

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2711/Mum/2023
(Assessment Year :2010-11)
&
ITA No.2712/Mum/2023
(Assessment Year :2009-2010)**

Income Tax Officer Ward 1(1), Thane Room No.23, B Wing 6 th Floor, Ashar IT Park Wagle Estate Thane	Vs.	Bapu Amruta Kharade D 602 New Silver Oaks CHS, Opp. LBS Marg Near Swapna Nagari Mulund-400 080
PAN/GIR No.ACXPk7034M		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri R.R. Makwana
Date of Hearing	18/03/2024
Date of Pronouncement	18/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

These aforesaid appeals have been filed by the Revenue against separate impugned orders passed by NFAC, Delhi for the A.Y.2009-10 and 2010-11 for the quantum of assessment passed u/s.143(3) r.w.s. 154.

2. In both the years the common grounds which have been raised reads as under:-

“On the facts and in circumstances of the case, the CIT(A) erred in restricting the disallowance to 12.5% of purchases instead of 100% of purchases of Rs. 26,93,645/- from non existent vendors by not following the decision of the Hon'ble Gujarat High Court in Tax Appeal No.242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. Vs DCIT wherein it has been held that once the purchases are bogus, additions should be made on the entire purchases and not only the profit embedded in such purchases against which the SLP filed by the assessee was dismissed by the Hon'ble Apex Court vide (2017) 292 CTR 354 (SC).

b It is humbly requested that present appeal may be filed in accordance with the CBDT'S Circular No.3/2018 dated 11.07.2018 amended vide letter dated 20.08.2018 as per para 10(e) of the said circular Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.”

3. The brief facts are that assessee is a proprietor of Bapuji Enterprises which was engaged in the business of manufacturing of Industry Spray Nozzles and Accessories. In this case certain information received by the Sales Tax department that assessee had obtained bogus purchase bills. In the first round of assessment proceedings, ld. AO completed the assessment by treating the purchase of Rs.36,46,807/- made from the parties as ‘bogus purchases’ in the A.Y.2009-10 for Rs.26,93,645/- in the A.Y.2010-11 in the order passed u/s.143(3) r.w.s. 147 of the Act. The assessee further filed an appeal before the Tribunal and the Tribunal had set aside the order and restored the issue to the file of the ld. AO to decide afresh. During the set aside proceedings, assessee submitted copies of bills, inward and outward

quantitative details and details of payment made through cheques, etc. However, the ld. AO held that assessee did not furnish any satisfactory explanation by establishing the evidence with proof of lorry receipts, LRN, proof of stock inward, proof of utilization of purchases etc., and accordingly, AO made the addition of entire purchases. The ld. CIT(A) on perusal of the copies of the bills, copies of bank statements, payment details, inward and outward details, quantity details as well as supplier payments held that even if the purchases are not verified, but same are recorded in the books of accounts and corresponding sales have not been disturbed and following the judgment of Hon'ble Bombay High Court in the case of PCIT vs. Vishwashakti construction 15 & 20 ITXA 1016 & 1026 of 2018 applied the GP rate of 12.5% on the disputed purchases. For the sake of ready reference, we are reproducing the relevant portion of his order:-

4.9 In view of the facts and circumstances and the judicial pronouncements cited above, disallowance in the instant case of the alleged bogus purchases can be resorted to the extent of excess profit element embedded in such purchases shown to have been made from entry providers. Apart from that the yardstick laid down by Hon'ble Courts in the aforesaid judgments by disallowing G P. related to the purchases, as approximate benefit garnered in such unverifiable purchases where sales are not disapproved, is a sound benchmark which needs to be adopted in the present case too.

4.10 Therefore in the instant case too, all the facts and circumstances outlined above leads to the conclusion that although the appellant claimed purchases made from 12 parties namely Universal Enterprise, Tyra Enterprises, Vardhan Traders, Silver Lining Enterprises, Sun Enterprises, M R corporation, Prakasn Enterprises, Aayushi Enterprises,

Shradhha Trading Co. Somnath International, V M Udyog and

Saj Enterprises during the year under consideration but at the sometime it is difficult to accept that the purchases shown on the invoices/bills issued by parties are as per the prevailing market price of those materials or actually been made from the party and might have been purchased in the grey market. The appellant has not placed any evidence on record that the goods were purchased parties at arms length price.

The appellant has also not placed on record any comparable bills/invoices for purchases of similar items made from other party to establish that the purchases from Hawala parties in question were at par with the purchases made from other parties during the period under consideration. The possibility of such purchases from unregistered dealers without invoices cannot be ruled out In view of ire above, the

correctness of the purchase prices mentioned on such bills/invoices issued by entry provider cannot be accepted and some additional profit needs to be estimated on such purchases made from the above mentioned party.

4.11 Keeping in view the totality of the case¹, the AQ's action of 100% addition on account of transactions with bogus suppliers cannot be sustained because the AO has accepted the sales and AO didn't point out any mis-match in quantitative details of inward and outward stock. Hence, I am of the considered opinion that an additional profit margin@12,50% of purchases from Hawala parties should be taxed to plug the leakage of revenue on account of purchase from undisclosed party but booked in the name of the bogus accommodation entry provider. Hence, an addition to the extent of Rs.3,36,705/- (12.5% of Rs.26,93,645) is confirmed and Rs.23,56,940/- (Rs.26,93,645 – 3,36,705) is deleted. Thus, this issue of appeal is partly allowed.

4. After hearing both the parties and on perusal of the impugned orders, first of all it is not in dispute that assessee had debited the purchases from these parties and the sources

of purchases are from the books. The payments have been made through banking channels / account payee cheques and invoices alongwith stock has been recorded. Not only that, corresponding sales have also been recorded in the books of accounts. Thus, it cannot be held that entire purchase amount is to be treated as bogus. At the most it could be a case of purchases are not verifiable because the parties from whom assessee had made purchases were allegedly hawala parties. Assessee might have taken accommodation bills from such parties but at the same time the quantity of purchases have been done from the grey market. At the most it can be a case of suppression of gross profit from such purchases. Accordingly, following the Hon'ble Jurisdictional High Court Judgment and catena of other judgments, GP rate of 12.5% which is still at a very higher side made by the Id. CIT (A) is sustained. Accordingly, the order of the Id. CIT (A) for both the years are confirmed. Accordingly, the appeals of the Revenue are dismissed.

5. In the result, appeals of the Revenue are dismissed.

Order pronounced on 18th March, 2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 18/03/2024
KARUNA, *sr.ps*

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, Mumbai