

| 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.3479/Mum/2024
(Assessment Year:2011-12)

Sanjaykumar Hirachand Jain 35, Maruti Mandir Marg, 5 th Kumbharwada, Mumbai - 400004. [PAN: AAAPJ7719F]	Vs	ITO - 19(3)(2) Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Mr. Mahaveer Jain
Revenue by :	Smt. R. M. Brindha, Addl. JCIT

सुनवाई की तारीख/Date of Hearing : 25.09.2024
घोषणा की तारीख /Date of Pronouncement: 27.09.2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order dated 22/05/2024 by NFAC, Delhi pertaining to Assessment Year 2011-12.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the additions made by the AO in respect of bogus purchases.

3. The briefly stated the facts of the case are that on the basis of the information received from the DGIT (Investigation Wing) Mumbai, the AO came to know that the assessee has been taking accommodation entries in order to inflate their purchases or expenses. Taking a leaf out of the information, the AO treated the purchases from Prerna Steel amounting to Rs.14,50,008/- as bogus and added the same as non-genuine purchases.

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

5. We have given a thoughtful consideration to the orders of the authorities below. On such circumstances, 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."

6. Respectfully following the decision of the Hon'ble High Court (supra), we direct the AO to restrict the addition to the extent of gross profit embed in the impugned purchases after due verification of the gross profit from the assessee.

7. Appeal of the assessee is partly allowed.

**Order pronounced in the Court on 27th September, 2024 at
Mumbai.**

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated: 27/09/2024
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