

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

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA Nos. 2060 & 2061/Mum/2018
(Assessment Years:2010-11 & 2011-12)**

Kamlesh Manohar Kanungo
(Prop. M/s Trison Impex)
C/o. D.C. Bothra & Co. LLP (CA)
(formerly known as D.C. Bothra & Co.)
297, Tardeo Road, Wille Mansion,
1st Floor, Opp Bank of India, Nana Chowk,
Mumbai – 400007

Dy. C.I.T. Central Circle-1(4),
Old CGO, Annexe Building,
9th Floor, M.K. Road,
Mumbai - 400020

PAN – ABBPK9675R

(Appellant)

(Respondent)

Appellant by: Shri Rajkumar Singh, A.R
Respondent by: Shri R. Bhoopathi, D.R

Date of Hearing: 24.02.2020
Date of Pronouncement: 27.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-47, Mumbai for A.Y. 2010-11 and A.Y. 2011-12, which in turn arises from the assessment orders passed under Sec. 143(3) r.w.s 147 AND under Sec. 143(3) r.w.s 153C of the Income Tax Act, 1961 (for short 'Act'), for the aforementioned respective years. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y. 2010-11. The only effective ground of appeal raised by the assessee before us is as under:

- “2. That the Id. C.I.T. (Appeals) has erred in not only confirming the G.P. disallowance of Rs.7,85,440/- being 3.12% of the trading purchases of Rs. 2,51,74,344/- from suspicious hawala dealers but has further erred in enhancing the such alleged disallowance to Rs. 12,58,717/- being 5% of the alleged purchases without any basis or comparative case by committing judicial impropriety in not following the judgment of honorable Tribunal in

assessee's own case by giving various frivolous & wrong reasons and findings to upheld and enhance the alleged disallowance.”

2. Briefly stated, assessment under Sec. 143(3) r.w.s 153C of the Act for A.Y: 2010-11 was framed on 27.03.2014, assessing the total income of the assessee at Rs.1,71,25,646/-, as against the returned income of Rs.1,68,61,436/- that was filed by him on 21.09.2012 in response to notice issued under Sec. 153C of the Act. On the basis of information received from the DGIT (Investigation), Mumbai, that the assessee as a beneficiary had obtained accommodation entries from two concerns viz. (1) M/s Veer Corporation: Rs.66,24,800/-; and (ii) M/s Apex Ferromate Pvt. Ltd.: Rs.1,85,49,544/-, the case of the assessee was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings as the assessee failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties, therefore, the A.O held a conviction that the assessee had booked bogus purchase in his books of accounts. At the same time, it was observed by the A.O that the fact that the assessee had purchased the goods under consideration could also not be ruled out. In the backdrop of the aforesaid facts, the A.O was of the view that the assessee had purchased the goods not from the aforementioned parties but had procured the same from the open/grey market. Backed by his aforesaid conviction, the A.O worked out the profit element embedded in making of such purchases by the assessee from the open/grey market by applying the current years G.P rate of 3.12% to the value of the impugned purchases of Rs.2,51,74,344/-. Resultantly, an addition of Rs.7,85,440/- (3.12% of Rs.2,51,74,344/-) was made by the A.O.

4. Aggrieved, the assessee assailed the assessment before the CIT(A). However, the CIT(A) was not persuaded to subscribe to the contentions advanced by the assessee in support of his claim that genuine purchases were made by him from the aforementioned parties. On the contrary, the CIT(A) enhanced the addition made by the A.O and worked out the same by applying a G.P. rate of 5% on the value of the impugned purchases. Accordingly, the addition made by the AO was enhanced by the CIT(A) to Rs.12,58,717/-.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the

very outset of the hearing of the appeal submitted that involving identical facts the Tribunal while disposing off the cross-appeals of the assessee and the revenue in ITA No. 3242 & 3243/Mum/2016, dated 28.02.2017 (assessee's appeals) and in ITA No.3087 & 3088/Mum/2016 (revenue's appeals), for A.Y: 2007-08 and A.Y: 2008-09, had restricted the addition in respect of the bogus purchase made by the assessee to 2% of the aggregate value of such purchases. Accordingly, it was submitted by the Id. A.R that on a similar footing the disallowance in the present case may also be restricted to the said extent i.e to 2% of the value of the impugned purchases.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities). However, the Id. D.R could not controvert the aforesaid claim so raised by the counsel for the assessee before us.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the records that the assessee could not substantiate the authenticity of the impugned purchase transactions to the satisfaction of the A.O. At the same time, the A.O being of the view that the assessee had purchased the goods not from the aforementioned parties but from the open/grey market, had thus restricted the addition to the extent of the profit which the assessee would had made by procuring such goods at a discounted value. As regards the quantification of the aforesaid profit element embedded in making of the impugned purchases, the A.O had applied the current year G.P rate of 3.12% to the aggregate value of the impugned purchases of Rs.2,51,74,344/-, and made an addition of Rs.7,85,440/-. On appeal, the CIT(A) not only rejected the claim of the assessee that he had made genuine purchases from the aforementioned parties, but on the contrary enhanced the addition by adopting the G.P rate of 5%. Accordingly, the CIT(A) substituted the addition of Rs.7,85,440/- made by the A.O by an amount of Rs.12,58,712/- resulting to an enhancement of Rs.4,73,277/-.

8. We have given a thoughtful consideration to the issue before us, and find, that the controversy therein involved hinges around the quantification of the profit element involved in making of the impugned purchases by the assessee from open/grey market. Admittedly, the Tribunal while disposing off the cross-appeals of the assessee and the revenue for A.Ys. 2007-08 and A.Y. 2008-09, had restricted the addition to 2% of the aggregate value of the impugned

purchases. On a perusal of the order passed by the Tribunal while disposing off the appeal of the assessee for A.Y. 2007-09, A.Y. 2008-09 and A.Y. 2011-12, in ITA No. 3242, 3243 and 3244/Mum/2016, dated 28.02.2017, we find that the Tribunal had restricted the addition to 2% of the value of the bogus purchase, observing 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 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. Accordingly, the appeal of the assessee is partly allowed.”

On the basis of our aforesaid observations, we are of the considered view that as the facts and the issue involved in the present appeal remains the same, therefore, by adopting a consistent approach the addition in the present case of the assessee merits to be restricted to 2% of the value of the impugned purchases. Accordingly, the order passed by the CIT(A) is modified in terms of our aforesaid observations.

9. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

ITA No. 2061/Mum/2018
A.Y. 2011-12

10. We shall now advert to the appeal of the assessee for A.Y. 2011-12. The assessee has assailed the impugned order on the following effective ground of appeal before us:

“2. That the Id. CIT(Appeals) has erred in not only confirming the G.P disallowance of Rs.18,77,081/- being 3.04% of the trading purchases of Rs.6,17,46,091/- from suspicious hawala dealers but has further erred in enhancing the such alleged disallowance to Rs.30,87,305/- being 5% of the alleged purchase without any basis or comparative case by committing judicial impropriety in not following the judgment of the honourable Tribunal in assessee's own case by giving various frivolous & wrong reasons and findings to upheld and enhance the alleged disallowance.”

11. Briefly stated, the assessment was framed by the A.O, vide his order passed under Sec. 143(3) r.w.s 153C, dated 27.03.2014. Observing, that the assessee had made bogus purchases aggregating to Rs.9,50,00,000/- from the following parties:

i	Jindal Metal Corp.	250 Lacs
ii	New Parmar Steel	250 Lacs
iii	Vijaylaxmi Trading	250 Lacs
iv	Unique Indl. Corp.	200 Lacs
	Total	Rs.950 lacs

, the A.O worked out the suppressed profit @ 5% of the value of the impugned purchases, and made an addition of Rs.47,50,000/-.

12. Aggrieved, the assessee assailed the assessment before the CIT(A). Observing, that the G.P rate of the assessee for the immediately preceding year was 3.12% and that for the year under consideration was 3.04%, the CIT(A) quantified the profit involved in making of the impugned purchases by applying the average G.P. rate of 3.08% to the value of the purchases under consideration. Resultantly, the CIT(A) restricted the addition to an amount of Rs.29,26,000/- [3.08% of Rs.9,50,00,000/-].

13. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the facts and the issue involved in the present appeal principally remains the same as were there before us in the appeal of the assessee for the immediately preceding year i.e A.Y. 2010-11, therefore, our order therein passed shall apply *mutatis mutandis* for the disposal of the present appeal. Accordingly, in terms of the observations recorded by us while disposing off the appeal of the assessee for A.Y. 2010-11 in ITA No. 2060/Mum/2018, we restrict the addition to 2% of the value of the impugned bogus purchases of Rs.9,50,00,000/- made by the assessee during the year under consideration.

14. Resultantly, the appeal of the assessee is partly allowed in terms of our aforesaid observations.

15. The appeals of the assessee for A.Y. 2010-11 in ITA No. 2060/Mum/2018 and A.Y. 2011-12 in ITA No. 2061/Mum/2018 are both partly allowed.

Order pronounced in the open court on 27.02.2020

Sd/-

(G.Manjunatha)
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/02/2020

Rohit, P.S.

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

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