

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

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

ITA No. 3796/Mum/2023
Assessment Year : 2011-12

ITO Ward 26(1)(1), Mumbai	Vs.	Ravi Realtors, 19A, 2 nd Floor, Vatsa House, Janmabhoomi Marg, Fort, Mumbai 400 001. PAN AAEFR0239C
(Appellant)		(Respondent)

Appellant By : Smt Mahita Nair (Sr. DR)
Respondent By : Shri Dharan Gandhi

Date of Hearing : 14.08.2024	Date of Pronouncement : 03.09.2024
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ORDER

Per Sandeep Singh Karhail, Judicial Member:

1. The present appeal has been filed by the assessee challenging the impugned order of dated 23/08/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2011-12.

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) has erred in restricting the disallowance of the bogus purchases made by the AO from 100% to 12.5% without appreciating the fact that the Sales Tax Department, being a statutory authority, after carrying out a detailed enquiry & investigation, has certified that i) M/s. Pearls International, ii) M/s Shree Ganesh Trading Co. and iii) M/s. Savari Enterprises, from whom the assessee had made purchase, are hawala Operators whose only job was issuing bills without delivering any good or services and the same was confirmed by the Hawala Dealers on oath before the Sales Tax Department that purchases made by the assessee were without supplying the goods"

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to consider the fact that the onus was upon the assessee to prove the genuineness of the expenditure claimed and the assessee during the reassessment proceedings after given multiple opportunities failed to provide details of the broker/agents or the suppliers as well as any evidences/details of transportation of the material purported to have purchased from the aforesaid hawala dealer, such as transportation receipts, delivery challan by the receiver etc to establish that goods have actually been delivered/supplied to the assessee. The assessee has failed to discharge the onus upon him to prove the genuineness of the purchase transaction claimed by him.

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) failed to appreciate the fact that the contention of assessee of making payments by account payee cheque is not a foolproof method of substantiating his claim and is not sufficient to establish the genuineness of the purchases. Reliance is placed on Kachwal Gems Vs. Jt. CIT (2007) 288 ITR 10 (SC).

4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) failed to consider the fact that it is well settle law that strict rules of evidence do not apply to Income Tax Act and the real test with regard to genuineness of the transaction is "Preponderance of Probabilities" and not "Beyond reasonable doubt" Reliance is placed on C. Vasantilal & Co. Vs. CIT (1962) 45 ITR 206 (SC), Chaturbhuj Panauj AIR 1969 (SC) and SumatiDayalVs.CIT(1996)214 ITR 801(SC). One has to consider

the totality of facts, surrounding circumstances and human probability for arriving at a conclusion as held in CIT Vs. Durga Prasad 82ITR 540(SC)."

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) failed to appreciate the fact that the decision of Hon'ble Apex Court in the case of NK Proteins Ltd. Vs DCIT in SLP (Civil) No.769/2017 dated 16/01/2017 has confirmed the 100% addition on this issue"

3. The sole grievance of the Revenue is against restricting the disallowance on account of bogus purchases to 12.5% as against 100% made by the Assessing Officer.

4. The brief facts of the case are that the assessee is a real estate developer and for the year under consideration, the assessee filed its return of income on 30/09/2011 declaring a total income of INR 1,22,18,400. The return filed by the assessee was selected for scrutiny and assessment under section 143(3) of the Act was completed vide order dated 19/03/2014 determining the total income at INR 1,22,48,400. Reassessment proceedings under section 147 of the Act, were initiated in the case of the assessee based on information received from the Sales Tax Department through DGIT (Investigation), Mumbai that the assessee has taken entries of non-genuine purchases to the tune of INR 7,21,11,428 from three parties, and accordingly, notice under section 148 of the Act was issued and served on the assessee. In response to the notice issued under section 148 of the Act, the assessee e-filed the return of income on 14/02/2018 declaring a total income of INR 1,22,18,400. Subsequently, statutory notices under section

143(2) as well as section 142(1) of the Act along with a questionnaire were issued and served on the assessee. In order to verify purchases, notices under section 133(6) of the Act were issued to these parties, which were returned by the postal authorities as "not known". Subsequently, during the assessment proceedings, the assessee was asked to furnish all the relevant evidence to establish that the goods had been delivered/supplied. The assessee was also asked to furnish the explanation of the purchases purported to have been made from the aforementioned parties and details of brokers/agents through whom purchases were claimed to have been made by the assessee including name, address, contact no., etc. to prove the genuineness of the transaction. The assessee was further asked to show cause as to why the expenditure claimed in respect of the purchases shown to have been made from the aforesaid dealer should not be disallowed. In response thereto, the assessee furnished the copy of the sample purchase bill, payment details to purchase parties, weightment slip. However, the assessee could not produce the details of the broker/agents or the suppliers.

5. The Assessing Officer ("AO") vide order dated 14/12/2018 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the assessee has not made available the details of transportation of material purported to have been purchased from the hawala dealer, such as transportation receipt, delivery challans. The AO held that the deduction of VAT in the bill does not prove the genuineness of a particular transaction in terms of the supply of material. The AO also

rejected the reliance placed upon the invoice and payment by account pay cheque by the assessee. By relying upon the findings of the Sales Tax Authority, the AO concluded that the parties from whom the assessee has claimed to have made the purchases did not supply any goods to the assessee and all these are hawala parties to issue bills without delivering any goods or services. The AO held that the assessee failed to produce any of the suppliers, brokers or transporters despite the opportunity being granted. The AO held that the assessee has failed to establish the genuineness of the purchase shown to have been made from these parties. Thus, it was held that the assessee has intentionally inflated the purchases by taking accommodation entry to reduce the profit element. Accordingly, the AO treated the entire purchase of INR 7,21,11,428 as a non-genuine purchase and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, following the decision of the Hon'ble Jurisdictional High Court in Pr CIT v/s Vishwashakti Construction, ITA No. 1016 and 1026 of 2018, restricted the addition to 12.5% of the disputed purchases. Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, based on the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, a reassessment proceeding in the case of the assessee was initiated. Further, notice issued under section 133(6) by

the AO to these entities was also returned unserved. The assessee claims that it is a real estate developer and the invoices were raised by these parties in respect of building materials, mostly in the form of cement, which were used by the assessee in the construction activity undertaken by it. Further, the assessee claims that all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee was neither able to produce the parties nor could furnish the documents as directed by the AO. Even before us, no such details are available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, it is evident from the record that the Revenue has not doubted the usage of materials for real estate development undertaken by the assessee. Further, it cannot be doubted that without the purchase of material, the assessee cannot carry out the construction work. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entities and materials purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage. Therefore, we find no infirmity in the impugned order in restricting the disallowance to 12.5% of the disputed purchases in the year under consideration. We find that the same is also in line with the judgment of the Hon'ble Jurisdictional High Court in PCIT vs Paramshakti Distributors

Ltd. in ITA No. 413 of 2017 decided on 15/07/2019. As a result, grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on 3rd September, 2024

Sd/-
(Narendra Kumar Billaiya)
ACCOUNTANT MEMBER
Mumbai, Date : 3rd September, 2024.

Sd/-
(Sandeep Singh Karhail)
JUDICIAL MEMBER

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai

By Order

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai