

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4787/Mum/2023 (A.Y. 2010-11)

Laxmipati Impex Private Limited C/o. B-804, Suman Ashish, B/H Soham Residency, Soham Circle, Althan, Surat Gujarat-395 017.	Vs.	ITO, Ward-1(2)(2) Room No. 582 Aayakar Bhavan M.K. Road Mumbai-400 020.
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PAN : AABCL5983D  
(Appellant)

(Respondent)

Assessee by	None
Department by	Shri R.R. Makwana
Date of Hearing	04.06.2024
Date of Pronouncement	24.06.2024

ORDER

1. This appeal is filed by Laxmipati Impex Private Limited (the assessee/the appellant) against the appellate order passed by the National faceless appeal Centre (NFAC) Delhi for assessment year 2010 – 11 dated 31/10/2023 wherein appeal filed by the assessee against the assessment order passed under section 147 read with section 144 of The Income Tax Act, 1961 (act) dated 26/12/2017 by the Income Tax Officer , Ward 1 (2) (2), Mumbai was dismissed.
2. Assessee aggrieved with that has preferred this appeal raising following grounds
  - i. That on the facts and in the circumstances of the case and as well as in the law the appellate order passed by the learned CIT (A) dismissing the appeal of the appellant is wrong, unjustified, invalid and bad in law.
  - ii. That on the facts and in the circumstances of the case as well as in law, the learned CIT (A) has erred in upholding

the addition of ₹ 980,000 by treating the genuine and duly accounted for purchase as bogus and added under section 69C of the act. The addition so made by the learned AO and sustained by the learned CIT (A) is wrong and unjustified. The appellant prays for deleting the same.

- iii. That on the facts and in the circumstances of the case as well as in law, the learned CIT (A) has erred in upholding the assessment of above addition of ₹ 980,000/- as total income of the appellant without setting off the same against loss of ₹ 3,795,790/- for which appellant is lawfully entitled. The addition and assessment so made without allowing lawful set off is completely wrong and unjustified and learned CIT (A) has erred in upholding the said addition and assessment without set off of the same against the loss suffered by the appellant.

3. The brief facts of the case shows that assessee is a private limited company engaged in trading of export of textile fabrics, filed its return of income for assessment year 2010 – 11 on 8/12/2017 declaring loss of ₹ 3,795,790/-. The learned assessing officer received information from the Deputy Director of income tax (investigation) unit that assessee has purchases booked by bogus bills which ultimately lead to suppression of profit. Therefore notice under section 148 of the income tax act was issued on 31/3/2017. This notice was sent through speed post as well as by hand and served on the assessee. However no response to such notice was received. Subsequently notice under section 142 (1) of the act was issued on 30/6/2017 which was also returned back by the postal authorities. Again notice under section 142 (1) was issued to the assessee on 19/7/2017 and 26/7/2017. Assessee did not respond to those notices and therefore the learned AO further issued notice under section 142 (1) of the act to

the directors on 15/9/2017. As there is no response, further notice was also sent on 9/10/2017 to the directors of the company on their address at Surat calling for certain details. This notice was also not responded. The learned assessing officer issued a further notice to the directors of the company providing the reasons recorded as well as the statement of one accommodation entry provider Mr. Prafull Ishwarbhai Patel. In response to the above show cause notice on 18/11/2017 the assessee furnished reply stating that assessee has made purchase of ₹ 980,000 from Ankita enterprises and assessee supported the same by the Ledger account, purchase invoices, and details of assessee of income tax return, computation of income and annual report. Assessee relies upon the several judicial precedents and pleaded that no disallowance can be made.

4. The learned assessing officer has noted that assessee has paid a sum of ₹ 980,000 to M/s Ankita enterprises for bogus purchases. The learned assessing officer noted that the genuineness of the purchases have not been proved by the assessee and also could not show any corresponding sales of purchases made from these parties. There is no availability of corresponding sales bill, entries in the stock register, goods inward register, stock register et cetera and the corresponding sales made to the parties. In absence of this primary evidences it is not possible to accept that the transaction of purchase claim to have been made by the assessee has also gone into sale of those items which are recorded in the books of assessee and therefore neither the purchases are genuine nor the benefit of sales is required to be given to the assessee. The AO further held that assessee has also not made any effort to show that the statement made by parties before the Deputy Director of income tax (investigation) are in any way incorrect. Accordingly the learned assessing officer passed an assessment order under section 147 read with section 144 of the act on 26/12/2017

determining total income of the assessee at ₹ 980,000. The AO also did not give any benefit of the losses per computation of total income of ₹ 3,795,792 as the addition was made under section 69C of the act.

5. The assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A wherein the learned CIT – A issued seven notices to the assessee and none of these notices were complied with. Therefore by order passed by the learned CIT – A the addition made by the AO was confirmed.
6. Aggrieved by that appellate order the assessee preferred an appeal before us. Despite notice none appeared on behalf of the assessee, assessee has submitted a written reply, and therefore the issue needs to be decided on the merits of the case considering those written replies.
7. The learned departmental representative vehemently supported the order of the lower authorities and submitted that the assessee has not furnished any information about the genuineness of the purchases and therefore the addition has been correctly made under section 69C of the act. It was further stated that the set off of loss also cannot be granted to the assessee because the addition has been made under section 69C of the act. He further stated that the assessee cannot be given the benefit of the applicability of the gross profit only for the simple reason that assessing officer has categorically noted that assessee has failed to show that there is any sales of the alleged bogus purchases product. When the sales is not shown by the assessee out of the alleged bogus purchases, the benefit of the gross profit cannot be allowed. He otherwise submitted that assessee has failed to appear before the assessing officer, before the CIT appeals and therefore assessee does not deserve any relief.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. Ground number 1 of the appeal is

stated to be general in nature and written submission filed by the assessee and therefore same is dismissed.

9. In Ground number 2 the assessee has submitted that the addition made by the learned assessing officer of ₹ 980,000 on account of purchases made from Ankita enterprises has been made only on the basis of finding of the investigation Wing that party was engaged in providing bogus bills without actual sales. The assessee has produced the purchase bills, and ledger account of the above party showing that the payment have been made to these parties through account payee cheque. It was the claim of the assessee that assessee has incurred losses of ₹ 3,795,790/- and therefore there is no reason to obtain any bogus purchases bill by the assessee. It was further stated that the addition has been made on the basis of the statement of third party itself and therefore such addition cannot be sustained. Assessee relied on several judicial precedents. In the end it was submitted that the entire purchases cannot be added but only the profit embedded in such purchases can at the most be added and further the addition is beyond the scope of section 69C of the act. It was also the claim of the assessee that the reassessment proceedings are taking place after almost 8 years and due to heavy losses suffered by the assessee the business was already closed. The assessee could not produce the books of accounts but that does not mean that these purchases are bogus. With respect to the corresponding sales it was submitted that appellant could not show corresponding sales but it is submitted that as per the audited accounts and return of income, total sales and closing stock is of ₹ 8.44 crore and ₹ 1.35 crores respectively. As the sales are very small amount of purchases of ₹ 980,000 which was made at the end of the year and were included in the closing stock hence this basis is also incorrect. It was stated that the purchases of ₹

980,000 has been shown in the closing stock. And therefore the addition could not have been made.

10. We find that only the gross profit embedded in such purchases could have been added at the most to the total income of the assessee. The purchases of the assessee are made on 25/3/2010 as per bill number 98 of Ankita enterprises of polyester fabrics of 3927.50 m at the rate of ₹ 78 per meter. Another bill number 100 was also dated 27/3/2010 of 4652 m of polyester fabrics at the same rate and further bill number 103 dated 30/3/2010 was also 3984.75 polyester fabrics meter at the same rate. The total amount of purchases is ₹ 980,012/-. The amount was outstanding as on 31/3/2010 in the books of the assessee. This sum was paid on 1/10/2010 by the assessee by account payee cheque. Quantity of purchases in the above transaction is shown by the assessee stated to be in closing stock and valued at the same rate. Assessee has stated that it has the closing stock of ₹ 1.35 crores. It is not the claim of the learned assessing officer that the purchases shown by the assessee are not at market rate. It is claimed by the assessee that above amount is also standing in the books of accounts in the closing stock at the same rate. Therefore, only the appropriate amount of the gross profit involved in the above transaction needs to be added to the total income of the assessee. As there is no information available with the assessing officer due to non-compliance by the assessee, non-compliance before the CIT appeal and also not producing any details except written submission before us, we are constrained to adopt 12.5% of the bogus purchases as income of the assessee. Accordingly the AO is directed to restrict an addition of 12.5% of ₹ 980,000 of the bogus purchases made by the assessee from Ankita enterprises. Accordingly ground number 2 of the appeal is allowed to that extent.

11. Ground number 3 of the appeal is against the set-off of loss of ₹ 3,795,790 as per return of income. The claim of the assessee is that such loss should be set off against any income held to be chargeable on account of this bogus purchases in view of CBDT circular number 11 of 2019. The above circular shows a clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE of the income tax act prior to assessment year 2017 – 18. The circular states that there was an uncertainty on the issue of set off of losses against the income referred to under section 115BBE. As per paragraph number 4 of that circular it was stated that to remove any ambiguity of interpretation set off of any losses was specifically inserted only by the finance act 2016 with effect from 1/4/2017, therefore assessee is entitled to claim set off of loss against income determined under section 115BBE of the act in the assessment year 2016 – 17. Thus the claim of the assessee is covered by the circular as the impugned assessment year is 2010 – 11. Accordingly ground number 3 of the appeal is allowed.
12. In the result appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24<sup>th</sup> June 2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 24.06.2024

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,

*PS*

(Assistant Registrar)  
ITAT, Mumbai