

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2210/M/2023
Assessment Year: 2011-12**

Shri Jaisingh Hajusingh Solanki, 25-C, Sonarika Apt, Nanubhai Desai Road, Chandawadi, Mumbai – 400 004 PAN: ACAPS6502R	Vs.	Income Tax Officer- 19(2)(1), Matru Mandir, Tardeo Raod, Mumbai – 400 004
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Ajeya Kumar Ojha, D.R.

Date of Hearing : 16 . 10 . 2023
Date of Pronouncement : 07 . 11 . 2023

ORDER

Per : Kuldip Singh, Judicial Member:

At the very outset it is brought to the notice of the Bench by the assessee by moving an application that the present appeal is filed before the Tribunal with a delay of 52 days and sought to condone the delay on the grounds inter-alia that the assessee is retired from the business and staying most of the times in village and being not available in the town and could not consult his consultant; that the delay in filing the appeal within limitation occurred due to lapse on the part of his tax consultant who has not

advised the assessee to file the appeal initially; that delay of 52 days in filing the appeal is neither intentional nor willful and sought to condone the same.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that the delay is caused partly to the assessee he being a retired person from business and staying in the village and partly to his tax consultant who has pursued the first appeal before the Ld. CIT(A) and has not filed the appeal within time and in these circumstances the assessee should not be made to suffer and should be given a chance to get the issue decided on merits. So we find sufficient cause to condone the delay in view of the decision rendered by the Hon'ble Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay". So the delay of 52 days in filing the present appeal is hereby condoned and present appeal is ordered to be registered and being heard today by the Bench on merits.

4. The appellant, Shri Jaisingh Hajusingh Solanki (hereinafter referred to as 'the assessee') by filing the present appeal, sought to

set aside the impugned order dated 24.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter-alia that :-

“The grounds mentioned hereunder are without prejudice to one another:

Ground 1-Estimated Addition of Suspicious Purchases of Rs. 1,29,38,500/-

Under the facts of and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining the estimated addition on suspicious purchases and not appreciating the facts of the case wherein the assessee has submitted the invoices, Bank Statement (reflecting payment through account payee cheque) and Stock Movement - being inwards of material (from suspicious dealer) and its subsequent sales with profit margin on the same. Thus, addition is bad in law and needs to be deleted.

Ground 2-Restricting addition upto Gross Profit on undisputed purchases vis-à-vis Gross Profit on disputed purchases (PCIT Vs Mohammad Haji Adam & Co)

Under the facts of and in the circumstances of the case and in law, the learned CIT(A) erred in not considering Hon'ble Bombay High Court Judgement in case of PCIT Vs Mohammad Haji Adam & Co where addition was restricted as difference between Gross Profit on undisputed purchases vis-à-vis Gross Profit on disputed purchases

Ground 3-Addition @ 12.5% minus Gross Profit Offered

Under the facts of and in the circumstances of the case and in law, the learned CIT(A) erred in upholding addition @12.5% where there are numerous case laws on similar facts where additions were reduced to 12.5% minus GP offered. Thus, we request your honour to restrict the addition to 12.5% minus gross profit offered.

Ground 4- No Opportunity to Cross-Examine the Parties

Under the facts of and in the circumstances of the case and in law, the learned CIT(A) erred in understanding that AO has merely relied on information received from sales tax department without making independent enquiries. Further neither any statement on which reliance was paid for addition was provided to appellant nor opportunity of cross examination was provided, denying principle of natural justice, and thus addition is bad in law and needs to be deleted.

Ground 5-Restriction of Addition upto Gross Profit or Net Profit Ratio.

Under the facts of and in the circumstances of the case and in law, the learned CIT(A) erred in not restricting Additions to Net Profit or Gross Profit (if not Net Profit) although AO agreed that only profit embedded

in such purchases to be taken as the profit earned from purchases shown to have been made from non-existence parties.

The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal..”

5. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of trading ferrous and non ferrous metals. On the basis of information received from Directorate General of Income Tax, (Investigation) Wing, Mumbai that some dealers under MVAT are providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing accommodation entries, reopening has been initiated under section 147/148 of the Income Tax Act, 1961 (for short ‘the Act’) after recording reasons. The assessee found to have availed of the accommodation entries/bogus purchases from four companies namely Manibhadra Metal Industries, Reannex Impex Private Limited, Vasudev Trading Company Private Limited & Khimsar Impex Private Limited. Necessary notices under section 142(1) and 143(2) of the Act were issued. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to estimate the addition on bogus purchases to the tune of Rs.33,10,814/- being 12.5% of the total non genuine purchases of Rs.2,64,86,514/- and thereby framed the assessment under section 143(3) read with section 147 of the Act.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by

the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

7. Notices were issued to the assessee which were duly served but the assessee has not preferred to appear before the Tribunal. Keeping in view the fact that the assessee has placed on record written submissions by relying upon the decision rendered by the Hon'ble Bombay High Court in case of Pr. CIT vs. M/s. Mohommad Haji Adam & Co. (2019) 104 CCH 0391 and the decision rendered by the co-ordinate Bench of the Tribunal in case of Puraram Modi vs. ITO in ITA No.6575/M/2018 order dated 15.01.2020. The assessee has also brought on record order passed by the Commissioner of Appeals in its own case for A.Y. 2010-11. The Bench has decided to dispose of the appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

8. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

9. Undisputedly the purchases made by the assessee during the year under consideration for different entities, who are engaged in providing accommodation entries on bogus sales to various beneficiaries and the assessee is found to be one such beneficiary. It is also not in dispute that during the year under consideration the assessee company has made purchases to the tune of Rs.2,64,85,514/-. It is also not in dispute that during the assessment proceedings as well as first appellate proceedings the

assessee has failed to controvert the facts on record by the Revenue that the said purchases are from bogus entities. It is also not in dispute that the Ld. CIT(A) has confirmed the addition by estimating the gross profit @ 12.5% of the total bogus purchases made by the assessee.

10. In the backdrop of the aforesaid undisputed facts the assessee in its written submissions, submitted that in view of the decision rendered by the Hon'ble Bombay High Court in case of M/s. Mohommad Haji Adam & Co. (supra) that the addition be restricted to the gross profit @ GP already declared by the assessee on genuine purchases as sales are not disputed by the Revenue. It is also submitted by the assessee in its written submissions that in A.Y. 2010-11 the Ld. CIT(A) in the identical issue in assessee's own case has restricted the addition to the rate of GP already declared by the assessee which order has already been accepted by the Revenue.

11. However, on the other hand, the Ld. D.R. for the Revenue relied upon the impugned order passed by the Ld. CIT(A) and contended that in the given circumstances in which the assessee is habitual of taking bogus entries of purchase bills without taking any delivery, the addition has been rightly made @ 12.5% of the bogus purchases.

12. We are of the considered view that the issue in question in case of making addition in bogus purchases on estimation basis the Hon'ble Bombay High Court in case of M/s. Mohommad Haji Adam & Co. (supra) has held that when the Revenue Department has not disputed the assessee's sales and there is no discrepancy

between the purchases shown by the assessee and the sales declared, addition should be restricted to the extent of bringing the GP rate on bogus purchases at the same rate of other genuine purchases. This view has been followed by the Tribunal in number of cases.

13. Furthermore, the Tribunal in assessee's own case for A.Y. 2010-11, wherein the addition @ 12.5% of bogus purchases was made, restricted the addition to the gross profit rate already declared by the assessee on the genuine purchases which decision has been accepted by the Revenue Department.

14. In view of what has been discussed above, we are of the considered view that the addition in this case @ 12.5% by the Ld. CIT(A) is not sustainable, hence ordered to be restricted to the average of the gross profit rate declared by the assessee on its genuine purchases in the last 5 years. So the AO is directed to estimate the addition on the basis of average of the GP rate declared by the assessee on genuine purchases in the last 5 years.

15. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07.11.2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 07.11.2023.

* 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.

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