

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "H(SMC)" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 4039/Mum/2024
Assessment Year : 2011-12

Noorul Hasan Sayed, Shop No. 5, B.P.T. Plot No. 345, Copper Smith Street, Dockyard Road, Mumbai PAN : APLPS8938R	vs.	Income Tax Officer, Ward-20(2)(4), 2 nd Floor, Piramal Chambers, Parel, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Singh
For Revenue :	Shri Uodal Raj Singh, Sr.DR

Date of Hearing :	22-10-2024
Date of Pronouncement :	22-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 12-07-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2011-12. The only issue contested in this appeal is related to the addition of alleged bogus purchases.

2. The assessee is engaged in the business of trading in pipes and steel in the trade name M/s. Zenith Pole & Pipe Co. The AO reopened the assessment for the year under consideration on the basis of the information received from Investigation Wing that the assessee has

availed accommodation bills, without actually receiving goods to the tune of Rs. 39,05,659/-. The assessee is alleged to have purchased goods from five alleged hawala traders.

3. During the course of assessment proceedings, the AO issued notices u/s. 133(6) of the Income Tax Act, 1961 ('the Act') to the above said parties, but all of them were returned un-served. Hence, the AO assessed the entire alleges bogus purchases of Rs. 39,05,659/- as un-explained expenditure u/s. 69C of the Act. The Ld.CIT(A) also confirmed the same.

4. The Ld.AR submitted that the purchases made by the assessee are fully supported by purchase bills, sales bills, ledger account, copy of VAT and CST paid challans, name of suppliers, TIN number etc. Accordingly, he submitted that there is no reason to disbelieve the purchases. The Ld.AR further submitted that identical addition was made in AY 2009-10 on the basis of similar information received from the Investigation wing and in that year, the AO has added only 12.5% of the value of alleged bogus purchases, instead of disallowing entire value of purchases. He further submitted that the assessee has declared a Gross Profit rate of 7.7% during the year under consideration. Accordingly he submitted that the addition @100% of value of alleged bogus purchases is not justified.

5. The Ld.DR, on the contrary, supported the order passed by the tax authorities.

6. We heard the parties and perused the record. We notice that the AO has primarily relied upon the information give by the Investigation Wing in order to conclude the impugned purchases are bogus in nature. Though the assessee has furnished all the documentary evidences in support of purchases, yet the AO did not accept them on the reasoning

that the notices issued by the AO to the suppliers u/s 133(6) of the Act were returned un-served. There should not be any doubt that the assessee cannot have control over the suppliers once the transaction is over and hence the assessee should not be held responsible for the non-cooperation of suppliers to the AO. However, when questioned about the linking of alleged bogus purchases with the sales, the Ld.AR submitted that the assessee is dealing in number of items and it is difficult to exactly link the impugned purchases to the sales made by the assessee.

7. In such type of alleged accommodation supplies, it is possible that the assessee might have purchased goods from one source and procured bills from another source. There is a possibility of making savings in such kind of transactions. Under these circumstances, we are of the view that this issue may be put to rest by estimating the profit that would have been made by the assessee from these transactions. We notice that the AO himself has estimated the profit at 12.5% of the value of the bogus purchases in AY. 2009-10 and the same has been accepted by the assessee. Accordingly, we are of the view that the profit on the alleged bogus purchases may be estimated @12.5% in this year also. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to restrict the addition to 12.5% of the value of alleged bogus purchases.

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

Order pronounced in the open court on 22-10-2024

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER
Mumbai, Dated: 22-10-2024

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

Copy to

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "H(SMC)" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai