was of the opinion

that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer that assessee failed to produce the parties and as such the parties remained unverifiable. Therefore, Assessing Officer treated ₹.5,29,162/- as non-genuine and added to the total income of the assessee.

4. Aggrieved with the above order, assessee preferred appeal before the Ld.CIT(A) and filed detailed submissions. After considering the submissions of the assessee Ld.CIT(A) sustained the addition made by the Assessing Officer.

5. Aggrieved with the above order, assessee is in appeal before us raising following grounds in its appeal: -

"1. The Ld. Commissioner of Income Tax (Appeals) erred in making additions of Rs.5,29,160/- on account of purchases made by the assessee treating is as bogus purchases in view of the IT Act.

2. The Ld. Commissioner of Income Tax (Appeals) erred in charging Interest under section 234B, 234C & 234D of the Income tax Act, 1961.

3. The Ld. Commissioner of Income Tax (Appeals) erred in initiating of penalty proceeding under Section 274 r.w.s 271(1)(c) of the Income Tax Act 1961.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law, in reopening the assessment of the assessee u/s.148 of income tax act, 1961 which is most unjustified and arbitrary.

5. On the facts and circumstances of the case and law the order passed by the Ld. Commissioner of Income Tax (Appeals) U/S 250 of the Income Tax Act, 1961 is bad in Law. The Ld. Commissioner of Income Tax (Appeals) has erred in law and not considered the submission made by the Appellant."

6. At the time of hearing, Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A). Ld. AR submitted that payments were made through banking channels and the sales were accepted by the department. He submitted that once that sales were accepted the purchases cannot be treated as non-genuine and prayed to set-aside the order of the Ld.CIT(A). Further, he submitted that assessee is not pressing the Ground Nos. 2 to 5 of grounds of appeal.

7. On the other hand, Ld. DR relied on the orders of the authorities below.

8. Considered the rival submissions and material placed on record and perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been held by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the

entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. In our considered view there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. readymade garments, it would be justified if the profit element embedded in those purchases are estimated at 5%. Accordingly, we direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 5% for the Assessment Year under consideration and restrict the disallowance of purchases to 5% and compute the income accordingly. Accordingly, Ground No. 1 raised by the assessee is partly allowed and other grounds are dismissed as not pressed.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20th September, 2023.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai / Dated 20/09/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum