

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2242/Mum/2024
Assessment Year: 2009-10

Income Tax Officer - 19(3)(1), Mumbai	Vs	Rajesh Ganeshlal Jain A-105, Plot No.100 Visamo Building Near Pragati School, Gorai-2 Mumbai -400092 [PAN: AFQPJ0074A]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Smt. Sanyogita Nagpal, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 20/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 20/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 27/02/2024 by NFAC, Delhi, [in short "ld. CIT(A)"] pertaining to Assessment Year 2009-10.

2. The sum and substance of the grievance of the revenue is that the ld. CIT(A) erred in reducing gross profit @ 5% as against the 100% addition made by the AO on account of bogus purchases of Rs. 12,77,26,954/- from two hawala parties, namely, M/s. Shubham Enterprises & M/s. Shidhsila Tradelinks Pvt. Ltd..

3. None appeared on behalf of the assessee in spite of notices.

4. We have heard the ld. D/R at length and carefully perused the orders of the lower authorities.

5. Briefly stated the facts of the case are that, the assessee is an individual engaged in the business of trading of diamond and gold jewellery. The return of income was filed on 26/09/2009 declaring the income at Rs.4,93,988/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. The assessment proceedings were neither attended by the assessee nor by his authorized representative, therefore, the AO was left with no choice but to frame a best judgment assessment u/s 144 of the Act.

5.1. On the basis of information received by the AO from DGIT (Inv.) - Mumbai, the AO came to learn that some of the dealers under the Maharashtra VAT Act, 2002, indulged in the practice of providing accommodation entries in the form of issuing bogus purchase bills without supplying any goods but providing accommodation entries only. As per the list of parties forwarded by the officer of DGIT (Inv.), Mumbai, the assessee was found to be one of the beneficiaries of such bogus bills totaling to Rs.12,77,26,954/-.

5.2. The assessee was repeatedly asked to explain the transactions; however, no details were submitted and the AO made the addition of the total bogus purchases of Rs.12,77,26,954/-.

6. Appeal was filed before the Id. CIT(A). Again the assessee chose not to attend the proceedings and even the First Appellate Authority proceeded to decide the appeal *ex-parte*.

6.1. The Id. CIT(A) admitted that the assessee did not produce any documentary evidence regarding these alleged bogus purchases. The Id. CIT(A) also agreed that the two parties mentioned elsewhere, have

provided mere bills of purchases to the assessee. Drawing support from the judicial decisions in the cases of *PCIT vs. Rakesh Kailashchand Jain [2023] 156 taxmann.com 82 (Gujarat)*, *Goenka Jewellers vs. CIT [2018] 100 taxmanncom 517 (Rajasthan)* and order of the Co-ordinate Bench of ITAT Mumbai in the case of *Sterling Jewels Pvt. Ltd. vs. ACIT in ITA Nos. 6154 to 6158/Mum/2016*, restricted the addition to the extent of 5% at Rs. 63,86,347/- and deleted the balance.

7. We have given a thoughtful consideration to the three decisions relied upon by the ld. CIT(A) for restricting the addition to 5%. In all the decisions relied upon by the ld. CIT(A), one factor is common and that is, during the course of proceedings, the assessee had furnished details with purchase bills and has also produced the books of accounts whereas in the case in hand, neither the assessee attended the assessment proceedings nor he has attended the First Appellate proceedings. Therefore, none of the lower authorities were in a position to verify the purchase details.

7.1. Moreover, the ld. First Appellate Authority has categorically accepted the fact that the assessee has not produced any documentary evidence regarding these purchases and yet relied upon some judicial decisions mentioned elsewhere.

8. We are of the considered view that unless the assessee furnishes some basic evidence, the profit cannot be estimated as per the decisions relied upon by the ld. CIT(A). Therefore, in the interest of justice and fair-play, we deem it fit to restore the appeal to the file of the ld. CIT(A). The assessee is directed to furnish the basic details/evidence relating to the impugned purchases and also produce the books of accounts and

the Id. CIT(A) is directed to decide the issue afresh after considering the above findings and after affording reasonable and adequate opportunity of being heard to the assessee.

9. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the Court on 20th August, 2024 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 20/08/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai