

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 2698/Mum/2023

(Assessment Year: 2011-12)

Murtuza Abdul Gaffar Khan
339, Voctoria Overbridge Road,
Reay Road Darukhana
Mumbai-400 010

Vs.

National Faceless Appeal
Centre (NFAC)
Delhi,

(Appellant)

(Respondent)

PAN No. AGHPK2006R

Assessee by : Shri Vimal Punmiya, CA
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 10.01.2024
Date of pronouncement : 15.03.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 2698/Mum/2023 is filed by Murtuza Abdul Gaffar Khan, [assessee / appellant], for A.Y. 2011-12, against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 6th July, 2023, wherein the appeal filed by the assessee against the assessment order under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 19th December, 2018, passed by the Income Tax Officer, Ward 26(2)(3), Mumbai, (the learned Assessing Officer), was dismissed. Therefore, the assessee is aggrieved and has preferred this appeal before us.

02. The only issue in the appeal is the addition confirmed by the learned CIT (A) of ₹1,15,86,557/-, treating non genuine purchases under Section 68 of the Income-tax Act, 1961 (the Act). The assessee has raised following grounds of appeal:-

"1. The learned CIT erred in confirming an addition of ₹1,15,86,557/- treating the same as Non-genuine purchase under Section 68 of the act income tax act 1961.

2. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."

03. The brief facts of the case shows that assessee is an individual proprietor of engineer tube traders carrying on the business as resellers in MS Pipes, Tubes and allied products. He filed his return of income on 28th September, 2011, at ₹6,72,951/-. The return was processed under Section 143(1) of the Act.

04. The notice under Section 148 of the Act was issued on 30th March, 2018, after recording the reasons. The assessee responded by reiterating the original return filed as return in response to notice under Section 148 of the Act. He further asked for the reasons recorded which were provided and thereafter, notice under Section 142(1) of the Act was issued.

05. In assessment proceedings and reasons recorded for reopening, It was found that assessee has purchased



material of ₹1,15,86,557/- from two parties M/s Chanchal Tube Corporation and Siddhi vinayak Steel, which are stated to be hawala party by Maharashtra sales tax department and DGIT, Investigation, Mumbai that these parties are bogus. The learned Assessing Officer issued notice under Section 133(6) of the Act to the hawala parties, which could not be served by the Postal Authorities and returned with remark 'not known'. The learned Assessing Officer was asked to produce the parties along with their books of accounts. The assessee expressed his inability. However, the assessee submitted that all these purchases have gone into sales and assessee has shown gross profit on these purchases. Further, the transactions are through banking channel supported by proper bills. The learned Assessing Officer held that the bogus purchases are required to be added to the total income of the assessee. Though in the assessment order in paragraph no.8.2, he categorically recorded that as the purchases have been made by the assessee, which has gone into sale, 12.5% of the cost of disputed purchases should be added. However, as the assessee did not show from whom the goods have been purchased in reality, he made 100% addition of such purchases. The assessment order under Section 143(3) read with section 147 of the Act was passed on 19th December 2018, at the total income of ₹1,22,59,510/-. The learned Assessing Officer made an addition of non-genuine purchases of ₹1,15,86,557/- at the rate of 100%.



06. The assessee filed appeal before the learned CIT (A), wherein the learned CIT (A) was confronted with objections to the reopening of the assessment, it was dismissed. On the merits of the addition, he confirmed 100% addition. Accordingly, the appeal of the assessee was dismissed.
07. The assessee aggrieved with that has preferred this appeal. Before us, the assessee has
- i. Submitted stock register of material purchased, he further shown the details of purchases from Siddhi Vinayak Steel and Chanchal Steel Corporation and corresponding sales made to other parties.
 - ii. produced stock tally of kilograms and submitted that on the goods purchases of ₹1,15,86,557/-, same were sold for ₹1,22,08,684/-, resulting into gross profit of ₹6,22,127/-, showing gross profit of 5.09%.
 - iii. Relied on the decision of the Hon'ble Bombay High Court in case of PCIT vs. Mohd. Haji Adam and Co. date 11 February 2019.
 - iv. Submitted, gross profit chart to show that in the regular business of the assessee, the assessee has earned gross profit ratio of 5.41% and therefore, gross profit is shown by the assessee similar even if alleged bogus



purchases and sales are separated. Therefore, no addition should be made to the total income.

v. Submitted plethora of judicial precedents to support his case.

08. The learned Departmental Representative supported the orders of the lower authorities.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact clearly shows that assessee is a trader in MST tubes and pipes. Based on sales tax department enquiry and consequent report of DGIT, assessee was found to have indulged into purchases from tainted parties as per Sales Tax Department. Two parties are identified and total of such purchases was ₹1,15,86,557/-. The learned Assessing Officer made an addition to the extent of 100% of the same, which was confirmed by the learned Commissioner of Income tax (Appeals). Before us, the assessee has given a quantitative chart along with the value to show that alleged bogus purchases are amounting to ₹ 1,15,86,557/- for 1,89,475 kgs, which were sold for ₹1,22,08,684/- of identical kgs. Bills of purchases and bills of sales were also correlated. The assessee has also submitted the stock register before us. Assessee has also produced before the lower authorities the details such as invoices, payment through banking channel, confirmation of accounts and other details for purchase of goods. Undeniably, the parties who notices under section 133 (6) of the act were returned, assessee also did not produce



the parties. However as held by the honourable Bombay High Court in case of Mohmd. Haji Adam & company (supra) where sales are not disputed, no discrepancy between purchases shown by the assessee and the sales declared; only the addition should be restricted to the extent of bringing the gross profit on purchases at the same rate of other genuine purchases. On this mandate, it was found that assessee has given the quantitative sales corresponding to the quantitative purchase, which is from alleged bogus suppliers. The resultant gross profit from alleged bogus purchase and sales is 5.096%. The gross profit ratio without alleged bogus purchase and corresponding sales is 5.407%, which will result into addition of 0.3% of alleged bogus purchases of ₹1,15,86,557/-which would be minuscule. Looking at the minuscule amount of addition to be retained, we find it a reasonable and just to delete the addition and allow appeal of the assessee.

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

Order pronounced in the open court on 15.03.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.03.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai