

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 516/MUM/2024
Assessment Year: 2011-12

Shri Rakesh Vardhichand Shah Office No.4, 1 st floor, Bldg No.498, Prabhu Shree Ram Mandir Marg, 4 th Kumbharwada, Mumbai – 400003 (PAN : AHXPS2501C)	Vs.	Income Tax Officer, Ward – 19(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 13.06.2024
Date of Pronouncement : 24.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058590383(1), dated 08.12.2023 passed against the assessment order by Income Tax Officer-19(3)(1), Mumbai, u/s.144 r.w.s.147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 07.11.2016 for AY 2011-12.

2. Grounds taken by the assessee are reproduced as under:

"1. On the facts and in the circumstances of the case, the Commissioner of Income- tax (Appeals), hereinafter referred to as the "CIT (A)", has erred in confirming the addition of Rs. 78,87,450/- made by the assessing officer by disallowing certain purchases from few named parties by considering it as accommodation entries.

2. The CIT(A) has erred in appreciating the fact that there cannot be sales without purchases. If the purchase are bogus than even the sales are bogus.

3. Without any prejudice whatsoever to the above grounds, on the facts and in the circumstances of the case, the CIT (A) has erred in not appreciating the fact the appellant has earned reasonable profit (as per their industry) on the trading done by him during the year. When there is a reasonable profit the question of suppression of tax or bogus purchase doesn't arise."

3. Brief facts of the case as culled out from records are that assessee filed his return of income on 30.09.2011 reporting a total income at Rs.6,95,928/-. Upon receipt of information from DGIT(Inv), Mumbai that assessee is one of the beneficiaries of hawala transactions, proceedings u/s.148 r.w.s. 147 were initiated. Ld. Assessing Officer noted that some dealers under Maharashtra VAT 2002 indulged in practice of providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing accommodation entries only. According to him assessee is one of the beneficiaries of such transactions. He listed the details of accommodation entries availed by the assessee from eleven parties totalling to Rs.71,91,524/-. Necessary details and explanations were called for from the assessee in this respect. However, nothing came up from the assessee to substantiate his claim. Accordingly, ld. Assessing Officer completed the assessment by treating this amount as non-genuine purchases, sources of which is not explained by the assessee.

4. Aggrieved, assessee went in appeal before the CIT(A) before whom, no representation was made on four different dated of hearing fixed by the ld. CIT(A). Accordingly, in absence of any response from the assessee, the addition so made on account of bogus purchases was sustained and the appeal was dismissed. Aggrieved, the assessee is in appeal before the Tribunal.

5. Before us, none represented the assessee. On going through the statement of facts placed on record, we note that assessee is engaged in the trading of ferrous and non-ferrous metal items. This issue before us in respect of addition made on account of bogus purchases based on information of the Maharashtra State Sales Tax Department has been dealt with by Hon'ble Jurisdictional High Court of Bombay in several cases which have been respectfully followed by Co-ordinate Benches of ITAT, Mumbai in several similar appeals. Decisions of Hon'ble Jurisdictional High Court includes-

1. CIT Vs. Nikunj Exim Enterprises Pvt. Ltd. And CIT Vs. Simit Sheth in ITA No.553 of 2012 dt. 16.01.2013
2. CIT vs. Bholanath Poly Fab(P) Ltd. in ITA no. 63 of 2012 dt. 23.10.2012.

5.1. Since the issue before us is squarely covered by the above referred judicial precedents, we are inclined to take up the matter *ex parte*, qua the assessee with the assistance from Ld. Sr.DR and by taking into consideration the material available on record before us.

6. As already noted, assessee is a trader in ferrous and non-ferrous metal items. There is an alleged bogus purchase transaction of Rs. 71,91,524/-. Ld. Assessing Officer has made the addition towards the entire amount of alleged accommodation entries towards purchases. By respectfully following the decisions of Hon'ble Jurisdictional High Court of Bombay (Supra) we restrict the addition to the extent of gross profit embedded in such alleged bogus purchases since Ld. Assessing Officer has not disputed on the sales made by the assessee. Accordingly, by following the judicial precedents, gross profit rate of 12.5% is taken on the amount of alleged bogus purchases of Rs. 71,91,524/- which comes to Rs.8,98,940.5 for the purpose of sustaining the addition. The balance amount is thus deleted from the

addition made by the Ld. Assessing Officer. Accordingly, grounds taken by the assessee in this respect are partly allowed.

7. In the result, the appeal of assessee is partly allowed.

Order is pronounced in the open court on 24 June, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24 June, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai