

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.499/M/2024
Assessment Year: 2011-12**

Circle-41(2)(1), Room No.623, Kautilya Bhavan, BKC, Mumbai Maharashtra - 400051	Vs.	Shri Gopal Ghanshyam Nehete, 201 Preshit Apartments, Chaphekar Bandhu Marg, Mulund East, Maharashtra-400 081 PAN: AAEPN2184Q
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Milind A. Gupte, Ld. A.R.
Revenue by : Ms. Nayana Krishnakumar, Ld. Sr. A.R.

Date of Hearing : 29 . 08 .2024
Date of Pronouncement : 28 . 11 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 15.12.2023, impugned herein, passed by the Ld. Addl./Joint Commissioner of Income Tax (Appeals) (in short "Ld. Addl./Joint Commissioner") under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

2. In the instant case, on the basis of information received from the office of DGIT (Inv.), Mumbai to the effect that the Assessee being involved in taking accommodation entries from the Hawala dealers listed by Maharashtra Sales Tax Department and during the assessment year under consideration the Assessee has made the bogus/non-genuine purchases to the extent of Rs.35,22,419/- (Rs.22,10,539/- from M/s. Swastik Enterprises & Rs.13,11,880/- from M/s. Paras Enterprises) by recording the reasons for reopening u/s 147 of the Act and issuing the notice u/s 148 of the Act.

2.1 The Assessing Officer (AO) in order to verify the genuineness of the transactions carried out by the Assessee with the aforesaid firms made the enquiries and ultimately made the addition of Rs.10,38,761/- being 29.49% of the alleged bogus purchases of Rs.35,22,419/- by determining the purchases made by the Assessee as bogus purchases and consequently added the same in the income of the Assessee.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and claimed that identical addition was also made in the Assessee's own case for the A.Y. 2009-10 wherein the addition was restricted to 12.5%. Somehow the Assessee considering his age of 78 years and does not have physical and mental strength to pursue the odd litigations any more, settled the demand raised for the A.Y. 2009-10, by availing the facilities as provided through Vivad Se Vishwas Scheme (VSVS) as applicable to that particular A.Y. 2011-12. However, as the AO in the instant case, has not given any reason for making the addition @ 29.49% for this particular year, therefore the Assessee is contesting the same.

3.1 We observe that the Ld. Commissioner by considering the peculiar facts and circumstances of the case and *“specifically the order 04.03.2015 passed by the AO for the A.Y. 2009-10, wherein the AO estimated the income/additional benefit on account of bogus purchases @ 12.5% and in the instant year the AO determined the estimated profit @ 29.4% without giving any reason for the higher estimation”*, finally restricted the addition on account of estimated profit on hawala purchases to the extent of 12.5% as determined for the A.Y. 2009-10 by observing and concluding as under:

“5.2 The assessment order for AY 2009-10 was passed on 04-03-2015 one year before the date of this order on 15-03-2016. The AO has estimated the income/ additional benefit on accounting bogus purchase at 12.5% for AY 2009-10 and 29.49% for this year. Both are estimations and the AO has not given any reason for the higher estimation in this year. The claim of the appellant that "the alleged hawala suppliers had failed to pay the applicable VAT (sales tax) on these transactions to the Maharashtra Sales Tax Authorities, which they have ultimately recovered with interest and penalty from the buyers, ie, the appellant in this case" also requires consideration. Considering these points, the estimated profit on hawala purchases is limited to 12.5% as decided for AY 2009-10 at Rs 4,40,302/-. The appellant gets a relief of Rs 5,98,459/-.”

3.2 We have given thoughtful considerations to the peculiar facts and circumstances of the case. The reason for reducing/restricting the addition to the extent of 12.5% by considering the case of the Assessee for the A.Y. 2009-10, seems to be reasonable, logical and justified and therefore the same does not require any interference. Even otherwise we do not find any reason/material to contradict the findings of the Ld. Commissioner in restricting the addition to 12.5%. Hence, on the aforesaid analyzations, we are inclined not to interfere in the decision of the Ld. Commissioner in restricting the addition.

4. In the result, the appeal filed by the Revenue Department stands dismissed.

Order is pronounced as per Rule 34 of the Income-tax (Appellate Tribunal) Rules, on 28.11.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.