

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 625/Mum/2024
Assessment Year 2012-13

Modi Glazing and Cladding Private Limited, 64/65, Huseni Lakda Bazar, 242, Belasis Road, Mumbai PAN : AAGCM6022R	vs.	ACIT, Circle-5(2)(2), Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Shalin Divatia,
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 19/09/2024
Date of Pronouncement : 21/10/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 15-12-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Gross profit on alleged bogus purchases.

2. The original assessment of AY 2012-13 was completed by the AO in the hands of the assessee on 27.12.2015. Subsequently, he received information that a person named M/s PEL Industries Ltd has issued

accommodation sales bills without supplying materials and the assessee was found to be one of the beneficiaries. The assessee has purchased goods to the tune of Rs.78,06,018/- from the above said concern. Hence the AO reopened the assessment. In the assessment proceedings, the AO proposed to add the profit that could have been generated from the above said purchases. The Hon'ble Gujarat High Court had estimated the profit @ 12.50% under similar situation in the case of CIT vs. Simit P Shah (2013)(356 ITR 451)(Guj). Accordingly, following the above said decision, the AO also estimated the profit at 12.50% and accordingly made addition of Rs.9,75,750/- to the total income. The Ld CIT(A) also confirmed the same.

3. The Ld A.R submitted that the assessee has furnished all details relating to the purchases made from the above said party. The assessee had purchased Aluminium products from the above said party. It furnished the Stock register showing receipt and sale of materials. He submitted that the AO has merely placed reliance on the report given by the investigation wing and ignored the evidences furnished by the assessee for receipt and sale of materials. He submitted that there was no evidence to show that the payments made towards purchases have been received back in cash by the assessee. Accordingly, the Ld A.R contended that there is no reason to suspect the purchase of materials. He further submitted that the AO has made addition for the profits only, meaning thereby, he has accepted the receipt of materials. Accordingly, he submitted that there is no reason to make addition towards additional gross profit, when the purchases and sales recorded by the assessee have been accepted.

4. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A).

5. We have heard rival contentions and perused the record. We noticed that the assessing officer has only estimated the profit from the alleged bogus purchases @ 12.50%, meaning thereby, the AO did not doubt the receipt and sale of materials. It is the contention of the assessee that it has furnished the details relating to purchases, payments made to the supplier, confirmation from the supplier and also the details of sale of products to various persons. The relevant stock register has also been furnished before the AO. It is pertinent to note that the AO did not find fault with any of the documents. He also only observed that the assessee did not furnish stock register for entire products dealt with by the assessee. Since the impugned purchases were related to Aluminium section, the assessee has furnished stock details of that section and in our view, the same would suffice for the purpose.

6. We noticed that the AO has followed the decision rendered by Hon'ble Gujarat High Court in the case of Simit P Shah (supra) in order to estimate the profit @ 12.50% of the value of alleged bogus purchases. The Ld A.R, however, placed reliance on the decision rendered by Hon'ble Supreme Court in the case of PCIT vs. Tejua Rohitkumar Kapadia (SLP No.12670/2018 dated 04-05-2018), wherein the Hon'ble upheld the deletion of addition relating to alleged bogus purchases with the following observations:-

“3. It can thus be seen that the appellate authority as well as the Tribunal came to the concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by Account Payee cheque. Raj Impex also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of

purchases made form Raj Impex which were also accepted by the Revenue. No question of law arises.”

We notice that the facts are identical in this case. The assessee herein has furnished all details evidencing the purchases, confirmation from the suppliers, the details of sales made out of those purchases. There is no evidence to show that the money given towards purchases was flown back to the assessee. The AO has accepted the sales. Accordingly, we are of the view that the impugned addition cannot be sustained, in the facts and circumstances of the case.

7. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition relating to alleged bogus purchases.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21-10-2024

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 21-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai