

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.2273/Mum./2024
(Assessment Year : 2009-10)

ITO-42(1)(1)
Mumbai-400051

.....Appellant

v/s

Ashwin Moolchand Madhani,
C/201, Viabhav Apartment,
Jamli Galli Borivali West,
Mumbai-400092.
PAN-AAPPM2256H

..... Respondent

Revenue by : Shri R. R. Makwana, Sr. DR
Assessee by : Shri R.U.Jain

Date of Hearing – 01/08/2024

Date of Order – 06/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 05/03/2024 passed under section 250 of the Income Tax Act, 1961 (*“the Act”*) by the learned Addl./Joint Commissioner of Income Tax (Appeals), Thiruvananthapuram, [*“learned Addl./Joint CIT(A)”*], for the assessment year 2009-10.

2. In this appeal, the Revenue has raised the following grounds: –

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not considered that the Ld. AO has rejected books of account and taking the return income as per profit & loss account submitted in the proceedings.*
3. *On the facts and in the circumstances of the case and in law, the Hon'ble ITAT is requested to entertain this appeal, though, the tax effect is below the monetary limit prescribed in the CBDT circular No. 5 of 2024 dt 15/03/2024 as the case falls under exception clause (c) laid down in Para 3.1 of CBDT circular no. 5 of 2024 dated 15/03/2024.*
4. *The appellant craves leave to amend or alter or add a new ground which may be necessary.”*

3. The only grievance of the Revenue, in the present appeal, is against restricting the disallowance on account of bogus purchases to the gross profit rate declared by the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and is engaged in the business of supplying building material. For the year under consideration filed his original return of income on 29/09/2009 declaring a total income of INR 3,64,546. Reassessment proceedings under section 147 of the Act, were initiated in the case of the assessee based on information received from Sales Tax Department through DGIT (Investigation) that the assessee has taken entries of non-genuine purchases to the tune of INR 60,60,302, and accordingly, notice under section 148 of the Act was issued and served on the assessee. In response to the statutory notices issued under section 143(2) as well as section 142(1) along with a questionnaire, the assessee filed the details as called for. During the assessment proceedings, the assessee was asked to show cause as to why the aforesaid transaction should not be taken as non-genuine and accordingly disallowed. Barring the ledger account and cheque payments, no other documents such as lorry receipts, transportation details, etc., were produced by

the assessee during the assessment proceedings. Further, it was also noted that the Sales Tax Department has found that the concerns from whom the assessee has availed the accommodation entry of bogus purchases have admitted that they have not made any sale or purchase transaction. Accordingly, the Assessing Officer ("AO") vide order dated 28/07/2016 passed under section 143(3) read with section 147 of the Act, held that the only fair conclusion that can be reached is that the assessee was a beneficiary of the accommodation bills, and there was no actual delivery/physical delivery of the goods. The AO further held that since the sales are claimed to be genuine by the assessee, it is proved that the assessee was actually in possession of the goods, as there cannot be any sales without purchases. The AO also held that the assessee, at the same time, purchased goods from other suppliers, maybe without bills, which is commonly known as Grey Market. The AO considered 12.5% of the total amount of INR 60,60,302, which comes to INR 7,57,537, as unproved/non-genuine purchases, and added the same to the total income of the assessee.

5. The learned Addl./Joint CIT(A), vide impugned order, by following the decision rendered in assessee's own case by the coordinate bench of the Tribunal restricted the disallowance to 12.5% of the bogus purchases as reduced by gross profit rate already declared by the assessee. Being aggrieved, the Revenue is in appeal before us.

6. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Ashwin Moolchand Madhani v/s ITO, ITAs No. 6784 and 6785/Mum./2018, for the assessment years 2010-11 and 2011-12, vide order

dated 04/02/2020, in similar factual matrix, directed that disallowance be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. The coordinate bench further held that if the gross profit rate already declared by the assessee is more than 12.5%, then no disallowance is called for. Since, in the present case, the learned Addl./Joint CIT(A) has followed the decision of the coordinate bench of the Tribunal in assessee's own case cited supra, we find no infirmity in the impugned directions. Accordingly, the impugned order is upheld and grounds raised by the Revenue on merits are dismissed.

7. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 06.08.2024.

Sd/-

**[RENU JAUHRI]
ACCOUNTANT MEMBER
MUMBAI, DATED: 06.08.2024**

Amit Kumar (Sr. PS on Tour)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Sd/-

**[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai