

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3306/MUM/2023
Assessment Year: 2014-15**

Income Tax Officer, BKC
Bandra,
315 Kautilya Bhavan, Income
Tax Office BKC Bandra East-
Mumbai-400051.

Appellant

Vs.

Vijaylakshmi, Sakinaka
36, GR Floor, Sagar Pallozio
Andheri Kurla Road Opp.
Sudharshan Hotel, Sakinaka,
Mumbai-400072.
PAN NO. AAIPU 8085 F
Respondent

Assessee by : None
Revenue by : Ms. Rajeshwari Menon, DR

Date of Hearing : 18/04/2024
Date of pronouncement : 25/04/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 14.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds:

1."Whether on the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in deleting the addition made by the AO ignoring the



fact that ITAT has deleted the addition to the extent of 95% of the addition made by the AO. 2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in deleting the addition made by the AO ignoring the fact that ITAT has deleted 95% of the purchases from hawala partied, therefore the CIT(A) ought have confirmed 95% of the creditors.

2. Briefly stated, facts of the case are that the Assessing Officer has made addition u/s 41(1) of the Income-tax Act, 1961 (in short 'the Act') for two amounts. **Firstly**, the addition of Rs.19,79,006/- is made on protective basis which is in respect of purchases already held as bogus and disallowed in earlier years, **secondly**, the amount of Rs.1,48,33,893/- is in respect of sundry creditors which were not subjected to disallowance in earlier years.

3. On further appeal, the Ld. CIT(A) has deleted the protective addition for the reason that in earlier year, the addition made on substantive basis towards bogus purchases has already been restricted to 5% by the Tribunal. The relevant finding of the Ld. CIT(A) is reproduced as under:

“9.0 In the appeal proceedings the assessee reiterated the stand taken before the AO and submitted that the Tribunal in his case for the earlier years decided the issue and treated the 5% of the purchases from the creditors as income. The assessee therefore took a stand that the same cannot be once again added back as income on protective basis in the impugned order.

10.0 As seen from the order in ITA 4402 to 4403/Mum/2018 w MA 210-212/Mum/2020 dt 17.12.2020, the Tribunal directed the AO to restrict the addition to 5% of the bogus purchases in the earlier assessment years. Considering the decision of the Tribunal the addition of Rs 1,09,79,006 on protective basis is therefore no longer tenable and hence deleted.”

3.1 As far as addition of Rs.1,48,33,893/-, the Ld. CIT(A) has upheld the addition observing as under:



“As regards, the addition of Rs 1,48,33,893 is concerned, the AO conclusively proved that the creditors were not genuine and in the appeal proceedings the assessee only reiterated the stand taken before the AO. Therefore, the decision of the AO to invoke provisions u/s 41(1) cannot be faulted. Therefore, the decision of the AO to invoke provisions u/s 41(1) cannot be faulted and hence the addition is confirmed”

4. Aggrieved with the deletion of protective addition of Rs.1,09,79,006/- the Revenue has filed this appeal . In the form prescribed for filing appeal i.e. the Form No. 36, the tax effect has been noted as Rs.32,37,071/-. The said tax effect is below the threshold limit prescribed by the Central Board of Direct Taxes (CBDT), New Delhi vide Circular No. 3/2018 dt. 20/08/2018 for filing appeal before the ITAT and therefore, the appeal of the Revenue is liable to be dismissed as infructuous. We order accordingly. However, later on if the Revenue finds that case falls under any of the exceptions to the said CBDT Circular or for any other reason the tax effect circular is not applicable on the assessee, the revenue is at liberty to file Miscellaneous Application for recalling the order of the Tribunal, if so advised.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25/04/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/04/2024
Rahul Sharma, Sr. P.S.



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,
(Assistant Registrar)
ITAT, Mumbai