

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

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

I.T.A. No. 566/Mum/2024
Assessment Year: 2011-12

Mr. Banarsi Haridwar Sharma 204, Quarry Street R.N. 3, Next to Rajesh Hotel Darukhana Maharashtra - 400010 [PAN: AOWPS0755A]	Vs	Income Tax Officer, Ward - 20(1)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 16/09/2024

घोषणा की तारीख/Date of Pronouncement : 19/09/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 26/12/2023 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2011-12.

2. The sum and substance of the grievance of the assessee is that, the ld. CIT(A) erred in confirming the entire addition of Rs.2,16,72,481/- made u/s 69C of the Act as bogus purchases by the AO.

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

4. The ld. D/R was heard at length. Case records carefully perused.

5. Briefly stated, the facts of the case are that the assessee filed his return of income on 26/09/2011 declaring income of Rs.4,60,370/-. The

return was processed u/s 143(1) of the Act. The assessee is engaged in the business of trading in steel and scrap.

6. On the basis of the information received from the Sales tax Department through DGIT (Inv.), the AO came to know that the assessee has obtained bogus *hawala* purchase bill entries, without taking any actual delivery of the goods from Shiv Industries amounting to Rs.2,16,72,481/-.

6.1. Based on the above information, proceedings u/s 147 of the Act were initiated and the assessee was asked to furnish various details for establishing the genuineness of the transactions.

6.1.1. In its reply, the assessee explained that the assessee had purchased materials from Shiv Industries from its business office situated near the office of the assessee and, therefore, delivery challans were not issued by the seller.

6.2. In absence of any clinching evidence, the AO treated the entire purchases as bogus and made the addition of Rs.2,16,72,481/-.

7. The assessee carried the matter before the Id. CIT(A) but without success.

8. 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), 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."

9. Respectfully following the findings of the Hon'ble Jurisdictional High Court (*supra*), we direct the AO to restrict the addition to the GP rate of the assessee after verifying the same from the records.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 19th September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 19/09/2024

**S.S.P.*

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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