

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

BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM

**ITA No. 1116/Mum/2019
(Assessment Year: 2009-10)**

M/s Balaji Pipes, C/o- D.C. Bothra & Co. LLP (CA) (formerly known as D.C. Bothra & Co.), 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp Bank of India, nana Chowk, Mumbai-400007.	Vs.	I.T.O.-19(1)(2) 2 nd Floor, Matru Mandir, Tardev Road, Mumbai-400021.
PAN/GIR No.AAIFB 0628 D		
(Appellant)	..	(Respondent)

Assessee by	Shri Raj Kumar Singh & Shri Harish Sharma (ARs)
Revenue by	Shri Amit Pratap Singh (DR)
Date of Hearing	11/02/2020
Date of Pronouncement	12/02/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is the appeal filed by the assessee against the order of the Id. CIT(A)-07, Mumbai dated 24/12/2018 for the A.Y. 2009-10 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the assessee is basically aggrieved for upholding addition of 12.5% on account of bogus purchases.
3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a dealer of ferrous and non-ferrous

metals. The A.O. reopened the assessment on getting information from the Sales Tax Department regarding the assessee involved in taking accommodation bill. After making detailed enquiry, the A.O. added 12.5% of alleged bogus purchases in assessee's income which was confirmed by the Id. CIT(A). Now the assessee is in further appeal before the ITAT.

4. The Id AR appearing on behalf of the assessee has contended that the issue is covered by the decision of Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019, according to which addition can be made only to the extent of difference between the G.P. declared on regular purchases vis a vis bogus purchases. He has further contended that no where the A.O. or the Id. CIT(A) has disputed the corresponding sales and the assessee has filed quantitative details of all the purchases and extract of purchase register and sales register of entire year containing inward and outward movement of trading goods. Furthermore, copy of invoice and delivery challans issued by the supplier was also produced before the A.O. with respect of alleged bogus purchases alongwith confirmation letter from the supplier. Under these facts and circumstances, it was contended that the A.O. was not justified in making addition of 12.5%.

5. On the other hand, the Id DR has relied on the orders of the authorities below and contended that after making detailed enquiry, the A.O. issued notice U/s 133(6) of the Act and reached to the conclusion that the assessee has not actually purchased the goods but only taken bills. Accordingly, the A.O. was justified in making addition of 12.5%.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that before the A.O., the assessee has filed following documents:

- (i) Extract of purchase register and sales register of entire year.
- (ii) Item wise and bill wise extract of stock register of entire year containing inward and outward movement of trading good dealtwith.
- (iii) Copy of invoice and delivery challans issued by alleged hawala dealers for alleged purchases made.
- (iv) Confirmation letter of following alleged hawala dealers alongwith copy of their sale tax return and paid VAT challan:
 - a) Shanti Pipes & Tubes
 - b) Pioneer Metals & Alloys
 - c) Heena Metals.

However, no defect was pointed out by the A.O. in the above documents and he just estimated profit @ 12.5% on the alleged bogus purchases. With respect to issue regarding addition in respect of bogus purchases, the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019 have held as under:

“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 assesses 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 Ltd.. (supra) cannot be applied without reference to the facts.*

7. The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated 07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:

“9. *When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P.Seth (supra). We have considered the rival contentions ITA No. 4192/Mum/2018 and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of*

differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly.”

8. It is clear from the above decisions that in case of bogus purchases where sales are accepted and assessee has filed quantitative details of purchases and also stock register reflecting goods received, the addition is required to be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. Respectfully following the order of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT, Mumbai, we restore the matter back to the file of the A.O. to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to GP on normal purchases. The assessee is also directed to give full details to the A.O. with regard to GP earned on normal purchases and also GP earned on alleged bogus purchases. We direct accordingly.

9. In the result, the appeal of the assessee is allowed in part for statistical purposes only.

Order pronounced in the open court on 12th February, 2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

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

Mumbai; Dated 12/02/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai