

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
| 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. 1252/Mum/2024
Assessment Year: 2010-11

Golden Hardware, Shop No. 09, Venus Tower, Three Petrol Pump, L.B. S. Marg, Thane West, Mumbai [PAN: AAIEFG7001P]	Vs	Income Tax Officer, Ward-1(4), Mumbai 1
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rohan Despande
Revenue by :	Shri R. r. Makwana, Sr. DR

सुनवाई की तारीख/Date of Hearing : 02/09/2024
घोषणा की तारीख /Date of Pronouncement: 02/09/2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of Id. Commissioner of Income Tax (Appeal), Varanashi, dt. 21.11.2023 pertaining to Assessment Year 2010-11.

2. The grievance of the assessee reads as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT (A), National Faceless Appeal Centre erred in upholding the disallowance of Rs. 7,43,974/- (representing over 10% of the total purchases made by the Appellant during the AY) as alleged 'bogus purchases' purportedly made by the Appellant.

2. *On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT (A), National Faceless Appeal Centre failed to appreciate that the Ld. AO had neither rejected the Appellant's books of accounts, nor doubted and/or impugned the sales effected by the Appellant, thereby leading to the logical conclusion that without corresponding purchases being made, the Appellant could not have effected the sales in question. Reliance for the same is inter alia placed upon CIT v. Nikunj Eximp Enterprises (P.) Ltd., [2015] 372 ITR 619 (Bom), Geolife Organics v. ACIT (ITA No. 3699/Mum/2016, decided on May 05, 2017) and ACIT v. Mahesh K. Shah (ITA No.*

3. *On the facts and in the circumstances of the case and in law, the Jt. CIT (A), National Faceless Appeal Centre did not appreciate that while making the disallowance on account of 'bogus purchases', the Ld. AO had not undertaken any efforts to verify the genuineness of the purchases, but had merely relied upon the information received from the Sales Tax Department. It is well settled that the Ld. AO cannot sit back and make additions by simply relying upon the information obtained from the Sales Tax Department, as held inter alia in Geolife Organics v. ACIT (supra), and therefore, the Ld. Jt. CIT(A) erred in not allowing the Appellant's appeal.*

4. *In any event, on the facts and in the circumstances of the case and in law, the Jt. CIT (A), National Faceless Appeal Centre ought not to have made any disallowance since the Appellant had never been confronted with any statement(s) given by the alleged 'hawala dealers', nor had the Appellant been given any opportunity by the Ld. AO to cross-examine the alleged 'hawala dealers' in question. In this regard, it is well settled that no addition can be sustained against an assessee in absence of adherence to the principles of natural justice.*

5. *On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT (A), National Faceless Appeal Centre failed to appreciate that once payments in relation to purchases had been made by the Appellant to the sellers through normal banking channels and by way of account payee cheques, in absence of any evidence brought on record by the Ld. AO that cash was being received by the Appellant from such sellers after deduction of commission, no disallowance could have been made qua the Appellant on account of 'bogus purchases'. The Ld. Jt. CIT(A) erred in not appreciating that once payment has been validly effected by the Appellant to the sellers, the Appellant has no control over the affairs of the sellers.*

6. *Without prejudice, and in the alternative, the Ld. Jt. CIT (A), National Faceless Appeal Centre erred in law by failing to appreciate that the goods bought in FY 2009-10 (relatable to AY 2010-11 in consideration) were returned in FY 2012-13 and purchases account was credited by the same amount in FY 2012-13 and also reflected in the Audited Financial Statements for FY 2012-13 (AY 2013-14).*

7. *The Appellant craves leave to add, alter, modify or delete any of the above Grounds of Appeal”*

3. Deley condoned.

4. Briefly stated the facts are that the during the course of the scrutiny assessment proceedings, the AO noticed that the following purchases were bogus as the purchase bills were from entry provider:-

a.	Ridhi Sales Corporation	Rs. 70,651/-
b.	Naina Multitrade Pvt. Ltd	Rs. 5,88,937/-
c.	Nirmal Trading Co.	Rs. 84,388/-

5. The assessee was asked to justify the genuineness of the aforementioned purchases. On receiving no plausible reply, the AO made addition of Rs. 7,43,947/-.

6. The assessee carried the matter before the ld. CIT(A) but did not furnish any details whatsoever to prove the genuineness of the purchases.

7. We have carefully perused the orders of the Authorities below. We are of the considered view that the assessee should get one more opportunity to prove the genuineness of the impugned purchases. Therefore, we restore the issues to the file of the Id. CIT(A) with a direction to decide the issues afresh after affording a reasonable and adequate opportunity of being heard to the assessee. The assessee is directed to avail the opportunity and furnish all necessary details to prove the genuineness of the impugned purchases. The appeal is allowed for statistical purposes.

Order pronounced in the Court on 2nd September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 02/09/2024
**AK NEDT, Sr. PS*

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