

| आयकर अपीलिय अधिकरण न्यायपीठ, 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. 1869/Mum/2024

Assessment Year: 2010-11

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|----------------------------|----|--|
| ITO, Ward-41(2)(1), Mumbai | Vs | Harshadray Vrajlal Sanghavi, Mumbai 302-1A, Indraprastha Jitendra Road Malad (E) Mumbai - 400051 [PAN: AHCPS3066M] |
| अपीलर्धी/ (Appellant) | | प्रत्यर्धी/ (Respondent) |

| | |
|---------------|-----------------------------------|
| Assessee by : | None |
| Revenue by : | Shir Ram Prakash Rastogi, Sr. D/R |

सुनवाई की तारीख/Date of Hearing : 01/10/2024

घोषणा की तारीख/Date of Pronouncement : 01/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 12/02/2024 passed by NFAC, Delhi [hereinafter 'ld. CIT(A)'] pertaining to AY 2010-11.

2. The sum and substance of the grievance of the revenue is that the ld. CIT(A) erred in restricting the addition made by the AO in respect of bogus purchases.

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

4. Briefly stated the facts of the case are that the assessee filed its return of income on 11/09/2010 declaring total income of Rs. 1,12,951/-. The return was processed u/s 143(1) of the Act and subsequently on the basis of the information received from DGIT (Inv.), Mumbai, the assessment

was reopened because the AO came to know that some businessmen had indulged in the acceptance of bogus bills from bogus purchase bills from bogus *hawala* bills providers. The AO also had the information that Sales Tax Department, Mumbai, carried out detailed enquiries which established that certain persons were into providing bogus bills. As per the information, the assessee was also found to be the beneficiary of such bogus purchase bills amounting to Rs. 1,84,30,266/-. The assessee was asked to furnish the details of the purchases and to prove the genuineness of the purchases. The assessee filed a detailed reply which did not find any favour with the AO. The AO was of the opinion that mere filing bills in support of purchases and showing payments through account payee cheques, cannot be conclusive in a case where genuineness of the transactions is in doubt. Drawing support from various judicial decisions, the AO disallowed 12.5% of the alleged bogus purchases of Rs.1,84,30,266/- and made addition of Rs. 23,03,783/-.

4.1. The assessee challenged the assessment before the Id. CIT(A) and strongly contended that the gross profit of the assessee is 5.77% for the year ended 31/03/2007. Thereafter, the gross profit fell to 3.10% and subsequently to 2.21% for the year ended 31/03/2009. The gross profit for the year under consideration was at 1.59%. it was pointed out that gross profit rate is continuously declining regardless of the sales. After considering the facts and the submissions, the Id. CIT(A) directed the AO to restrict the addition to 3.10% of the bogus purchases.

5. Before us, the Id. D/R strongly supported the findings of the AO while the findings of the Id. CIT(A) is supported by the decision of the Hon'ble Jurisdictional High Court in the case of *PCIT vs. 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 Jurisdictional High Court (*supra*), we do not find any reason to interfere with the findings of the Id. CIT(A).

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 1st October, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 01/10/2024

**S.S.P.*

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