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

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA NO.439/MUM/2019 : A.Y : 2010-11

ITO-6(3)(1) **5th Floor, Room No.510** **Aayakar Bhavan** **M.K.Road, Mumbai-400020**	vs.	**M/s. Fanatic Fashion Pvt.Ltd.** **122, Jogani Industrial Estate** **S B Marg, Dadar (W)** **Mumbai – 400 028** **PAN No. AAACF9297F**

Revenue by : Shri Anoop Hiwase
Assessee by : Shri Vizti Kothari

Date of Hearing : 27/01/2020
Date of Pronouncement : 28/01/2020

O R D E R

PER R.C. SHARMA, ACCOUNTANT MEMBER

This appeal filed by the revenue against the order of CIT(A) for the A.Y.2010-11 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. Revenue is aggrieved for upholding addition to the extent of 12.5% in respect of alleged bogus purchases which was made by the AO at 100%.

3. I had gone through the orders of the authorities below and found that CIT(A) has restricted addition on account of alleged bogus purchases @12.5% after observing as under:-

"4.2 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO on account of non-availability of the suppliers at the given address and non- production of transportation bills, added 100% of the said suspicious purchases. However the assessee filed copies of purchase invoices, ledger accounts of the parties in assessee's accounts and bank statement showing the payments and also invoices of corresponding sales. It is seen that many Benches of ITAT and Hon'ble High Courts in such circumstances have held that when purchases are supported by sufficient documentary evidences, then because of non-appearance before the AO, one cannot conclude that the purchases were not made by the assessee. Reliance is placed on Nikunj Eximp Enterprises (P.) Ltd. v. CIT 216 Taxman 171 (Bom.), CIT v. Nangalia Fabrics (P.) Ltd. ***220*** *Taxmann 17 (Guj.), CIT v. M.K. Bros. 163 ITR 249 (Guj.), Asstt.CIT v. Akruti Dyeing & Printing Mills (P.)Ltd. Dy. CIT v. Adinath Industries [2001] 252 ITR 476 (Guj), CIT v. Precious Jewels Corpn.17 taxmann.com 264 (Raj.), CIT v. Rajesh P. Soni [Tax Appeal No.1107 of 2006, dated 27-2-2012.].*

4.3 However, fact remains that the appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could not have made the sales. Merely relying upon the information from the Sales Tax Department the Assessing Officer could not have treated the purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and there is no evidence before the AO that the payments made were again routed back to the appellant, the addition of bogus purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills for the material purchased locally. In other words the entities may not be the actual supplier but may have provided the bills for the material purchased locally. This is not case in which the signed blank cheque books etc. found with the buyer to say that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. Therefore the saving on account of VAT other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12.5% of such purchases. Therefore, the AO is directed to estimate the 12.5% of Rs.1,61,450 and modify the addition accordingly. Appellant gets part relief. This ground is partly allowed."

4. It is clear from the order of CIT(A) that he has considered all the facts and circumstances and after applying the judicial pronouncements in case of N K Proteins Ltd. 250 Taxman 22(SC), upheld the addition in respect of profit element of 12.5%. Nothing was placed before me so as to persuade me to deviate from the findings of CIT(A), accordingly, I uphold the order of CIT(A).

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 28/01/2020

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/01/2020
Karuna Sr.PS

<u>Copy of the Order forwarded to</u> :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)

ITAT, Mumbai