IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 441 OF 2018

Principal Commissioner of
Income Tax ….. Appellant
Vs.
Hiren C. Parekh ….. Respondent

Ms. Sushma Nagaraj a/w Ms. Kinjal Patel and Ms. Vibhuti Keny, for Appellant.
None for Respondent.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 28, 2023

P.C.

1. The appeal is against the order passed by the Income Tax Appellate Tribunal, Mumbai ('ITAT') on 07/06/2017 for the Assessment Year 2010-11 by which ITAT sustained addition towards gross profit on bogus purchases but reduced the same from 12% to 8%.

2. The substantial questions of law proposed are as under:

> a) Whether in law and on the facts and circumstances of the case, was the Tribunal order not perverse, wherein it was content to merely excerpt a portion of the orders of the CIT(A) without giving any reasons as to why it had agreed with the decision?
>
> b) Whether the Tribunal was right in further reducing the addition to 8% of the value of the tainted purchases as against 12% of the

> same as held by the CIT(A).
>
> c) Whether in law and on the facts of the case, was the Tribunal correct in ignoring the decision of the Gujarat High Court in N.K. Proteins?

3. Appellant's Counsel was unable to show any formula by which the disallowance towards gross profit on bogus purchases could be arrived at. This was a case where the Assessing Officer ('AO') during the course of assessment proceedings found the assessee had made total purchases of Rs.2,03,55,145/- and accordingly, called upon the assessee to file details of purchases made during the year along with names and addresses of the suppliers. During this process, AO found from the website of the Government of Maharashtra, Sales Tax Department certain parties from whom assessee had made certain purchases were engaged in providing accommodation entries in respect of bogus purchases. The AO claims to have issued notice under Section 133(6) of the Income Tax Act, 1961 to the parties but the same were returned unserved with the postal remarks 'addressee are not known' and 'unclaimed'. The AO therefore added the entire amount of purchases made from these parties to the total income of the assessee for the reason that the parties were not genuine and all purchases made by the assessee were in doubt.

4. We have considered the order of the AO. The AO does not dispute

that purchases have been actually made but what is disputed is whether purchases have been made from the said 4 parties. The fact that payments were made to these parties by way of account payee cheques is also not questioned by AO. The AO has not given any finding as to whether he has even approached the bank or made any enquiries with the bank to find out genuineness of those payments. It is of course recorded that the notices sent to those persons came back undelivered and assessee was unable to provide any actual delivery challans. What is material to note is that the purchases themselves were not being disputed and what is disputed is genuineness of the sellers. Therefore, in view of these factors, CIT(A), relying on a judgment of the Gujarat High Court in [1]***CIT Vs. Simit Sheth*** , came to a conclusion that not the entire purchases, but only profit element embedded in such purchases can be added to the income of the assessee. CIT(A) while deciding what is appropriate profit element percentage has very correctly stated that though there is no uniform yardstick adopted, while looking at the norms in the market and considering the trade of the assessee, 12% gross profit on the impugned component of purchases is appropriate and directed the same to be added to the profit of the assessee for that year.

5. The Revenue as well as the assessee challenged this order before the

1 (2013) 356 ITR 451 (Guj)

ITAT and the ITAT by impugned order dated 07/06/2017 partly allowed the assessee's appeal and reduced the gross profit to be applied from 12% to 8%.

6. Ms. Nagaraj submitted that except reproducing the portion of the order of CIT(A), no reasons have been given as to why it should be reduced from 12% to 8%.

7. What is sufficient reason would vary from case to case and having considered paragraph 6 of the impugned order, we are satisfied that what has weighed in the mind of ITAT is that assessee had already declared 7.5% as gross profit. Of course, assessee had taken a stand that deference between 12% and 7.5% should be sustained and gross profit of 4.5% be applied. It is this proposal, we feel, made ITAT come to a mid figure of 8%. These are all calculations arrived at on the basis of the facts before ITAT and what is argued before the ITAT.

8. Moreover, what would be actual profit margin in the business that the assessee was carrying on and the matter of calculation before the concerned authority, whether the purchases were bogus and the parties from whom such purchases were allegedly made were bogus are essentially questions of fact for which evidence will have to be led. Therefore, in view

of this, no substantial question of law arises.

9. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**