

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
&
Smt. Renu Jauhari (AM)

I.T.A. No. 4756/Mum/2023 (A.Y. 2009-10)

Rajeshkumar Ratilal Shah B-303/304, Shree Rameshwar Tower, Shimpoli Road, Opp. Reliance Mall, Borivali West, Maharashtra- 400092. PAN : AAVPS2376L (Appellant)	Vs.	ITO-42(1)(4) Kautilya Bhavan Bandra Kurla Complex, Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Harshal Ajmera
Department by	Shri Nagnath Pasale
Date of Hearing	28.05.2024
Date of Pronouncement	31.05.2024

ORDER

Per Narender Kumar Choudhry (JM) :-

In the instant case, the Assessing Officer vide assessment order dated 5.3.2015 under section 144 read with section 147 of the I.T. Act made the addition of Rs. 10,88,165/- under section 69C of the Act, on account of fictitious invoices in the name of bogus parties and added the same to the total income of the assessee. The Assessee being aggrieved, challenged the said addition before the Id. CIT(A) who more or less on the same reasoning as given by the Assessing Officer, ultimately affirmed the aforesaid addition. The assessee being aggrieved is in appeal before us.

2. Learned AR, at the outset by drawing out attention to the assessment order dated 4.3.2016 passed under section 143(3) read with section 147 of the Act for assessment year 2010-11 contended that on identical facts and circumstances, the Assessing Officer made the addition only to the extent @ 12.5% of the total amount of bogus purchases and therefore by following the same method, this appeal can be decided.

3. On the contrary, learned DR though refuted the claim of the assessee, however accepted the factual aspect, qua assessment order dated 4.3.2016(supra).

4. We have given thoughtful consideration of the peculiar facts and circumstances of the case. No doubt, purchases made by the assessee have been proved as bogus purchases based on the fictitious invoices by the authorities below. However, it is settled law that entire amount of alleged bogus purchases cannot be added/disallowed in entirety but the profit element embedded therein can only be considered for making addition. Hence, considering peculiar fact that in subsequent assessment year i.e. A.Y. 2010-11, the Revenue department has made addition @ 12.5% of the alleged bogus purchases, therefore in order to maintain the consistency we are inclined to restrict the addition to the extent of 12.5% of the amount of alleged bogus purchases **or** the profit shown by the assessee voluntarily, which ever would be higher.

5. In the result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 31 May, 2024.

Sd/-
(Renu Jauhari)
Accountant Member

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS