

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2495/Mum./2023
(Assessment Year : 2012-13)

Income Tax Officer- 19(3)(1)
Piramal Chamber, Room no. 405,
Lalbaug Mumbai- 400012

..... Appellant

v/s

Smaru Gems
FW 6070 Bharat Diamond Bourse,
Bandra Kurla Complex Bandra (E)
Mumbai 400051
PAN – ABGFS6292P

..... Respondent

Assessee by : None
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 26/02/2024

Date of Order – 27/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 16/05/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, in

view of the above, we proceed to dispose off the present appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record

3. In this appeal, the Revenue has raised the following grounds:-

(1) "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in restricting the addition made by the Assessing Officer amounting to Rs. 9,88,30,860/- to Rs. 5,21,60,876/- without any reason & without appreciating the ratio of the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., wherein the Court has held that when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed?"

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not confirming the addition made on account of bogus purchase @ 100% of total bogus purchase ignoring the fact that during the search proceeding in the case of Rajendra Jain Group, it was held that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase

(iii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee failed to file confirmation of the said transaction from the parties, in spite of opportunity provided by the Assessing Officer."

(iv) "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition even after acknowledging that appellant made cash purchase indicating the suspicious nature of transactions".

(V) "The appellant craves leave to amend to alter any grounds or add a new ground which may be necessary?"

4. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 31/10/2012 declaring a total income of INR 32,21,510. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from DGIT (Investigation), Mumbai that the assessee is a beneficiary of accommodation entries by way of bogus purchases from the entities, which are controlled by

Rajendra Jain Group, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued and served on the assessee. During the reassessment proceedings, the assessee was asked to show cause as to why the amount of purchase of INR 9,88,30,860 from the aforesaid entities should not be added to its total income for the year under consideration. In response thereto, the assessee reiterated that the purchases made are genuine transactions. Since the assessee could not bring any material to controvert the findings of the Investigation Wing, the Assessing Officer ("AO") vide order dated 23/12/2019 passed under section 143(3) r/w section 147 of the Act considered the entire amount of purchases of INR 9,88,30,860 as bogus purchase and added the same to the total income of the assessee.

5. In the appeal before the learned CIT(A), the assessee challenged the addition made by the AO. However, the assessee failed to respond to various notices issued by the learned CIT(A). The learned CIT(A), vide *ex-parte* order, granted partial relief to the assessee and directed the AO to restrict the disallowance to gross profit ratio of the genuine purchases, following the decision of Hon'ble Jurisdictional High Court in Pr. CIT v/s Mohommad Haji Adam & Co., (2019) 103 taxmann.com 459. Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of the learned DR and perused the material available on record. In the present case, the AO as well as the learned CIT(A) both came to the conclusion that the impugned purchases are bogus in nature. The AO made the addition of the entire bogus purchases of Rs.9,88,30,860, while the learned CIT(A) restricted the addition to the gross profit ratio of the genuine purchases, following the decision of Hon'ble jurisdictional High Court in Mohommad Haji Adam & Co. (*supra*). We find that while deciding similar issue in assessee's own case in Smaru Gems v/s ITO, in ITAs No. 3622 and 3633/Mum./2018, for the assessment years 2011-12 and 2014-15, the Tribunal vide order dated 28/06/2019, following the aforesaid

decision of Hon'ble jurisdictional High Court, directed the AO to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) granting partial relief to the assessee by following the decision of the Hon'ble jurisdictional High Court cited supra. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, the appeal by the Revenue is dismissed.
Order pronounced in the open Court on 27/02/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/02/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai