

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5474/MUM/2018  
Assessment Year: 2012-13**

ACIT-29(1)  
Room No.108, 1<sup>st</sup> Floor  
C-10, Pratyankshkar Bhawan,  
B.K.C, Bandra (E)  
Mumbai-400051

Shri Jagdish Takkar  
Vs. Vikash Paradise-1002B  
Tower-III, LBS Marg  
Mulund(W)  
Mumbai-400 080

**PAN No. AADPT9100H**

**Appellant**

**Respondent**

**C.O. No. 184/Mum/2019  
(Assessment Year: 2012-13)**

Shri Jagdish Takkar  
Vikash Paradise-1002B  
Tower-III, LBS Marg  
Mulund(W)  
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ACIT-29(1)  
Vs. Room No.108, 1<sup>st</sup> Floor  
C-10, Pratyankshkar Bhawan,  
B.K.C, Bandra (E)  
Mumbai-400051

**PAN No. AADPT9100H**

**Appellant**

**Respondent**

Revenue by : Smt. Samatha (DR)  
Assessee by : Shri Dharmesh Shah (AR)

Date of Hearing : 16/09/2020  
Date of pronouncement : 17/09/2020

**ORDER****PER N.K. PRADHAN, A.M.**

The captioned appeal by the revenue and cross objection by the assessee are directed against the order passed by the Commissioner of Income Tax (Appeals)-40, Mumbai [in short 'CIT(A)'] and arise out of assessment completed u/s. 143(3) of the Income Tax Act. 1961 (the Act).

2. The grounds of appeal filed by the revenue read as under:-

1. Whether, on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in quashing the order passed u/s 143(3) by the A.O without appreciated the facts that sales Tax Department had made independent enquiry in case of each Hawal parties and the DGIT (inv), Mumbai also fortified the finding of the sales Tax Department that these parties are bogus. The assessee has not sought any cross examination nor denied any adverse evidence had only paper bills was merely issued. The assessee has also not explained the source of purchase of the goods.

2. Whether, on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in quashing the order passed u/s 143(3) by the A.O and deleting the addition made on account unallowable interest expense without appreciated the facts that assessee has secured loan of Rs.13,51,272/- and unsecured loan of Rs.10,76,999/- and given advance of Rs.94,18,505/- wherein the assessee has debited interest of Rs.3,37,426/- however no interest was charged on advance given by the assessee.

3. In the cross objection, the assessee has raised the ground that Ld. CIT(A) erred in law and in facts in confirming the disallowances of Rs.64,89,180/- being 10% of the alleged purchases.

4. As the first ground filed by the revenue and cross objection by the assessee are intertwined, we proceed below to discuss them together.

5. Briefly stated the facts of the case are that the assessee filed its return of income for the AY 2012-13 on 20/09/2012 declaring total income of Rs.56,54,240/-. On the basis of the information received from the Sales tax

Department, Government of Maharashtra that the assessee had obtained accommodation entries through bogus bills, the AO made enquiry in respect of purchases from M/s. Harshil Freemate Pvt.Ltd. (Rs.84,19,056/-), M/s. Pradip Kumar Babulal (Rs.3,45,48,129/-) and M/s. Hans Enterprises (Rs.2,19,24,616/-). On the reason that the notice u/s. 133(6) could not be served on the above parties and the report of the inspector that the above parties do not function in their given address, the AO made an addition of the total amount of Rs.6,48,91,801/-.

6. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). We find that vide order dated 26/06/2018, the Ld.CIT(A) restricted the disallowances to Rs.64,89,180/- with the following reasons.

“6. I have considered the submission made by the appellant and the reasons recorded by the AO. So far as first ground of appeal is concerned I find that the issue is covered by the decision of honourable ITAT, Mumbai in the case of the appellant for A.Y. 2011-12 in ITA No.768/Mum/2015 dated 06/01/2017 wherein on the same set of facts, the honourable Tribunal has upheld the order of the CIT(A) directing the AO to restrict the addition to 10% of the alleged non-genuine/hawla purchases. Respectfully following the same, the AO is directed to restrict the addition to 10% of purchases from hawala dealers towards element of profit in purchases from such hawala dealers. Accordingly, the addition is directed to be restricted to Rs.68,89,180 and balance amount of addition is directed to be deleted. Accordingly, this ground of appeal is partly allowed.”

7. Before us, the Ld. Departmental Representative (DR) submits that the purchases were made from non-existing parties, rather bogus parties, as the notices u/s 133(6) sent in the address given by the assessee were returned unserved. Further, it is stated by her that the enquiry through Inspectors of Income tax established that those parties were non-existent. Thus, the Ld. DR explains that the addition made by the AO of Rs.6,48,91,801/- be affirmed.

8. On the other hand, the Ld. Counsel for the assessee relies on the order of the Hon'ble Bombay High Court in the *Pr.CIT vs M/s. Mohommad Haji Adam & Co.* (ITA No.1004 of 2016). It is argued by him that as the principle has been laid down by the jurisdictional High Court on similar matter, the same may be followed.

9. We have heard the rival submissions and perused the relevant materials available on record. The reasons for our decisions are given below

It is relevant to mention here the reply given by the assessee to the order sheet entry dated 12/03/2015 by the AO asking him to explain why the purchases of Rs.6,48,91,801/- from the said parties should not be added. The reply of the assessee is at page 2-3 of the assessment order, which is produced below:-

“My main business is exports and my entire turnover represents export of goods which is purchased locally and out of Maharashtra. I am not a stockiest and that goods purchased by me all against the exports sales which can be directly verified. In this regard I am submitting the details of purchases and sales showing quantitative details of month wise purchases viz-a-viz export carried out by me. You will appreciate that all the export are required to be verified by the authorities from customs and excise department. We already submitted the copies of bill of landing as well as copies of customs clearance certificate along with the commercial invoice & delivery challans for your ready reference and record. Compared with the copies of sales invoice along with the purchases, you will find that we have correlated all the purchases viz a viz sales which inter alia include the quantitative and value wise details. We would also like to state that we had purchased goods from all the parties which were registered dealer under the MVAT 2002 and that at all relevant point of time when the purchases were made by me, they were registered dealers and their registration number was valid. Further on verification of the bill you will also appreciate that these parties had supplied goods directly to nava Sava where from the export container was filled. You will also appreciate that all the dealers from whom we had purchased goods have charged MVAT separately in their invoice and have collected the tax from us. It is also pertinent to note that during the course of assessment proceedings also we had produced these details and it was also brought to the notice of the Asst. Commissioner of Income Tax that we had made all the payments through payee cheques which were encashed by the respective parties through their own bankers. Therefore these purchases were genuine purchases.”

10. In such a context , we are of the considered view that the judgment of the Hon'ble Bombay High Court in M/s. Mohommad Haji Adam & Co. (supra) is applicable. In that case, during the course of survey operations in the case of entities from whom the assessee had claimed to have made purchases, the Department collected information suggesting that such purchases were not genuine. The AO noticed that the assessee had shown purchases of fabrics worth Rs.29.41 lakhs from three group concerns, namely M/s Manoj Mills, M/s Astha Silk Industries and M/s Shri Ram Sales and Synthetics. On the basis of statement recorded during such survey operations, the AO concluded that the selling parties were engaged only in supplying the bogus bills, that the goods in question were never supplied to the assessee, and therefore, the purchases were bogus. He, therefore, added the entire sum in the hands of the assessee as its additional income. The assessee carried the matter in appeal before the CIT(A), who accepted the factum of purchases being bogus. However, he compared the purchases and sales statements of the assessee and observed that the Department had accepted the sale, and therefore, there was no reason to reject the purchases, because without purchases there cannot be sales. He, therefore, held that under these circumstances the AO was not correct in adding the entire amount of purchases as the assessee's income. He, therefore, deleted the addition refreshing it to 10% of the purchase amount. He also directed the AO to make addition to the extent of difference between the gross profit rate as per the books of accounts on undisputed purchases and gross profit on sales relating to the purchases made from the said three parties. The assessee carried the matter before the Tribunal. The Revenue also carried the issue before the Tribunal. The Tribunal allowed the appeal of the assessee partly and dismissed that of the Revenue. The Tribunal noted that

the CIT(A) had not given any reasons for retaining 10% of the purchases by way of ad-hoc additions. The Tribunal, therefore, deleted such additions, but retained the portion of the order of the CIT(A) to that extent he permitted the AO to tax the assessee on the basis of difference in the GP rates. In further appeal before the Hon'ble Bombay High Court, the Revenue referred to the decision of the Division Bench of the Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. v. DCIT in Tax Appeal No. 240 of 2003 and connected appeals decided on 20.06.2016 and also pointed out that the SLP against such decision was dismissed by the Hon'ble Supreme Court. The Hon'ble Bombay High Court held :

“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 assessee's 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 (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“ So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular

books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

We find that the facts in the instant case are similar to the above decision. Following the same, we direct the AO to restrict the addition limited to the extent of bringing the G.P. rate on disputed purchases at the same rate of other genuine purchases.

10.1 In the result, the first ground of appeal by the revenue and the cross objection filed by the assessee are partly allowed.

11. Now, we turn to the second ground of appeal filed by the revenue. The issue is the disallowance of interest amounting to Rs.13,08,770/- made by the AO. The Ld.CIT(A), deleted the said addition on the ground that the interest free funds available with the assessee at the beginning of the year was Rs.1,63,74,285/- whereas the interest free advance was Rs.94,18,505/- Therefore, relying on the decision of the Hon’ble Bombay High Court in *CIT vs Reliance Utilities and Power Limited* 313 ITR 340 (Bom.), the Ld.CIT(A) deleted the above disallowances of Rs. 13,08,770/-.

We find that the Ld.CIT(A) has rightly followed the decision in *Reliance Utilities & Power Limited* (supra), as the interest free funds

available with the assessee at the beginning of the year was much more than the interest free advances. Therefore, we uphold the order of the Ld.CIT(A) and dismiss the second ground of appeal of the revenue.

12. In the result, the appeal filed by the revenue and the cross objection by the assessee are partly allowed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Mumbai:  
Dated: 17/09/2020  
THIRUMALESH Sr.PS

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT 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,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**