

| आयकरअपीलीयअधिकरणन्यायपीठ,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.2164/Mum/2024
(Assessment Year:2010-11)

M/s. Vishal Babulal Shah, 211, A, 3 rd Floor Raja Ram Mohan Roy Marg Mumbai - 400 007 [PAN: AYTPS6260K]	Vs	ITO- 19(3)(5) Mumbai
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Smt. R.M.Brindha, Addl. JCIT

सुनवाई की तारीख/Date of Hearing : 24.09.2024
घोषणा की तारीख /Date of Pronouncement: 24.09.2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order of Id. CIT(A)-30, Mumbai dated 19/09/2018 pertaining to Assessment Year 2010-11.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in upholding the order of the AO and disallowing the

purchase to the extent of 12.5% of Rs.1,01,18,076/- amounting to Rs.12,64,759/- on account of bogus purchases.

3. None appeared on behalf of the assessee. In fact, the notice sent through RPAD returned back with the remark “addressee not known”.

4. We decided to proceed *ex parte*. The DR was heard at length. Case records carefully perused. The appeal is barred by limitation. We have carefully considered the affidavit on record mentioning the facts causing the delay in filing the appeal. We are convinced that the assessee was prevented by reasonable and sufficient cause for not filing the appeal on time hence, the delay is condoned.

5. Coming to the facts of the case on the basis of the information received from Sales Tax department, the AO came to know that the assessee was taking bogus entries in respect of bogus purchases totaling to Rs.1,01,18,076/-.

6. The assessee was asked to furnish complete details of the purchases. Assessee filed details and contended that the payments have been made through account payee cheques duly reflected in the bank statements and the impugned sales have been accepted. The contention of the assessee was dismissed by the AO who proceeded by making addition of Rs.12,64,759/- being 12.5% of the total non-genuine purchases.

7. Assessee carried the matter before the CIT(A), but without any success.

8. After giving a thoughtful consideration to the orders of the authorities below, we find that the Hon'ble High Court of Bombay, in the case of PCIT v. Mohommad Haji Adam & Co. reported in [2019] 103 taxmann.com 459 (Bombay), under identical situation, 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. In the light of the above, we do not find any reason to interfere with the findings of the AO. The addition of 12.5% of the impugned bogus purchase is hereby confirmed.

10. Appeal is dismissed.

Order pronounced in the open Court on 24th September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated: 24/09/2024
Karuna, 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. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai