

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

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

I.T.A. No. 3200/Mum/2024  
Assessment Year: 2010-11

Income Tax Officer, 41(1)(3), BKC	Vs	Nashim Ibrahim Khan Sion Railway Station Prop. Shama Impex Room No. 355 Pasco Patil House Opp. Sion Railway Station Sion Mumbai - 400022 [PAN: AJXPK1791J]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 28/08/2024  
घोषणा की तारीख/Date of Pronouncement : 28/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM :**

This appeal by the revenue is preferred against the order dated 12/03/2024 by National Faceless Appeal Centre, Delhi [in short 'ld. CIT(A)], pertaining to AY 2010-11.

2. The sum and substance of the grievance of the revenue is that, the ld. CIT(A) erred in restricting the addition to 12.5% of the alleged bogus purchases as against 100% addition made by the AO.

3. None appeared on behalf of the assessee in spite of notices. We decided to proceed *ex-parte*.

4. Briefly stated the facts of the case are that the assessee is an individual and is proprietor of M/s. Shama Impex, engaged in the

business of dealership in leather goods. The return for the year was filed on 15/10/2010 declaring total income of Rs.4,02,650/-. The returned income was processed u/s 143(1) of the Act. Thereafter, the case was reopened after recording reasons. The case was reopened as per the information available with the office of the AO from DGIT (Inv.), Mumbai, that the assessee had obtained bills of bogus purchases from three parties, namely, Real Traders – Rs.1,78,244/- ; Sunrise Enterprises – Rs. 35,329/- & Shalaka International – Rs. 30,058/-. It came to the notice of the AO that the Sales Tax Department, Mumbai, carried out detailed inquiries in respect of the above mentioned parties and came to the conclusion that these concerns are into providing bogus bills. The AO accordingly issued a showcause notice to the assessee asking it to furnish details to establish the genuineness of the transactions. On receiving no plausible reply, the AO added the entire alleged bogus purchases of Rs. 2,43,631/-

5. The assessee carried the matter before the Id. CIT(A) and strongly contended that the alleged purchases were made in cash as and when the material was required for manufacturing of the leather goods for export. It was brought to the notice of the Id. CIT(A) that the assessee was not aware whether the sellers were providing accommodation bills and was only interested in procuring the material for its manufacturing activities. It was pleaded that only the profit element imbibed in the purchases should be added. After considering the submissions, the Id. CIT(A) restricted the addition to the expenditure of 12.5% of such bogus purchases.

6. Before us, the Id. D/R strongly supported the findings of the AO.

7. We find that under identical circumstances, the Hon'ble High Court of Bombay in the case of *PCIT vs. Mohommad Haji Adam & Co.* reported in [2019] 103 taxmann.com 459 (Bombay), has held as under:-

*"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under –*

*" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."*

*9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."*

8. Respectfully following the decision of the Hon'ble Bombay High Court, we decline to interfere.

9. In the result, appeal of the revenue is dismissed.

**Order pronounced in the Court on 28<sup>th</sup> August, 2024 at Mumbai.**

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 28/08/2024

*S/S*

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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