

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA Nos. 3087 & 3088/Mum/2016  
(Assessment Years:2007-08 & 2008-09)**

JCIT (OSD) – Central Circle 1(4)  
R. No. 902, 9<sup>th</sup> Floor, Old CGO Buld.  
M.K. Road, Church Gate,  
Mumbai – 400 020

Vs.

Shri Kamlesh Manohar Kanungo  
(Prop. Trison Impex)  
2<sup>nd</sup> Floor, Apsara Cinema Bldg.  
Dr. D.B. Marg, Grant Road (E),  
Mumbai – 400007

PAN – ABBPK9675R

**(Appellant)**

**(Respondent)**

Appellant by: Shri S.C. Tiwari, CIT D.R  
Respondent by: Shri Rajkumar Singh, A.R

Date of Hearing: 19.02.2020  
Date of Pronouncement: 20.02.2020

**ORDER**

**PER RAVISH SOOD, JM**

The captioned appeals filed by the revenue are directed against the order passed by the CIT(A)-47, Mumbai, dated 26.02.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s. 153C of the Income Tax Act, 1961 (for short 'Act'), dated 27.03.2014. Initially, the aforesaid appeals were disposed off by the Tribunal vide its consolidated order passed in Joint Commissioner of Income Tax (OSD) Vs. Shri Kamlesh Manohar Kanungo, ITA Nos. 3087 & 3088/Mum/2016, dated 26.10.2017. However, the Tribunal at the time of disposing off the aforesaid appeals of the revenue had lost sight of the fact that the cross-appeals of the assessee for both of the aforesaid years were already disposed off, vide its consolidated order passed in Shri Kamlesh Manohar Kanungo Vs. Dy. CIT (ITA Nos. 3242 & 3243/Mum/2016, dated 28.02.2017. As the subsequent order passed by the Tribunal while disposing off the appeals of the revenue was found to be inconsistent with the view that was earlier taken by it while disposing off the appeals of the assessee for the said years,

therefore, the assessee preferred miscellaneous applications viz. M. A. Nos. 321 & 323/Mum/2018 (arising out of revenues appeals) for the aforementioned years viz. A.Y 2007-08 band A.Y 2008-09 with the Tribunal. On the basis of its consolidated order passed in M.A. Nos. 321 & 322/Mum/2018, dated 20.08.2019 r.w M.A. No. 524 & 525/Mum/2019, dated 25.11.2019, the Tribunal had recalled its consolidated order that was passed by it while disposing off the appeals of the revenue for the captioned years viz. A.Y. 2007-08 & A.Y. 2008-09.

2. As common issues are involved in the captioned appeals of the revenue, therefore, the same are being taken up and disposed off by way of a common order. Search and seizure proceedings were conducted on 29.04.2011 in the case of Tirupati group of companies which was involved in the business of trading in steel pipes, joints, RSJ poles, angles, channels & TMT bars etc. On the basis of incriminating material that was unearthed during the course of the search proceedings, it was gathered that the proprietary concern of the assessee viz. M/s Trison Impex, as well as a concern in which he was a director i.e M/s Sikkim Ferro Alloys had issued bogus bills in the name of M/s Max Tech Oil & Gas Services Pvt. Ltd. Survey proceedings were conducted at the premises of the assessee, which therein revealed that he had carried out bogus purchases from M/s Aakaash Ferromet Pvt. Ltd., M/s Adhunik Steel Corporation and M/s Arihant Trading Company over different years. On a perusal of the records, it was gathered that the aforesaid parties were also blacklisted by the Sales Tax Department as hawala traders. After considering the facts on record and the explanation of the assessee, the A.O completed the assessment for A.Y 2007-08 and made a disallowance of Rs.1,65,33,581/- and an addition of commission expenses of Rs.1,90,335/-. For A.Y. 2008-09 the disallowance on account of bogus purchases was Rs.1,60,43,273/- and the addition towards commission expenses was estimated at Rs.6,85,749/-.

3. Aggrieved, the assessee assailed the respective assessments before the CIT(A). On a perusal of the records, it was observed by the CIT(A) that the A.O had accepted the sales made by the assessee. Further, the CIT(A) observed that the purchase and sale correlation was also not controverted by the A.O. It was also noticed by the CIT(A) that the payments for the purchase consideration were routed through banking channels. Apart from that, it was observed by the CIT(A) that the delivery challans pertaining to the impugned purchase transactions were also produced by the assessee. In the backdrop of the aforesaid facts, it was

observed by the CIT(A) that the impugned purchases under consideration could not be held to be bogus. At the same time, the CIT(A) was of the view that the primary impetus behind availing of such bogus bills by the assessee was to suppress its gross profit. On the basis of his aforesaid observations the CIT(A) worked out the average G.P. rate of the assessee after considering those for the immediately two preceding years and that for the year under consideration, as under :

Assessment Year	Average G.P. Rate
A.Y. 2007-08	4.25%
A.Y. 2008-09	3.28%

Observing, that the assessee would had benefited as regards the impugned purchase transactions to the extent of the respective G.P. rates viz. A.Y. 2007-08: 4.25% and A.Y. 2008-09: 3.28% on the aggregate value of the impugned purchases under consideration for the said respective years, the CIT(A) worked out the disallowance of the impugned purchases to the said extent. Accordingly, on the basis of his aforesaid observations the CIT(A) scaled down the addition which was made by the A.O in the aforementioned years, and restricted the same to the extent of the respective G.P. rate (average) on the impugned purchase transactions for the aforesaid years under consideration. As regards the addition of commission expenses that was made by the A.O, the same was deleted by the CIT(A).

4. Aggrieved, both the assessee and the revenue filed cross appeals before the Tribunal. Adverting to the appeal of the revenue of which we are seized as on date, the Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted, that the Tribunal had while disposing off the appeals of the assessee for the captioned years, had vide its order passed in ITA Nos. 3242 & 3243/ Mum/2016 for A.Y. 2007-08 and A.Y. 2008-09, dated 28.02.2017 restricted the impugned addition to 2% of the amount of the bogus purchases. Accordingly, it was submitted by the Id. A.R that in the backdrop of the order that was passed by the Tribunal while disposing off the appeals of the assessee for captioned years, the present appeals of the revenue were liable to be dismissed.

5. Per contra, the Id. Departmental Representative (for short 'D.R') did not controvert the aforesaid factual position.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the Tribunal vide its order passed while disposing off the cross-appeals of the assessee for the captioned years viz. A.Y. 2007-08 and A.Y. 2008-09 in ITA Nos. 3242 & 3243/Mum/2016, dated 28.02.2017, had restricted the addition in respect of the impugned bogus purchases to 2% of the aggregate value of the impugned purchases. Relevant observations of the Tribunal are reproduced as under:

“We find that the Id. CIT(A) has considered the ratio laid down in the various decisions as prayed by the Id. A.R before FAA and sustained the addition to the extent of 3.28% of the alleged bogus purchase. However, in the present case, we feel that the rate applied by the FAA on GP peak purchases is on higher side and the same is reduced to 2% of the bogus purchases.

In the backdrop of the aforesaid facts, we are of the considered view that now when the Tribunal while disposing off the appeals of the assessee for A.Y. 2007-08 and A.Y. 2008-09 had restricted the addition to 2% of the aggregate value of the bogus purchase, therefore, the present appeals of the revenue assailing the order of the CIT(A) does not merit acceptance and are liable to be dismissed.

7. Resultantly, the appeal of the revenue for A.Y. 2007-08 and A.Y. 2008-09 are dismissed.

Order pronounced in the open court on 20.02.2020

Sd/-  
(M. Balaganesh)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 20/02/2020

Rohit, P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)

**ITAT, Mumbai**