

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.2847/Del/2022
निर्धारणवर्ष/Assessment Year: 2015-16

ACIT, Central Circle : 25, New Delhi.	<u>बनाम</u> Vs.	HH Interior & Auto Components Pvt. Ltd., 12-A, Indraprakash Building, Barakhamba Road, New Delhi - 121 001, PAN No. AAACK4360J
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	None;
राजस्वकीओरसे / Department by :	Shri Vivek Kumar Upadhyay, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	24/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	31/10/2023

आदेश / ORDER

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the
ld. Commissioner of Income Tax (Appeals)-29 [hereinafter referred

to CIT (Appeals)]/New Delhi, dated 23.09.2022 for the assessment year 2015-16 in estimating the profit element from alleged bogus purchases at 4.81% as against 100%.

2. In spite of issue of notices none appeared on behalf of the assessee. In fact on both the occasions the notices issued by Speed Post were returned back from the Postal authorities un-served with the remarks "Left Without Address". Therefore, we dispose off this appeal on hearing the ld. DR.

3. Briefly stated the facts are that the Assessing Officer while completing the assessment under section 143(3) read with section 147 of the Income Tax Act, 1961 (the Act) disallowed entire purchases of Rs.3,86,87,155/- on the ground that the assessee has not proved the identity of the seller, namely, S.S. Engineering Enterprises. The Assessing Officer observed that the seller of goods is not found in the address provided by the assessee. Therefore, the identity is not proved.

4. On appeal the ld. CIT (Appeals) restricted the disallowance by estimating the gross profit at 4.81% observing as under:-

"12.3 The appellant deals in the business of manufacturing of trims for seats and head rest assemblies for cars. In the case of the appellant the purchases admittedly have been made through payee cheques and the source of purchases are from the books of account. The figures of opening stock, purchases, sales, closing stock and gross profit have been accepted by the AO. As the quantity of opening stock and purchases on the debit side; and sales and closing stock in the credit side in the books of account has not been rejected, therefore to hold that the some quantity of purchases recorded in the books are unexplained or

outside books of account, is not rational and accordingly purchase as debited in the books of accounts cannot be added. If the purchases made from the parties were in the nature of bogus purchases then there can be two scenarios, firstly, whether these purchases have been made outside books or does not matched with the quantitative tally; or secondly, whether such bills have been obtained merely to suppress the gross profit. The first reason is not here in this case as discussed above; and in so far as the second reasoning is concerned, one has to see if purchases have been made through cheques, the source of which are from the books of accounts and if later on, cash has been received in lieu of such cheque but no purchases have been made, then clearly there would be a difference in quantitative tally of purchases as well as in the stock and such a discrepancy has been found the purchases can be held to be bogus, But in this case no such difference in the quantitative tally has been found by the AO. Further, if assessee after receiving the cash in lieu of the cheque has made purchases from the grey market for getting the same quantity of material in cash from some different vender, then at the most it could be a case of the suppressing of gross profit, In other words, assessee has debited higher amount for the purchase which in fact has purchased the same material and quantity at a lesser amount, thereby suppressing the gross profit. Accordingly, addition which could be made, is by enhancing the Gross Profit on such purchases. The books of accounts of the appellant are maintained and audited as per requirement of law and AO has not rejected the Books of accounts maintained by the appellant u/s 145(3) of the Act. The AO has formed the belief that the said purchases are bogus on the basis of survey action u/s 133A of the Act on Krishna Maruti Group of companies and the post survey proceedings on M/s SS Engg Enterprises. In the assessment order the AO has mentioned that as per the field enquiry made by the Inspector the concern M/s SS Engg. Enterprises was not traceable at its registered premises. The appellant in its submission has stated that on the day the Inspector visited the premises, it was closed and that the Inspector has stated in its report that the said premises belonged to M/s SS Engg Enterprises. The appellant during the assessment proceedings submitted the details of purchases, sundry creditors, bank statements etc. The judicial pronouncements as mentioned

above hold that full disallowance for bogus purchases cannot be made. The rationale is that no sale is possible without actual purchases. Further, no discrepancy in the details of stock filed by the appellant was pointed out by the AO. From the facts of the present case, it appears that the appellant has made purchases from the grey market, which may have give it some other indirect savings.

12.4 In view of above discussion and the facts of the case, undoubtedly there are corresponding sales in respect of the bogus purchases. Therefore, the A.O was not justified in making the addition of whole purchases holding the same to be bogus. Respectfully following the judicial pronouncements as quoted supra it is held that the addition on account of bogus purchases is to be restricted to the gross profit embedded in such purchases. It is seen from the records that the gross profit rate of the appellant for the year was 4.81%. It is seen from the assessment order that the said bogus purchases during the year are from M/s. SS Engg. Enterprises of Rs.3,86,87,155/-. The A.O. is, therefore directed to restrict the addition to the extent of 4.81% of gross profit embedded in such purchases of Rs.3,86,87,155/- which amounts to Rs.18,60,852/-. This ground of appeal is partly allowed.”

5. As could be seen from the above the ld. CIT (Appeals) estimated the gross profit at 4.81% be based on the G.P. declared by the assessee for the year under consideration. While coming to such conclusion the ld. CIT (Appeals) placed reliance on the decision of the Delhi Bench in the case of (i) M/s. Becon Constructions Pvt. Ltd. Vs. ACIT In ITA. No. 5034/Del/2016 dated 24.12.2020; (ii) ACIT Vs. M/s. Sanvik Engineers India Pvt. Ltd. in ITA. No. 3201/Del/2015 dated 30.05.2019; (iii) Manoj Sharma Vs. Income Tax Officer in ITA. No. 4342/Del/2018 dated 28.01.2019.

6. On the other hand, the ld. DR supported the order of the Assessing Officer. He also placed reliance on the decision of the Hon'ble Gujarat High Court in the case of N. K. Industries Ltd. Vs. DCIT [(2016) 72 taxmann.com 289 (Guj.)].

7. We have heard the ld. DR perused the record before us. The only issue to be addressed is whether the ld. CIT (Appeals) is justified in estimating the gross profit on the purchases disallowed by the Assessing Officer or entire purchases are liable to be disallowed.

8. In the case of CIT Vs. Bholanath Poly Fab Pvt. Ltd. (supra) the Hon'ble Gujarat High Court held as under:-

“5. Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the assessee. Therefore, the purchases of the entire 1,02,514 metres of cloth were sold during the year under consideration. The Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of Sanket Steel Traders and also made reference to the Tribunal's decision in the case of Vijay Proteins Ltd. v. Asst. CIT [1996] 58 ITD 428 (Ahd).

6. We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were

bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CIT [2009] 316 ITR 274 (Guj). Such decision is also followed by this court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT v. Kishor Amrutlal Patel. In the result, tax appeal is dismissed.”

9. Similarly the Hon’ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth (supra) held as under:-

“6. In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee’s theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT Vs. Vijay M. Mistry Construction Ltd. vide order dated January 10, 2011 passed in Tax Appeal No. 1090 of 2009-since reported in [2013] 355 ITR 498 (Guj) and in the case of CIT Vs. Bholanath Poly Fab P. Ltd. vide order dated October 23, 2012, passed in Tax Appeal No. 63 of 2012-since reported in [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. Vs. Asst. CIT 1996] 58 ITD 428 (Ahd.) came to be approved.

8. If the entire purchases were wholly bogus and there as a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Asst. CIT (OSC) Vs. Pawanraj B. Bokadia (supra).

9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent., as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.”

10. In the case on hand before us, we observe that the Assessing Officer did not dispute the sales recorded from out of the purchases made by the assessee. The quantitative details of the stocks are not found to be incorrect. Since the Assessing Officer has accepted the sales made out of the purchases and there is no discrepancy in stocks found there is no justification in treating the entire purchases as not proved simply because the seller was not produced or not found in the address given. Therefore, following the above decisions of the Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth (supra) the profit element is estimated at 12.5% as against 4.81% estimated

by the Id. CIT (Appeals). The decision relied upon by the Id. DR is distinguishable on facts. Thus, we direct the Assessing Officer to restrict the disallowance to 12.5% of the purchases and re-compute the income accordingly.

11. In the result, the appeal of the Revenue is partly allowed as indicated above.

Order pronounced in the open court on : 31/10/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/10/2023.

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	30.10.2023
Date on which the typed draft is placed before the dictating member	31.10.2023

I.T.A. No. 2847/Del/2022

Date on which the typed draft is placed before the other member	31.10.2023
Date on which the approved draft comes to the Sr. PS/ PS	31.10.2023
Date on which the fair order is placed before the dictating member for pronouncement	31.10.2023
Date on which the fair order comes back to the Sr. PS/ PS	31.10.2023
Date on which the final order is uploaded on the website	31.10.2023
Date on which the file goes to the Bench Clerk	31.10.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	