

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM

ITA No. 3699/Mum/2023

(Assessment Year: 2012-13)

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| ITO- 19(1)(1) Room No.501, Piramal Chambers, Lalbaug Parel, Mumbai-400 012 (Appellant) | Vs. | Diajewel 303-B, 113 Aman Chambers, M.Karve Road, Opera House, Mumbai-400 004 (Respondent) |
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PAN No. AABFD8623K

Assessee by : Shri Bhupendra Shah, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 14.05.2024
Date of pronouncement : 21.05.2024

ORDER**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 3699/Mum/2023, is filed by the Income Tax Officer, Ward 19(1)(1), Mumbai, (the learned Assessing Officer) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 17th August, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 11th December, 2019, was partly allowed.
02. The learned Assessing Officer has raised following grounds of appeal:-

“1. Whether on the facts and circumstances of the case and in law, L.d. CIT(A) has erred in applying 3 years Gross Profit @ 16.45% as against the 100% addition made u/s 68 of the Income-Tax Act, 1961. by the Assessing Officer on account of Bogus Purchases of Rs. 4,22,34,640/- by ignoring the fact that DGIT(Inv.) had proved beyond doubt that the party M/s. Mayank Impex, a dummy entity of Rajendra Jain Group, who were involved in providing accommodation entry of Sales & purchases without actual delivery of goods and the assessee was one of the beneficiary who accepting accommodation entries for the purchases of goods.

2. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in applying 3 years Gross Profit @ 16.45% as against the 100% addition made u/s 68 of the Income-Tax Act, 1961, by the Assessing Officer on account of Bogus Purchases of Rs. 4,22,34,640/- without appreciating the fact that during the search operation an statement recorded u/s 132(4) of the Act, of Mr. Ranjendra Jain, wherein has categorically stated that M/s. Mayank Impex, to whom the assessee claimed to have made purchases are managed and controlled by him for providing the accommodation entry only with no real business?

3. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is right in presuming that purchases have been made during the year from the unknown

parties, whereas bills have been received from Hawala dealer?

4. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was right in applying 3 years Gross Profit @ 16.45% as against the 100% addition made u/s 68 of the Income-Tax Act, 1961, by the Assessing Officer on account of Bogus Purchases of Rs. 4,22,34,640/- without appreciating the fact the assessee could neither produce the delivery, challans or the transport bills/invoices nor could produce the alleged parties from whom purchases was claimed to have been made during the year?

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in applying 3 years gross profit @ 16.45% as against the 100% addition made u/s 68 of the Income-Tax Act, 1961 on account of Bogus Purchases of Rs. 4,22,34,640/-, without appreciating the ratio in the decision of the Hon'ble Supreme Court in the case of N.K. Protein Ltd. Wherein the court has held that when the purchases are from bogus suppliers. the entire purchases are liable to be disallowed ?

6. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in applying 3 years Gross Profit @ 16.45% as against the 100% addition made by the Assessing Officer on account of Bogus Purchases of Rs. 4,22,34,640/-, without appreciating the fact that in the

case of Swetamber Steels Ltd. (Supra), the Hon'ble ITAT Ahmedabad had confirmed the disallowance of the bogus purchase in entirety stating that the purchases shown from respective parties were found non- genuine and the decision of the ITAT was upheld by Hon'ble Gujrat High Court and also Hon'ble Supreme Court?"

03. The brief facts of the case shows that assessee is a partnership firm filed its return of income on 23rd September, 2012, at a total income of ₹8,97,530/-. The case of the assessee was reopened by issue a notice under Section 147 of the Act which culminated into an assessment order under Section 143(3) read with section 147 of the Act on 11th February, 2019, wherein the total income of the assessee is assessed at ₹4,31,32,170/-. The addition of ₹4,22,34,640/-, was made to the total income of the assessee on account of accommodation bills for purchase of ₹4,22,34,640/- allegedly obtained by the assessee from M/s Mayank which is an entity operated by accommodation entry provider Mr. Rajendra Jain group. This is the issue for which the assessment was reopened and consequent addition of bogus purchases at the rate of 100% was made.
04. The assessee challenged the same before the learned CIT (A), who as per the appellate order dated 17th August, 2023, has partly allowed the appeal of the assessee by determining the amount of profit involved in the bogus purchase to the extent of 60.45% as per average gross profit of last three years of the assessee. Accordingly, addition to the extent of ₹69,47,598/- was confirmed and the balance addition was deleted.



05. Both the parties were aggrieved with the above appellate order. Assessee approached the co-ordinate Bench in ITA No.2948/Mum/2023, for A.Y. 2012-13, which was decided by the co-ordinate Bench on 26th February, 2024, wherein the addition was restricted to 3% of gross profit. As assessee has already declared gross profit rate of 1.42% for the year, balance 1.58% was confirmed. It has not brought to our notice that any Miscellaneous Application is pending or filed before the ITAT.
06. By this time neither the registry nor the parties informed the Bench that Id Ao has filed an appeal against the same order though the appeal of the Revenue was filed on 3rd October, 2023. Had it been known to the Bench that the cross appeal of the Revenue is pending, perhaps that would have been heard and disposed off together. It would have been duty of the Registry to tag the cross appeals and fixed them together for hearing. However, in this case as the issue is already decided by the co-ordinate Bench that assessee should have been earned the excess gross profit of only 1.58%, the appeal of the Revenue becomes infructuous. Accordingly, we dismiss the same.
07. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 21.05. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.05. 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