



IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 948/MUM/2024

A.Y.2012-13

Naresh Brothers
407, 4th Floor, Dhiraj
Heritage, Near Bus Depot,
SV Road, Santacruz (W),
Mumbai 400054

Vs.

The Income tax officer
Ward 17 (2) (4)
Mumbai

(Appellant)
PAN
Assessee by
Revenue by

(Respondent)
AACFN7734Q
None

Shri Ashok Kumar Ambastha,
Senior
Departmental Representative

Date of hearing
Date of pronouncement

5 August 2024
7th August 2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT-A) for assessment year 2012-13 dated 2/1/2024 wherein the appeal filed by the assessee against assessment order passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (the Act) dated 28.12.2019 passed by the Income Tax Officer-17(2)(4) (the Assessing Officer), was partly allowed.



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02. Assessee is aggrieved with the appellate order has raised following grounds of appeal: –
- i. On the facts and circumstances of the case and in law, the learned Commissioner of income tax (Appeal), has erred in making adhoc addition of Rs.11,76,965/- being 12.5% of purchase of Rs. 94,15,726/-.
 - ii. The appellant craves leave to add, amend, alter, delete and / or modify any of the aforesaid grounds of appeal on or before the date of hearing.”
03. The learned Commissioner of Income Tax (A) erred in upholding the addition of Rs. 11,76,965/- being 12.5% of bogus purchases of Rs. 94,15,726/-.
04. Briefly stated the facts of the case that the assessee is a partnership firm who filed its return of income declaring income of Rs. 5,95,125/-. The assessment took place under section 143(3) on 16.03.2016 wherein the total income of the assessee was assessed at Rs. 607,619/-.
05. Subsequently, the information was received from Deputy Director of Income Tax (Investigation), Indore on 27.3.2019 that assessee has taken accommodation entries from M/s Indore Impex whose proprietor is Mr. Ajay Maheshwari of bogus purchases. The reasons were recorded, an approval was obtained under section 151 and notice under section 151 and notice under section 148 of the Act was issued on 30.03.2019. The reasons of reopening were provided to the assessee. Further, notices under section 142(1) were issued to the assessee and a show cause notice was also issued on 22.12.2019. The assessee submitted details of purchases and sales, purchase invoices issued by Indore Impex , stating that payments had been made banking channel etc, and such material of bogus



purchases have been sold , due tax is offered. The learned Assessing Officer held that mere copies of the bills are not sufficient evidences regarding genuineness of the transaction. The Assessing Officer further held that during the course of investigation in case of Mr. Ajay Maheshwari, the Police Department contacted the various associations wherein it was found that nobody knew the name of the proprietor of Indore Impex as well as the Indore Impex itself. The learned Assessing Officer issued notices under section 133(6) of the Act on 27.11.2019 which was not replied. Accordingly, the Assessing Officer found that assessee has booked purchases of Rs.94,15,726/- from the above party and assessee failed to prove the genuineness of the purchases. Accordingly, the above amount was added to the total income of the assessee under section 69C of the Act by assessment order passed under section 143(3) read with section 147 of the Act on 28.12.2019 determining total income of the assessee at 1,00,23,345/-.

06. Aggrieved with that assessee preferred an appeal before the learned CIT-A. The learned CIT-A relying on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Ashwin Purushottam Bajaj held that only the profit element of bogus purchases can be added to taxable income when the assessee re-conciles the stock. He held that profit element embedded in the above transaction is estimated at 12.5% of purchases. Therefore, he directed the learned Assessing Officer to restrict the addition to 12.5% of total purchases of Rs. 94,15,726/-. Thus, the addition was restricted to Rs. 11,76,965/-.
07. Assessee aggrieved with the same has preferred an appeal before us.
08. Earlier on 3rd June, 2024, when appeal was fixed, none appeared on behalf of the assessee and subsequently on 5th August, 2024 today also, none appeared on behalf of the assessee despite notice issued



to the assessee by registered post. On looking at the record of the service of the notice, it is apparent that the notices have been sent to the correct addresses. There is no remark of the postal department that notices are not served. In view of this, the appeal is decided on the merits of the case as per information available on record.

09. The learned Departmental Representative vehemently supported that in this case, the Assessing Officer has recorded a fact that even Police Department has conducted an enquiry and the supplier was not found. Further, the Assessing Officer has also issued notices under section 133(6) of the Act and supplier was not replying to this notice also. Therefore, the purchases are absolutely bogus. The learned CIT (A) has followed the decision of Hon'ble Bombay High Court and has correctly estimated the profit @ 12.5%.
010. We have carefully considered the rival contentions and the perused the orders of the learned lower authorities. The facts show that assessee has made purchases from one shri Ajay Maheshwari, proprietor of Indore Impex who could not be traced at the given address and assessee also could not show the genuineness of such purchases. However, as before the learned CIT (A), the assessee has provided the purchases and respective sales reconciliation to show that the bogus purchases have already gone into the sales which has accepted by the learned Assessing Officer, The learned CIT (A) relying on the decision of Hon'ble Bombay High Court held that embedded profit is required to be added to the total income accordingly estimated 12.5% of the bogus purchases as income of the assessee. In the statement of facts filed before us, assessee has stated that his gross profit ratio and net profit ratio for subsequently two years and the current year having an average ratio of gross profit of 1.20% and net profit of 0.15%. Therefore, the addition sustained by the learned CIT (A) is very high. However, we consider



that in the present case, the party from whom the purchases are made does not at all exist as per the Investigation Report of the DDIT (Investigation), Indore as well as the Police Department. The notice issued under section 133(6) to the supplier was also not responded to. Therefore, apparently the assessee has failed to prove the genuineness of purchases. The learned CIT (A) relying upon the decision of Bombay High Court restricted the addition to 12.5% of such bogus purchases. Estimate made by the learned CIT (A) cannot be said to be unreasonable or excessive. Further, the gross profit and net profit stated in the statement of fact remains unvouched. The assessee has failed to show before the Assessing Officer, learned CIT (A) and even before us what is the profit element of the assessee from genuine purchases and what is the profit element from non-genuine purchases. In absence of any such bifurcation, the assessee does not deserve any further relief than what is granted by the learned CIT (A). In view of this, we do not find any infirmity in the order of the learned CIT (A) in restricting the addition @ 12.5% of such bogus purchases. In view of this, on the grounds of appeal raised by the assessee are dismissed.

011. In the result, the appeal of the assessee is dismissed.

012. Order pronounced in the open court on 7/08/2024.

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 7.08.2024

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The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,



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ITA No.948/M/2024

A Y : 2012-13

Naresh Brothers

Vs.

ITO-17(2)(4), Mumbai

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai