

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

ITA No.1957/MUM/2024
Assessment Year: 2011-12

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 : 10.07.2024
Date of Pronouncement : 22.07.2024

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/250/2024-25/1064004901(1), dated 09.04.2024 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 2011-12.

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

“1. (a) On facts and circumstances of the case and in law, Ld. 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 CIT (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 CIT (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 2009-10 at 4% addition

(d) The CIT (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 2009-10 at 4% addition considering the GP ratio of that year was 3.96% as against in this year this year the GP Ratio is 2.74% which is even lower than the above stated year.

(e) The CIT (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 2009-10 reducing the addition of CIT (A) from 100% to 4% as against the addition in the given case being 25%.

(f) 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.

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

3. The only issue raised by the assessee in this appeal is in respect of addition of Rs.53,97,157/- made by the ld. Assessing Officer by taking 25% of the alleged bogus purchases of Rs.2,15,88,627/- which was confirmed by ld. CIT(A).

4. Briefly stated facts are that assessee filed his return of income on 16.08.2011 reporting total income at Rs.4,90,648/-. Case of the assessee was re-opened u/s. 147 by issuing notice u/s. 148 on 05.11.2014 after receipt of information from DGIT (Inv) Wing, Mumbai, that assessee is a beneficiary for hawala purchase entries from 12 different parties totalling to Rs.2,15,88,627/-. The ld. Assessing Officer asked the assessee to furnish supporting documents for purchases made from the 12 parties along with supporting documents for corresponding sales affected by the assessee. Assessee furnished certain details in compliance to the notices issued by the ld. Assessing Officer. Ld. 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.53,97,157/-. 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. 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 and 2010-11, the Co-ordinate Bench of ITAT, Mumbai in ITA No.1043/Mum/2020, dated 17.09.2021, on identical set of facts, held that "*it would be reasonable if the profit rate of 4% is applied on the bogus purchases*". The Co-ordinate Bench had 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 (Supra), wherein profit rate of 4% has been directed to be applied on the alleged bogus purchases. Also, in the decision of Co-ordinate Bench in assessee's own case for Assessment Year 2010-11 in ITA No.1646/Mum/2024, dated 18.07.2024 similar direction is given to adopt profit rate of 4%. 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. 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 and 2010-11, we direct the Id. Assessing Officer to apply the rate of 4% on the alleged bogus purchases of Rs.2,15,88,627/-. 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 22 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 22 July, 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