

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1646/MUM/2024
Assessment Year: 2010-11

Ravikumar Jamatraj Shah Room No. 29, A, 2 nd Floor, 487, Murad Mansion Building, V.P. Road (Opera House), 2 nd Parasiwada, Mumbai – 400 004 (PAN : BCPPS5087K)	Vs.	Ward -19(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Pooja M. Chhawachharia, C.A
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 04.07.2024
Date of Pronouncement : 18.07.2024

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/250/2023-24/1061176410(1), dated 20.02.2024 passed against the assessment order by Income Tax Officer, Ward 19(3)(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 17.03.2016 for Assessment Year 2010-11.

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

“1. (a) On facts and circumstances of the case and in law, Ll. CIT(A) erred in dismissing the appeal and sustaining the addition as it is a proven fact by various judicial authorities that sales without purchases is not possible for a trader.

(b) The CTT (A) erred in sustaining to 25% addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus and the learned officer has not given a fair opportunity of putting forward the facts.

(c) The CTT (A) erred in sustaining to 25% addition without appreciating the understated vital fact that for the same assessee and on the same facts the ITAT has pronounced an order of 2000-10 at 4% addition.

(d) The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.

(e) The Appellant prays that the addition/ disallowance of entire 5005968/- made in respect of Alleged purchases be deleted."

2. On the facts and circumstances of the case and in law, the CIT (A). erred in dismissing the ground for the appellant's plea of withdrawal of initiation of penalty proceedings u/s 271(1) (c)."

3. The only issue raised by the assessee in this appeal is in respect of addition of Rs.50,05,968/- made by the Id. Assessing Officer by taking 25% of the alleged bogus purchases totalling to Rs.2,00,23,871/- which was confirmed by Id. CIT(A).

4. Briefly stated facts are that assessee filed his return of income on 14.07.2010 reporting total income at Rs.3,96,288/-. Case of the assessee was re-opened u/s. 147 by issuing notice u/s. 148 on 28.10.2014 after receipt of information from DGIT (Inv) Wing, Mumbai, that assessee is a beneficiary for hawala purchase entries from 20 different parties totalling to Rs.2,00,23,871/-. The Id. Assessing Officer asked the assessee to furnish supporting documents for purchases made from the 20 parties along with supporting documents for corresponding sales affected by the assessee. Assessee furnished certain details in compliance to the notices issued by the Id. Assessing Officer. Id. Assessing Officer concluded that it is only the profit embedded in the alleged bogus purchase transaction which needs to be taxed. He thus, arrived at a percentage of 25% of the total non-genuine

purchases to add it to the total income of the assessee as profit earned from such purchases which amounted to Rs.50,05,968/-. Assessment was thus completed u/s. 143(3) r.w.s. 147 of the Act. Aggrieved, assessee went in appeal before the ld. CIT(A), who sustained the additions so made by applying 25% of the total non-genuine purchases. Aggrieved, assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee submitted that assessee is engaged in the business of trading in ferrous and non-ferrous metals under the name and style of M/s. Nandi Vardhan Impex. According to him, sales for the year are not doubted and therefore purchases cannot be rejected, when assessee is a trader. According to him, gross profit ratio for the current year is 4.13%. Thus, in the light of the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Mohammed Haji Adam & Co. in ITA No.1004 and others of 2016 dated 11.02.2019, the addition is to be restricted to the extent of bringing gross profit rate on purchases at the same rate of other genuine purchases. He further submitted that in assessee's case for AY 2009-10, the Co-ordinate Bench of ITAT, Mumbai in ITA No.1043/Mum/2020, dated 17.09.2021, on identical set of facts, it was held that "*it would be reasonable if the profit rate of 4% is applied on the bogus purchases*". Accordingly, the Co-ordinate Bench set aside the order of ld. CIT(A) and directed the ld. Assessing Officer to apply rate of 4%.

6. Per contra, ld. Sr. DR placed reliance on the orders of the authorities below, since assessee could not substantiate his claim by furnishing all the relevant necessary documentary evidences.

7. We find that under the given set of facts before us in the present case, the matter is covered by the Co-ordinate Bench of ITAT, Mumbai

in assessee's own case for AY 2009-10 wherein profit rate of 4% has been directed to be applied on the alleged bogus purchases. Further, Hon'ble Jurisdictional High Court of Bombay in the case of Mohammed Haji Adam & Co. (supra) had held to restrict the addition to the extent of bringing the gross profit rate on purchases at the same rate of other genuine purchases. In the present case, assessee has claimed that he had earned gross profit rate of 4.13%. Accordingly, respectfully following the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Mohammed Haji Adam & Co.(supra) as well as in assessee's own case in AY 2009-10, we direct the ld. Assessing Officer to apply the rate of 4% on the alleged bogus purchases of Rs.2,00,23,871/-. Accordingly, appeal of the assessee is partly allowed.

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

Order is pronounced in the open court on 18 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 18 July, 2024

MP, Sr.P.S.

Copy to :

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- 2 The Respondent
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai