

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1123/Mum/2024 (A.Y. 2010-11)
I.T.A. No. 1124/Mum/2024 (A.Y. 2011-12)

Rajnish Srikishan Gupta A-3, Brindavan Housing Society Ltd., Lala Jamnadas Gupta Marg Deonar, Mumbai-400088. PAN : AABPG2210M (Appellant)	Vs.	ITO 20(3)(1) Priamal Chamber 4 th Floor Lalbaug Parel Mumbai-40 0012. (Respondent)
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Assessee by	Shri Kirit Sanghvi
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	28.06.2024

ORDER

Per Prashant Maharishi Accountant Member

1. These are the two appeals filed by the assessee for assessment year 2010 – 11 and 2011 – 12 against the appellate order of the National faceless appeal Centre (learned CIT – A) dated 9/3/2024 and 14/2/2024 respectively wherein the appeal is filed by the assessee against the assessment order passed by the income tax officer 20 (3) (1), Mumbai (the learned AO) under section 143 (3) read with section 147 of the income tax act, 1961 (the act) dated 30/11/2017 were dismissed.
2. In both the appeals the issue is with respect to the addition on account of bogus purchase of ₹ 2,430,272 and 35,67,407/- paid by the learned assessing officer under section 69C of the act whereas the learned CIT – A has dismissed the appeal upholding the addition of hundred percent of such bogus purchases.

3. The brief facts for assessment year 2010 – 11 shows that assessee filed his return of income on 23/6/2010 declaring a total income of ₹ 593,230/-. As the information was received that assessee has obtained the bogus bills from Bhagwati trading company of ₹ 3,567,407/- as per the information provided by the director general of income tax (investigation), notice under section 148 of the income tax act was issued to the assessee on 30/3/2017. The assessee reiterated its original return of income by letter dated 4/4/2017. Assessee was asked to produce the party for which assessee failed. Notices under section 133 (6) were also issued to the party who provided the purchase invoices but same were returned unserved. Inspectors report were also called for which also show that the parties did not exist at the given address and further enquiries also shows that those parties were never in existence at those places. Therefore the learned assessing officer held that purchases made by the assessee is bogus and therefore made an addition under section 69C of the entire purchases of ₹ 3,567,407/- under section 69C of the act by passing an order under section 143 (3) read with section 147 of the income tax act on 30/11/2017.
4. For assessment year 2011 – 12 it is seen that assessee filed his return of income on 31/8/2011 declaring total income of Rs. 250505/-. Assessee is a proprietor of M/s Rajneesh steels. Subsequently the information was received from the director general of income tax (investigation) Mumbai in respect of assessee with regard to bogus bill providers who have been engaged in issuing of bogus purchase bills. The assessee is one of the beneficiaries. It was found that assessee has obtained bogus invoices from Bhagwati trading company of ₹ 2,430,272. The case of the assessee was reopened by issue of notice under section 148 of the act on 30/3/2017. The assessee on 4/4/2017 reiterated the original return. Therefore the notice under section 143

(2) was issued on 17th/7/2017. During the course of assessment proceedings the assessee was found to have been engaged in the business of trading environment steel items. Notice under section 133 (6) was issued to the bogus purchase bills provider. Such notices were returned back unserved. Therefore the assessee was also asked to produce the invoices, stock register, delivery challans, lorry receipts et cetera in support of the genuineness of the purchases. Assessee was also asked to produce the party. The inspector report was also obtained wherein it was stated that the said parties were not available at the addresses mentioned in the purchase bills produced by the assessee. The enquiry also shown that such parties did not exist. Therefore the learned assessing officer held that assessee has failed to prove the genuineness of the purchases and accordingly made the addition of the entire purchases under section 69C of the act by passing an order under section 143 (3) read with section 147 of the income tax act on 30/11/2017.

5. Aggrieved assessee preferred an appeal before the learned CIT – A. The learned CIT – A passed identical orders for both the years wherein he confirmed the action of the learned assessing officer and therefore assessee is in appeal before us.
6. The learned authorized representative contesting both the appeal submitted that assessee has proved the purchases by producing the invoices, the payment to the parties through banking channels, the goods received has also been sold by the assessee. The invoices showed the description of the goods as well as the quantity of the goods. The rates were not found to be exorbitant or not at the market rate. Further the assessee has also shown that the goods which have been stated to have been purchased by the assessee from that party has also gone into the sales. He submitted a chart showing the gross profit of alleged bogus purchases of (-) 3.86% whereas the assessee has earned gross

- profit in his regular business of 7.72%. He stated that at the most the addition could be the difference between the gross profit only. He also produced the quantitative details of purchases and sales.
7. The learned departmental representative vehemently supported the orders of the learned lower authorities and stated that it is not the case of the bogus purchase invoices obtained by the assessee but the goods have never been received by the assessee therefore there is no question of any sales. Therefore the orders of the lower authorities are sustainable.
 8. We have carefully considered the rival contention and perused the orders of the lower authorities. Undisputed fact shows that the assessee is engaged in the business of trading of irony and steel in his proprietary concern. Assessee has produced the invoices, payment to the party through banking channel, quantitative details and also the one to one mapping of purchases from tainted invoices to the sales which have been accounted for in the profit and loss account. In the circumstances only the profit element can be added to the total income of the assessee. Honourable Bombay High Court in case of PRINCIPAL COMMISSIONER OF INCOME TAX-17 V. MOHOMMAD HAJI ADAM & CO 2019 SCC ONLINE BOM 7226 has held that only the differential profit could be added to the total income of the assessee. In the case of the assessee the embedded differential gross profit is 11.58% for assessment year 2010 - 11. Accordingly, respectfully following the decision of the honourable Bombay High Court, we direct the learned assessing officer to retain the addition to the extent of 11.58% of the alleged bogus purchases for both the years. Accordingly the appeal of the assessee is allowed to that extent as per ground number 2 of the appeal for both the years.
 9. Ground number 1 and 3 of the appeal are merely academic and hence dismissed.

10. Accordingly both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 28 June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 28.06.2024

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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