

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "F" Bench, Mumbai.

Before Justice (Rtd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2516/Mum/2023 (A.Y. 2011-12)
I.T.A. No. 2517/Mum/2023 (A.Y. 2012-13)
I.T.A. No. 2518/Mum/2023 (A.Y. 2013-14)
I.T.A. No. 2519/Mum/2023 (A.Y. 2014-15)

V.M. Star 308 Jewel, Mama Parmanand Marg Opera House Mumbai-400 004. (Appellant)	Vs.	ACIT, Circle-19(3) 506, Piramal Chambers, Lalbaug Opp Bharat Mata Talkies, Mumbai-13 (Respondent)
---	-----	--

I.T.A. No. 3062/Mum/2023 (A.Y. 2012-13)

DCIT, Circle-19(3) 513, Piramal Chambers, Lalbaug Opp Bharat Mata Talkies, Mumbai-12 (Appellant)	Vs.	V.M. Star DW 6310 Bharat Diamond Bourse Bandra Kurla Complex, Bandra Mumbai-400 051. (Respondent)
---	-----	---

PAN : AAAPV5448H

Assessee by	Shri Suchek Anchliya
Department by	Smt. Vranda U. Matkari
Date of Hearing	16.11.2023
Date of Pronouncement	13.12.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed these appeals for A.Y. 2011-12 to 2014-15 and the Revenue has filed appeal for A.Y. 2012-13. Since the issue urged in these appeals by both the parties relate to the addition made on alleged bogus purchases, they were heard together and are being disposed of by this common order.

2. The facts relating to the issue are stated in brief. The assessee is partnership firm engaged in the business of trading of cut and polished diamonds. Most of its sales are stated to be export sales only. The Revenue carried out search and seizure action in the hands of a person named Shri Bhanwarlal Jain and his group of companies on 03.10.2013. During the course of search, it was found that the above said person and his group companies were providing accommodation entries, inter alia, in the form of sale bills without actually supplying goods. It was noticed that the assessee has purchased diamonds from group concerns of Shri Bhanwarlal Jain. Hence, the Assessing Officer took the view that the assessee has only taken accommodation bills for purchases. Accordingly, he reopened the assessments of assessment years A.Y. 2011-12 and 2012-13. The returns of income filed for AY 2013-14 and 2014-15 were taken up for scrutiny.

3. Before the Assessing Officer, the assessee contended that it has actually purchased the diamonds from the concerns belonging to Shri Bhanwarlal Jain and exported them. The assessee produced stock details in order to show that the diamonds purchased from the above said group was exported/sold. However, the Assessing Officer did not agree with the submissions made by the assessee. He took the view that the assessee might have purchased diamonds from the grey market in cash and would have procured bills from Bhanwarlal Jain group of concerns. Accordingly, the AO took the view that the assessee might have earned profit in this process. Accordingly, the Assessing Officer estimated the profit @ 3% of the value of alleged bogus purchases in A.Y. 2011-12, 2013-14 and 2014-15 and added the same to the total income of the assessee. However, the Assessing Officer disallowed 100% of the purchase value of the diamond purchased from Bhanwarlal Jain group in A.Y. 2012-13.

4. In the appellate proceedings, the learned CIT(A) proposed to enhance addition in A.Y. 2011-12, 2013-14 and 2014-15 also to 100% of the value of bogus purchases, by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of N.K. Proteins Vs. DCIT (2017) 84 taxman.com 195 (SC). The assessee contended before Ld CIT(A) that the facts prevailing N.K. Proteins (supra) were different and hence, in the absence of parity of facts, the ratio of the said decision could not be applied in this case. It appears that the Ld CIT(A) was convinced with the said contentions and hence dropped the said proposal in the above said years.

5. The assessee also relied on certain decisions rendered by Mumbai Bench of the Tribunal and contended that the additions made by the Assessing Officer is not warranted since the gross profit declared by the assessee in all these years was more than 3%. The learned CIT(A), on the contrary, referred to certain decisions rendered by Mumbai Bench and also by Hon'ble Bombay High Court in the case of construction business, wherein addition @ 12.5% had been sustained by the Tribunal. Accordingly, following the above said decisions, the ld CIT(A) directed the Assessing Officer to enhance the addition to 12.5% of the value of the bogus purchases in A.Y. 2011-12, 2013-14 & 2014-15. In respect of AY 2012-13 also, the Ld CIT(A) directed the Assessing Officer to restrict the addition to 12.5% of the value of bogus purchases in A.Y. 2012-13.

6. Aggrieved by the relief granted by the Ld CIT(A) in AY 2012-13, the revenue has filed appeal. The assessee has filed appeals for all the four years under consideration challenging the above said decision of Ld CIT(A). The Ld A.R also contended that the Ld CIT(A) has not given any fresh notice for enhancing the addition to 12.50% in AY 2011-12, 2013-14 and 2014-15. Accordingly, he submitted that the enhancement so made by Ld CIT(A) in these three years is bad in law and is liable to be quashed.

7. We heard rival contentions and perused the record. We shall first take up the appeal filed by the revenue in AY 2012-13. We noticed earlier that the AO had disallowed 100% of value of alleged bogus purchases and the Ld CIT(A) restricted the same to 12.50%. Hence the revenue is challenging the said decision of Ld CIT(A). There is no dispute with regard to the fact that the assessee has reconciled the purchases with corresponding sales. It is trite law that when sales have been accepted, then it is necessary to deduct corresponding purchase cost in order to arrive at the profit. In the instant cases, the sales have been accepted and hence corresponding purchases have to be deducted. In this view of the matter, the AO was not justified in disallowing 100% of value of alleged bogus purchases. In this view of the matter the appeal filed by the revenue in AY 2012-13 is liable to be rejected.

8. We shall now take up the appeal filed by the assessee in all the four years challenging the addition of Rs.12.50% of the value of alleged bogus purchases made by Ld CIT(A). We notice that the issue relating to bogus purchases has been examined by the jurisdictional Hon'ble Bombay High Court in the case of PCIT vs. M/s Mohammad Haji Adam & Co (Income tax Appeal No.1004 of 2016 dated February 11 2019), wherein it was held as under:-

“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases.”

9. It was the submission of Ld A.R that the rate of profit earned in the alleged bogus purchases was more than the rate of profit declared in the genuine purchases. However, we are of the view that the computation part may be restored to the file of the AO. Accordingly, we set aside the order passed by Ld CIT(A) in all the four years under consideration and we direct the AO to verify the issue in accordance with the decision rendered in the case of M/s Mohammad Haji Adam & Co (supra) by Hon'ble Bombay High Court, i.e., the addition should be limited to the extent of bringing the G.P rate on alleged bogus purchases at the same rate of other genuine purchases. If the rate of gross profit declared in the alleged bogus purchases is more than the rate of gross profit declared in the genuine purchases, then no addition is called for. We also direct the assessee to furnish necessary details to the AO.

10. In the result, all the appeals of the assessee are treated as allowed and the appeal of the revenue in AY 2012-13 is dismissed.

Order pronounced on 13.12.2023.

Sd/-
(Justice (Rtd.) C.V. Bhadang)
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 13/12/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai