

| 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.3619/Mum/2024
(Assessment Year:2011-12)

M/s. Microwave Communications 101, Chintamani Kutir, Plot No. 504, Azad Road, Ville Parle East, Mumbai - 400057. [PAN: AAAPM1504B]	Vs	Income Tax Officer Ward 34(2)(1), Mumbai Kautilya Bhavan Mumbai 400051.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri. Sanjay Parikh, CA
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/ORDER

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order of CIT(A)-1, Siliguri dated 31.05.2024 pertaining to Assessment Year 2011-12.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.8,00,922/- as bogus purchases made by the AO.

3. Briefly stated the facts of the case are that the assessee filed its return of income declaring total income at Rs.8,82,710/-. On the basis of information received from DIT (Investigation) and Sales Tax department of Government of Maharashtra, the AO came to know that the assessee has been taking accommodation entries in respect of purchases from various parties. On the basis of such information, the AO treated the purchases of Rs.8,00,922/- as bogus and made the addition of the same u/s.69C of the Act. Assessee carried the matter before the CIT(A), but without any success.

4. Before us, the Counsel for the assessee stated that on identical situation in A.Y.2010-11 this Tribunal in ITA No.6196/Mum/2014 has restricted the addition to 10% of total alleged bogus purchases therefore, the same view should be followed. The DR strongly supported the findings of the AO but could not bring any decision in favour of the revenue.

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 findings of the Hon'ble High Court (supra) since in earlier assessment years the Co-ordinate Bench has

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restricted the addition to 10% of the bogus purchases, the same view should be taken in the year under consideration also. Therefore, we direct the AO to restrict the addition to 10% of the bogus purchases since other grounds are not pressed.

7. The appeal 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