

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4544/MUM/2019
Assessment Year: 2009-10**

Mr. Mihir Nitin Bhandari,
Flat No. 48, B Wing, 8th floor,
Navdarya Mahal CHS Ltd.,
Napeansea Road,
Mumbai-400 006.

PAN No. AACPB 5636 M
Appellant

Vs. Income Tax Officer-19(2)(3),
Room No. 221, 2nd floor, Matru
Mandir Building, Tardeo,
Mumbai-400 007.

Respondent

Assessee by : Mr. Kirit Mehta AR
Revenue by : Mr. Sanjay J Sethi, DR

Date of Hearing : 02/03/2021
Date of pronouncement : 16/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. During the course of hearing, the Ld. counsel for the assessee submits that he would not like to press the 1st and 3rd ground of appeal. Considering the submission of the assessee, we dismiss the 1st and 3rd ground of appeal as not pressed. We then turn to the 2nd ground of appeal which reads as under :

“2. Addition on account of alleged non-genuine purchases

The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of a sum of Rs.1,06,900/-, being 8 percent of alleged non-genuine purchases of Rs.13,26,130/-.

The Appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned addition inasmuch as there are no bogus purchases made by the Appellant and the Assessing Officer has not brought any material on record in respect of the same and hence, the impugned addition ought to be deleted.”

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 12.11.2009 declaring total income of Rs.2,68,540/-. On receipt of information from the Director General of Income Tax (Inv) Mumbai that the assessee had obtained bogus purchase bills of Rs 13,13,000/- from M/s Mayur Exports (a concern of Shri Bhanwarlal Jain & Ors) during the financial year 2008-09, the Assessing Officer (AO) reopened the assessment by issuing notice u/s 148 of the Act. During the course of reassessment proceedings, the assessee filed before the AO (i) copies of invoices of purchases and corresponding sales, (ii) copies of bank statements evidencing payments made through banking channels by issuing account payee cheques in respect of the above party, highlighting the relevant entries.

However, the AO was not convinced with the above submission of the assessee on the ground that in the books of accounts of the assessee, the purchases made from the above party remained unverifiable. Considering the facts and circumstances of the case, he estimated profit @ 8% of the disputed purchases of Rs.13,26,130/- and thus made an addition of Rs.1,06,090/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 03.05.2019, the Ld. CIT(A) confirmed the above disallowance made by the AO by observing that :

“6.3.32 As narrated earlier, the AO in this case has held that the parties from which purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchases price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (*supra*), I estimate that the addition made by the AO is correct. This estimation is in addition to the GP shown by the appellant. Thus, addition of Rs.1,06,090/- (being 8% of Rs.13,26,130/-) is confirmed.”

5. Before us, the Ld. counsel for the assessee submits that the payments to Mayur Exports have been duly made via account payee cheques – Rs.11,89,000/- on 10.11.2008 by cheque No. 507209 and Rs.1,37,130/- on 07.03.2009 by cheque No. 507210. It is further stated that the assessee has filed his MVAT returns regularly for the financial year 2010-11 and has paid the differential MVAT after claiming the eligible input tax credit on the purchases made from Mayur Export. Thus it is stated that the profit from the said transaction has been recorded in the profit and loss account for the year ended 31.03.2009 and said profit has also been reported in the return of income of the year under consideration.

The Ld. counsel has mainly placed reliance on the judgment of the Hon'ble Bombay High Court in the case of *PCIT v. Mohammad Haji Adam & Co* (ITXA Nos. 1004, 1013, 1059, 1064, 1075, 1095, 1204 and 1012 of 2016 dated 11.02.2019).

6. On the other hand, the Ld. DR submits that the estimation of profit @ 8% done by the AO and then affirmed by the Ld. CIT(A), being reasonable be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. We are of the considered view that considering the facts and circumstances of the present case, the decision in *M/s Mohommad Haji Adam & Co.* (supra) relied on by the Ld. counsel merits consideration. In that case, during the course of survey operations in the case of entities from whom the assessee had claimed to have made purchases, the Department collected information suggesting that such purchases were not genuine. The AO noticed that the assessee had shown purchases of fabrics worth Rs.29.41 lakhs from three group concerns, namely M/s Manoj Mills, M/s Astha Silk Industries and M/s Shri Ram Sales and Synthetics. On the basis of statement recorded during such survey operations, the AO concluded that the selling parties were engaged only in supplying the bogus bills, that the goods in question were never supplied to the assessee, and therefore, the purchases were bogus. He, therefore, added the entire sum in the hands of the assessee as its additional income. The assessee carried the matter in appeal before the CIT(A), who accepted the factum of purchases being bogus. However, he compared the purchases and sales statements of the assessee and observed that the Department had accepted the sale, and therefore, there was no reason to reject the purchases, because without purchases there cannot be sales. He, therefore, held that under these circumstances the AO was not correct in adding the entire amount of purchases as the assessee's income. He, therefore, deleted the addition refreshing it to 10% of the purchase amount. He also directed the AO to make addition to the extent of difference between the gross profit rate as per the books of accounts on undisputed

purchases and gross profit on sales relating to the purchases made from the said three parties. The assessee carried the matter before the Tribunal. The Revenue also carried the issue before the Tribunal. The Tribunal allowed the appeal of the assessee partly and dismissed that of the Revenue. The Tribunal noted that the CIT(A) had not given any reasons for retaining 10% of the purchases by way of ad-hoc additions. The Tribunal, therefore, deleted such additions, but retained the portion of the order of the CIT(A) to that extent he permitted the AO to tax the assessee on the basis of difference in the GP rates. In further appeal before the Hon'ble Bombay High Court, the Revenue referred to the decision of the Division Bench of the Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. v. DCIT in Tax Appeal No. 240 of 2003 and connected appeals decided on 20.06.2016 and also pointed out that the SLP against such decision was dismissed by the Hon'ble Supreme Court. The Hon'ble Bombay High Court held :

"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 (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.”

We find that the facts in the instant case are similar to the above decision. Following the same, we set aside the order of the Ld. CIT(A) and direct the AO to restrict the additions limited to the extent of bringing the G.P. rate on disputed purchases at the same rate of other genuine purchases.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 16/03/2021

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated:16/03/2021
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai

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