

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4526/M/2023
Assessment Year: 2009-10**

M/s. A.D. Enterprises, 122/10, Regent Palace CHS, Jawahar Nagar, Road No.10, Goregaon (West), Mumbai - 400062 PAN: AANFA2770Q	Vs.	CIT(A), Mumbai-42, National Faceless Appeal Centre - (NFAC)Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Mansi Solanki, A.R. a/w
Mr. Deepak Agrawal, A.R.

Revenue by : Shri Himanshu Kumar, D.R.

Date of Hearing : 16 . 05 . 2024

Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 29.05.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

2. In the instant case, the assessee had declared its total income of Rs.54,190/- on 27.09.2009 which was processed under section 143(1) of the Act. Subsequently, on the information received from

the Sales Tax Department, Mumbai as well as from the office of DGIT (Inv.), Mumbai to the effect that there are some hawala dealers who were involved in issuing of bogus bills to the beneficiaries. The list of the hawala dealers is also available on the official website of Sales Tax Department, Government of Maharashtra www.mahavat.gov.in qua suspicious parties who are only providing accommodation entries without doing any actual business. According to the information received, the assessee has also received accommodation entries from the alleged suspicious parties (hawala dealers) amounting to Rs.10,73,729/- and accordingly the case of the assessee was reopened under section 147 of the Act and notice dated 18.02.2014 under section 148 of the Act was issued and thereafter statutory notices were also issued, in response to which the assessee from time to time filed relevant details as called for, which were verified and placed on record by the Assessing Officer (AO). On perusing the financials of the assessee, it was observed by the AO that the assessee has debited purchases totaling to Rs.45,93,351/- and sales of Rs.57,79,480/-, the AO also observed that the assessee has made purchases from 8 parties for different amounts totaling to Rs.10,73,729/-. Consequently, in order to verify, the AO issued notices under section 133(6) of the Act to the parties, however, some of the notices returned by the postal department with the remarks refused/left/not known. Though the assessee furnished details of party wise & quantity wise purchases & sales, however, failed to file the details of movement of goods and therefore the AO doubted the purchase transactions carried out by the assessee mainly on the reasons that notices under section 133(6) of the Act were returned back and purchase parties were not produced for verification and in the audit report it is clearly stated that primary evidences like loading, unloading, payment to purchase parties, L.R./transportation receipt/octroi receipt/of the material purchased and manufacturing details like where the purchased material was utilized, neither stock register nor quantitative details are maintained and consequently

onus of proving genuineness had not been discharged by the assessee. The AO ultimately treated the amount/expenses of Rs.10,73,729/- as an unexplained under section 69C of the Act and consequently added the same in the income of the assessee.

3. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, in spite of affording opportunities by issuing notices to the assessee by the Ld. Commissioner, the assessee, except filing its reply on one occasion, has not submitted any submission/explanation/evidence to support its claim. Therefore, the Ld. Commissioner, by considering the part reply filed by the assessee and the assessment order, ultimately affirmed the addition as made by the AO.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. No doubt the assessee has failed to prove the genuineness of the purchases made, however, it is a fact as demonstrated by Ms. Mansi Solanki, the Ld. Counsel of the assessee that both the authorities below have not doubted the sale made by the assessee, hence 100% of the alleged bogus purchases cannot be disallowed/added in the income of the assessee, but as per the dictum laid down by the higher courts, if any addition/disallowance qua bogus purchases is to be made, then the profit element embedded therein can only be considered for addition but not the entire amount of bogus purchases.

Considering the contention raised by the Ld. AR and peculiar facts and circumstances and for the just decision of the case and for substantial justice, we are inclined to restrict the addition to the extent of 5% of the alleged amount of purchases or the profit/GP rate qua alleged bogus purchases shown by the Assessee, **whichever would be higher**. The AO is directed to recompute the income accordingly.

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

Order pronounced in the open court on 29.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.