

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

ITA No. 3617/Mum/2023
(Assessment Year: 2009-10)

Income Tax Officer
34(3)(2)
Room No.233, 2nd Floor,
Kautilya Bhavan, BKC,
Mumbai-400 051

Vs.

Pinaki D Panani
401, Mangal Villa, VS
Khandekar Marg,
Ville Parle (East)
Mumbai-400 057

(Appellant)

(Respondent)

PAN No. AIJPP0802A

Assessee by : Shri Rahul Hakani, AR
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 23.04.2024
Date of pronouncement : 25.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA number 3617/M/2023 four assessment year 2009 – 10 is filed by the income tax officer – 34 (3) (2), Mumbai (the learned AO) against appellate order passed by National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) dated 8/8/2023 wherein the appeal filed by the assessee against assessment order passed under section 143 (3) read with section 147 of the income tax act, 1961 (the act) dated 30/12/2016 passed by the assessing officer, circle – 25 (3), Mumbai was allowed.

02. The learned assessing officer is aggrieved with the appellate order and has preferred this appeal raising following 2 grounds

“1. Ground no.1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in not considering that the addition was made on the basis of information received from Sales Tax Department, Maharashtra with regard to the bogus purchases made by the assessee from dealers without supply of actual goods.

2. Ground No.2. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) is justified in deleting the addition of ₹11,58,195/- made in the hands of assessee under Section 69C of the Income-tax Act, 1961 (the Act) without appreciating the fact that the assessee has failed to discharge its onus to establish the genuineness of the purchases?”

03. brief facts of the case shows that assessee is an individual engaged in the business as the civil contractor working on various projects of MCGM, government and semi government bodies, filed return of income on 29/9/2009 declaring a total income of Rs. 4,865,060/- which was assessed under section 143 (3) on 7/12/2011 at the same income. Subsequently the case was reopened and reassessment was completed under section 143 (3) read with section 147 of the act on 17/2/2014 at the total income of Rs. 21,813,413/-.



04. Subsequently the assessment was once again reopened by issue of notice under section 148 on 27/1/2016. The assessee responded by letter dated 8/2/2016 requesting to consider the return filed in assessee's case for assessment year 2009 – 10 earlier, as return in response to notice under section 148 of the act. The assessee was also provided copy of the reasons recorded for reopening of the cases on 30/5/2016. A notice under section 143 (2) was issued on 30/5/2016.
05. In this case information was received from the director general of income tax (investigation), Mumbai stating that assessee has purchased goods worth Rs. 1,158,195/- from the enterprises which was found to be bogus supplier as per the enquiry of sales tax department. The assessee was questioned to prove the purchases from the above party. In response to that assessee submitted letter dated 6/6/2016 wherein it has been submitted that assessee has already been reassessed for addition of Rs. 16,948,368/- on account of purchases from suspicious dealers. The matter travelled before the learned CIT – A and further following the order of the income tax settlement commission, profit rate of 5.76% of turnover was estimated. It was further stated that total addition confirmed by the learned CIT – A is Rs. 5,044,947 on account of bogus purchases. Therefore no further adjustment is required to be made to the total income of the assessee. Assessee also explained the nature of its business stating that she is a civil contractor working on various projects of government and; bodies wherein the contracts were awarded on the basis of the tender and each and every bill of contract is certified by the

principal stop therefore the total consumption of the quantities are certified. The material is also procured from various sources such as brokers agents and suppliers directly also. Assessee also relied upon several judicial precedents.

06. The learned AO after considering the explanation of the assessee rejected it for the reason that assessee has failed to substantiate the claim of purchases made from the aforesaid party with any credible and corroborative evidence. The facts clearly emerges that in the facts and circumstances of the case the assessee had failed to discharge the onus of proving the purchase transaction shown by them with the aforesaid party. Accordingly the learned assessing officer applied provisions of section 69C of the act and made disallowance of percent of the purchases of Rs. 1,158,195 and determined the total income of the assessee at Rs. 17,926,680 by passing an assessment order on 30/12/2016.
07. Assessee preferred appeal before The learned CIT – A who passed an order on 8/8/2023 holding that when the ITAT has passed an order dated 19/12/2016 net profit rate at the rate of 5.76% taken by the learned CIT – A was upheld holding that this would include all purchases. The jurisdictional ITA T when decided the issue about the estimation of profit the addition in this appeal stands deleted as only the gross profit embedded in the bogus purchases are to be taxed.
08. Learned assessing officer aggrieved with the above appellate order is in appeal before us. As per ground number 1 it is contested that that addition has been made on account of

information received from sales tax department with regard to the bogus purchases made by the assessee from dealers without supply of actual goods and as per ground number 2 the AO is aggrieved that CIT – A justified in deleting the addition of ₹ 1,158,195 under section 69C of the act without appreciating the fact that the assessee has failed to discharge his onus was established the genuineness of the purchases.

09. The learned departmental representative After explaining the facts relied upon the order of the learned AO.
010. The learned authorized representative submitted that in the earlier reassessment proceedings the additions were made on account of bogus purchases only. The learned assessing officer made an addition of ₹ 16,948,368/- in that proceedings. The learned CIT – A computed the net profit at the rate of 5.76% amounting to ₹ 9,873,846 on turnover of ₹ 171,420,934. The learned CIT – A confirmed the addition of the difference on account of net profit as per books of accounts of ₹ 4,828,899/- and estimated net profit at the rate of 5.76% amounting to ₹ 9,873,846. Therefore the addition of ₹ 5,044,947 has already been confirmed on account of bogus purchases. Therefore, the order of the learned AO making the 100 % Percent addition of alleged bogus purchases of ₹ 1,158,195/- is incorrect. He further stated that the addition of gross profit at the rate of 5.76% has also been made on account of order of income tax settlement commission in assessee's own case for assessment year 2010 – 11 to 2012 – 13. Therefore, now the addition has been rightly deleted by the learned CIT – A.



011. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee's case has already been reopened on account of alleged bogus purchases amounting to ₹ 16,948,368/- wherein the profit is offered in settlement commission of 5.76% and the profit as declared by the books of accounts of the assessee was compared, after that the balance difference was confirmed by the learned CIT – A. Therefore, it is apparent that the net profit of 5.76% of the total annual turnover of the assessee has been estimated by the learned CIT – A in the appeal against the reassessment, which travelled up to the ITAT and the order of the learned CIT – A was confirmed. Now in this second reassessment proceedings further information was received that assessee has further obtained purchases from suspicious dealers amounting to ₹ 1,158,195/-. The issue is whether the addition is required to be made of alleged bogus purchases at the rate of hundred percent or the addition is subsumed in net profit rate already assessed. It is an established principle that in case of such bogus purchases only profit embedded there in should be charged to tax if such purchases have resulted into sales. Now the issue that arises is whether when the already addition of ₹ 5,044,947/- is confirmed to arrive at the net profit rate of 5.76% as decided by the settlement commission in assessee's own case further addition is required to be made on account of alleged bogus purchases of ₹ 1,158,195/- or not. Of course, It is required to be separately added provided the difference between the net profit rate of 5.76% amounting to ₹ 9,873,846 and actually declared net profit as per books of accounts of ₹ 4,828,898/- is lower than the alleged bogus purchases. Here



the alleged bogus purchases are only Rs. 11,58,195 whereas the already sustained addition is of ₹ 5,047,947/-. Thus, according to us the learned CIT – A is correct in not making any further addition to the total income of the assessee on account of alleged bogus purchases of ₹ 1,158,195/- for which the impugned reassessment order is passed. Accordingly we confirm the order of the learned CIT – A. Accordingly, both the grounds raised by the learned assessing officer are dismissed.

012. In the result appeal filed by the learned AO is dismissed.

Order pronounced in the open court on 25.04. 2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 25.04. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai