

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No. 3067/Mum/2024
Assessment Year 2012-13

DCIT, CC-1(1), 9 th Floor, Pratishtha Bhavan, M.K. Road, Mumbai	vs.	Rajendra S. Karnavat, 103, Pleasant Palace, 16, Narayan Dabholkar Road, Walkeshwar, Mumbai PAN : AAGPK9912P
(Appellant)		(Respondent)

For Assessee :	Shri Sunil Hirawat
For Revenue :	Smt. Mahita Nair, Sr.DR

Date of Hearing :	06-08-2024
Date of Pronouncement :	13-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

This appeal by the Revenue is directed against order dated 25-01-2024 along with Corrigendum dated 05-02-2024, passed by the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [in short Ld.CIT(A)] for the Assessment Year (AY.) 2012-13, raising following grounds:

- i. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in restricting the addition made by the A.O. without appreciating the fact that assessee is one of the beneficiary of accommodation entry provided by Bhanwarlal Jain Group concerns exclusively engaged in the business of issuing non-genuine purchase bills?”*

- ii. *Whether on the facts and in law, the Ld.CIT(A) has failed to uphold the decision of Hon'ble Apex Court in the case of N.K. Proteins Ltd. Vs. DCIT in SLP(Civil) No.769/2017 dated 16.01.2017 where 100% of addition was confirmed by the Apex Court?*
- iii. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in directing the AO to compute the addition/disallowance only to the extent of bringing the G.P. rate of alleged bogus purchases at the same rate as that of the genuine purchases without considering the evidential value of the statement on oath which clearly indicates payments made under the garb of bogus purchases & assessee is beneficiary of accommodation entry?"*

2. Briefly stated facts of the case are that in view of the information received by the Assessing Officer (AO) that the assessee received accommodation entries of purchase of diamonds through the firms controlled and managed by 'Sh Bhanwarlal Jain Group', the AO recorded reason to believe that income escaped assessment and issued notice u/s. 148 of the Income Tax Act, 1961 (in short 'the Act'). In the re-assessment completed, the AO held purchases amounting to Rs. 1,75,67,000/- from the parties, namely, Mohit Enterprises, Mayur Exports and Mukti Export as bogus and made addition for that amount. On further appeal, the Ld.CIT(A) deleted the addition made by the AO following his finding for the AY. 2010-11. The relevant finding of the Ld.CIT(A) for the AY. 2010-11 is reproduced as under:

"6.6 The appellant vide his submissions dated 13.01.2022 attached affidavit filed by M/s. Mohit Enterprises and M/s. Mayur Exports before AO. who have confirmed that they have made sales of Rs. 1,38,30,095/- to the appellant. It is further submitted that the appellant is engaged in the business of export of goods and the purchase made from above both parties, the same goods were also exported. In this connection, he submitted copies of custom acknowledged Export invoices and payments were received through bank before the AO as well as in appellate proceedings also. The appellant stated that the AO has added the entire purchases from the above two parties in the total returned income however, the sale is accepted by the AO. It is correct that though AO has rejected the books of accounts but the exports arising out of same purchases can not be ignored in absence of any specific adverse finding. Once sale has been accepted as genuine, the purchase has to be in reckoning only issue may be left for decision is whether purchases are from same parties or not.

6.7 The above submissions filed by the appellant and other facts of the case are carefully perused. It is found from the records that both the parties i.e. M/s. Mohit Enterprises and M/s. Mayur Exports have filed the affidavit in connection to purchases made by the appellant and simultaneously sales were made by him. In connection to the above said addition, many decisions of superior judicial authorities have decided time and again that only profit element should be added against such alleged purchases where sales are vouched. I find that in the case of M/s. Mohammad Haji Adam & Co. in AY:2007-08 dated 11.02.2019 [ITA No. 1004 of 2016], it is held that the AO should restrict the addition/disallowance to the extent of bringing the gross profit rate on the impugned bogus purchases at the same rate of the other genuine purchases declared by the appellant. This decision of Hon'ble Jurisdictional High Court has been followed by Hon'ble ITAT Mumbai in cases of Concorde International ITA 4235/Mum/2018 and Sobhagmull Gokalchand Jewellers ITA 3767 did 31.07.2019

6.8 In view of the totality of facts and circumstances of the case, and the prevailing position of law applicable, as discussed in preceding paragraphs, it is found that the facts of the case and issue involved in the captioned appeal remains the same, accordingly, relying on the judgment of Hon'ble Bombay High Court in the case of M/s. Mohammad Haji Adam & Co. as discussed above, the AO is directed to provide reasonable opportunity of being heard to the appellant to represent his case at the time of appeal giving effect to this order. It should be ensured that the addition/disallowance only to the extent of bringing the G.P. rate of alleged bogus purchases at the same rate as that of the genuine purchases as declared by the appellant only after verifying the records with respect the above ground raised by the appellant, the necessary order will be passed and re-compute the total income accordingly. With the above direction, the Ground No. 2 is partly allowed for statistical purpose.”

3. We have heard rival submissions of the parties and perused the relevant material on record. Before us, the Ld. Departmental Representative (DR) referred to Ground No. 2 of the appeal and submitted that the Ld.CIT(A) has failed to follow the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., vs. DCIT in SLP (C) No. 769/2017, dated 16-01-2017, where 100% of addition was confirmed by the Hon'ble Court. On the other hand, the learned counsel for the assessee submitted that the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., vs. DCIT (supra), has dismissed the SLP summarily, without any discussion and, therefore, same does not

constitute declaration of any law and, hence, cannot be treated as a precedent on the law.

4. We find that in the case issue of disallowance of bogus purchases is involved. The AO made disallowance of entire amount of alleged bogus purchase but the Ld.CIT(A) has restricted the addition/disallowance in respect of bogus purchases to the extent of gross profit earned on non-bogus purchases at the rate of gross profit earned by the assessee on non bogus purchases, following the binding precedent of the **Hon'ble Delhi High Court in the case of M/s. Mohd. Haji Adam & Co., in ITA No. 1004 of 2016**. Therefore, the limited issue before us is whether the ld CIT(A) was required to follow the decision of Hon'ble Supreme Court in the case of N.K. Proteins Ltd., vs. DCIT (supra). In our opinion, it is undisputed that Special Leave Petition in the case of N.K. Proteins Ltd., (supra) has been dismissed by the Hon'ble Supreme Court summarily. We further note that the Hon'ble Supreme Court in the case of **Rup Diamonds and Ors. vs. Union of India and others 1989 AIR 674, 1989 SCR (1) 13**, clarified that - *mere rejection of Special Leave Petition cannot be considered as court's endorsement of acceptance of the correctness of the decision being filed against*. Further, the Hon'ble Supreme Court in the case of **Employees Welfare Association vs. Union of India and another AIR 1990 SC334**, observed that - *when the Hon'ble Supreme Court dismissed the Special Leave Petition and provides the reason under Article 136, that decision becomes binding under Article 141, but, if the Special Leave Petition is summarily dismissed without any reasons given, it does not establish any law under Article 141*. The relevant finding of Hon'ble Supreme Court is reproduced as under:

"22. It has been already noticed that the Special Leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged

by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar it has been held by this Court that the dismissal of a Special Leave Petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted. In Union of India v. All India Services Pensioners Association. this Court has given reasons, for dismissing the Special Leave Petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a Special Leave Petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution.”

5. In view of the above, we do not find any infirmity in the order of the Ld.CIT(A), in following the binding precedent in the case of M/s. Mohd. Haji Adam & Co., (supra) of the Hon'ble jurisdictional High Court, instead of following the decision of the Hon'ble Gujarat High Court in the case of N.K. Proteins Ltd., vs. DCIT, (2016) (6) TMI 1139, SLP against which has been dismissed by the Hon'ble Supreme Court summarily. Accordingly, the grounds raised by the Revenue are dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 13th September, 2024

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai,

Date : 13-09-2024

TNMM

Copy to :

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

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai