

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 2767/Mum/2023 (A.Y. 2010-11)

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| ITO, Ward 3(2) 2 nd Floor, Rani Mansion Murbad Road, Kalyan-W Maharashtra-421 301. | Vs. | Mukesh Odhavji Kamaliya Flat No. 22, Building E2 Prem Park, Masulkar Colony Near Corporation Bank, Pune-411 018 PAN : AXZPK8408L |
| (Appellant) | | (Respondent) |

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

O R D E R

1. This appeal is filed by The Income Tax Officer Ward 3 (2), Kalyan (the learned assessing officer) for assessment year 2010 – 11 against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) dated 29/5/2023 wherein the appeal filed by the assessee against the assessment order passed by The Income Tax Officer on 19/2/2015 under section 143 (3) read with section 147 of The Income Tax Act, 1961 (the act) was partly allowed. Therefore, the assessing officer is aggrieved and is in appeal before us.
2. The solitary ground of the appeal of the learned assessing officer is that the learned CIT – A has erred in restricting the disallowance to 25% of purchases instead of hundred percent of purchases of Rs. 777,174/- from non-existent vendor's by not following the decision of the honourable Gujarat High Court in case of NK proteins Ltd versus DCIT where in it has been held that once the purchases are bogus, the addition should be made on the entire purchases and not only the

profit embedded in such purchases against which the specially petition filed by the assessee was dismissed by the honourable Supreme Court in (2017) 292 CTR 354 (SC).

3. The fact is that the assessee is an individual who filed his return of income on 26/9/2010 for assessment year 2010 – 11 at a total income of Rs. 202,640/-. The information was received by the AO from the GI (investigation), Pune on 6/2/2013 that the sales tax department Mumbai has on our racket involving more than 1935 hawala dealers involved in issuing bogus invoices to more than 37,000 beneficiaries. Accordingly, the assessee was found to be beneficiary with respect to the purchases of 7,77,174/- with respect to 5 such hawala dealers and therefore the notice under section 148 of the act was issued to the assessee. The assessee reiterated his return of income. Notice under section 143 (2) of the act was also issued to the assessee. The assessee was questioned on that which it was replied by the assessee stating that assessee has produced books of accounts, bank book, cashbook, purchase register, sales register, and all other details with respect to such purchases. The assessee was also asked to show womb the sales were made of those goods. The assessee produced the Ledger accounts and necessary details. Notices under section 133 (6) were issued to the parties who supplied allegedly bogus invoices to the assessee which were returned by postal authorities. Therefore, the assessee was asked to produce proprietor of M/s Rishabh enterprises. Assessee could not produce. AO also noted that the assessee has failed to produce the delivery slip of the materials received by the assessee as well as transported by way of a sale to other parties. Accordingly, the assessment order was passed under section 143 read with section 147 of the act on 19/2/2015 wherein the 100 % percent of the bogus purchases of Rs. 777,174/- was added to the total income of the assessee under section 69C of the act to the returned income of Rs. 202,640/- and the total income was assessed at Rs. 979,814/-.

4. The assessee aggrieved with the assessment order preferred an appeal before the learned CIT A, who passed an appellate order on 29/5/2023 wherein he is following the decision of the honourable Gujarat High Court in case of Vijay proteins Ltd versus ACIT restricted the addition to the extent of 25% of bogus purchases. The learned assessing officer is aggrieved with the same and is in appeal before us.
5. The learned departmental representative vehemently submitted that the learned CIT – A should not have reduced the disallowance of bogus purchases from hundred percent to 25% in view of the decision of the honourable Supreme Court in case of NK proteins Ltd. He referred to the facts of that case and stated that the issue is squarely covered against the assessee and therefore the order of the learned CIT –A is not sustainable.
6. Despite notice none appeared on behalf of the assessee and therefore the issue is decided in the absence of the assessee on the facts available on record on its merit.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the learned assessing officer has made the hon percent of the bogus purchases as addition to the income of the assessee by invoking the provisions of section 69C of the act despite the assessee showing the purchase invoices, name, and address of the parties, producing the books of accounts, payments made by the banking channel. Merely because the notices issued to the supplier under section 133 (6) of the act could not be served by the AO and further the assessee failed to produce the owner of M/s Rishabh Enterprises the learned assessing officer made the addition to the extent of hundred percent of such bogus purchases. The learned CIT – A upon the decision of the honourable Gujarat High Court in case of M/s Vijay Proteins Limited retained the addition only to the extent of 25% of bogus purchases. We find that in the case of NK proteins, honourable Gujarat High Court followed the decision of

M/s Vijay Proteins Ltd and further in both the cases the addition was restricted to the extent of 25% of the bogus purchases only. Therefore, the grounds of appeal preferred by the learned assessing officer are misplaced. Accordingly same is dismissed as we do not find any infirmity in the order of the learned CIT – A in restricting the addition of bogus purchases to the extent of 25% of such bogus purchases.

8. In the result appeal of the AO is dismissed.

Order pronounced in the open court on 24th 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,

(Assistant Registrar)
ITAT, Mumbai

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