

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI
BEFORE SHRI S.RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5169 /MUM/2019
(Assessment Year: 2010-11)**

M/s Bhansali Trade Impex
143-145, Earth Castle Mall,
101-104, 1st Floor,
V.P. Road, Girgaum,
Mumbai – 400 004

ACIT, Circle-19(1)
Vs. Matru Mandir, Tardeo,
Mumbai – 400007

PAN No. AAFFB7831F

(Assessee)

(Revenue)

Assessee by	:	Shri Jitendra Singh, A.R
Revenue by	:	Shri Tharian Oommen, D.R
Date of Hearing	:	03/02/2021
Date of pronouncement	:	04/02/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-6, Mumbai, dated 06.05.2019, which in turn arises from the assessment order passed by the A.O under Sec. 143(3)(ii) r.w.s 147, dated 14.03.2016. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The Hon'ble CIT(A)-6 erred in adjudicating the validity of reopening the assessment u/s. 143(3) r.w.s.147 of the Act, by the Assessing Officer (AO).
2. The Hon'ble CIT(A)-6 erred in construing section 48(5) of the MVAT ACT, 2002. The Hon'ble CIT(A)-6 erred in confirming the addition of Rs.60,17,257/- made by the AO on account of purchases on the basis of the name of Parties appearing in the list of Maharashtra Govt. website as VAT defaulter who has not deposited VAT collected from my assessee to treasury of Govt and also on the unwarranted inferences drawn of the probability of such impugned purchase from the grey market.
3. The Hon'ble CIT(A)-6 erred in considering that the appellant has failed to reconcile the purchase and sales on 1:1 basis and has not provided crucial evidences in support of the same.

4. The Hon'ble CIT(A)-6 has grossly erred in referring the supplier as the witness for the appellant as evidence of the alleged purchases, the entire fabric of reasoning falls to the ground.
5. The Hon'ble CIT(A)-6 has erred in not considering the principles of natural justice and opined that, the concept of burden of proof lies on the appellant only to prove his claim and not the Revenue. Also finding out the appellant reality by applying the test of "human probability" is not justifiable.
6. The Hon'ble CIT(A)-6 erred judgmentally in considering that The appellant has placed reliance on various decisions of Hon'ble ITAT based on specific facts to support his claim which cannot be generalized.
7. The Hon'ble CIT(A)-6 erred in delivering the justice in respect of granting set-off of gross profit margin despite knowing the fact that such high rate of gross profit margin does not exists in such trading business of the appellant.

The Applicant reserve right to add, alter, amend or delete any ground of appeal at the time of hearing of case or before hearing of the case.”

2. Briefly stated, the assessee company which is engaged in the business of trading in iron and steel metals had filed its return of income for A.Y. 2010-11 on 09.09.2010, declaring its total income at Rs.21,58,132/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. On the basis of information received from the office of the DGIT(Inv.), Mumbai, that the assessee had in order to inflate its purchases taken accommodation entries from certain hawala operators, its case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have inter alia made purchases from the following three tainted parties:

TIN	NAME	PAN	Amount of Sales to assessee in F.Y. 2009-10 (in Rs.)
27800620987V	Shubh Labh Metal and Alloys/Bright Enterprise	ASUPS0628N	7457902
27110671176V	Stelco Steel Industries	AFYPJ0025K	18818055
27490644001V	Rolex Trading Company	ASMPP8954A	21862100
		Total	48138057

In order to verify the genuineness and veracity of the aforesaid purchase transactions, the A.O issued notices under Sec. 133(6) to the aforesaid parties. However, no confirmation/reply was received from either of the aforementioned parties. As the assessee failed to substantiate the authenticity of the impugned purchase transactions, the A.O held a conviction that the purchases under consideration were made by the assessee from the open/grey market and not from the aforementioned parties. Observing that the impugned purchases had remained unverified the A.O rejected the books of accounts of the assessee under Sec. 145(3) of the Act. In the backdrop of the aforesaid facts, the A.O being of the view that the assessee would had benefitted by procuring the goods at a discounted value from the open/grey market, therein made an addition/disallowance of Rs.60,17,257/- i.e @ 12.5% of the aggregate value of the impugned purchases. Accordingly, the income of the assessee was assessed at an amount of Rs.81,75,390/-.

4. Aggrieved, the assessee assailed the assessment order without any success before the CIT(A), wherein the latter finding no infirmity in the view taken by the A.O upheld his order and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was averred by the Id. A.R that the A.O while estimating the profit which the assessee would had made by procuring the goods from the open/grey market had arbitrarily made a high pitched addition/disallowance @ 12.5% of the aggregate value of the impugned purchases. It was the standalone contention of the Id. A.R that though the impugned purchases had remained unverified, however, the addition to the extent made by the A.O and thereafter upheld by the CIT(A) was highly exorbitant. The Id. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of PCIT-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No.1004 of 2016, dated 11.02.2019). It was submitted by the Id. A.R, that as per the ratio of the judgment of the Hon'ble High Court the addition w.r.t the impugned purchases was liable to be restricted to the extent of the GP rate of

the genuine purchases of the assessee pertaining to the year under consideration. On a specific query by the bench as to what was the GP rate of the assessee for the year under consideration, the Id. A.R could not satisfactorily reply and stated that the same was somewhere around 4.6%.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have given a thoughtful consideration to the facts involved in the case before us, and find, that the solitary grievance of the assessee before us is as regards the quantification by the A.O of the profit which the assessee would had made by purchasing the goods under consideration at a discounted value from the open/grey market i.e 12.5% of the aggregate value of the impugned purchases. Apropos the issue pertaining to quantification of such profit element is concerned, the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate as that of other genuine purchases. The Hon'ble High Court while concluding as hereinabove, had observed as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The AO 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 sale 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 trade. 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. 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.20,98,62 1.88 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.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of the other genuine purchases. We, thus, respectfully following the aforesaid judgment of the Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs. 4,81,38,057/- in the case before us are concerned by bringing the G.P. rate on the amount of such bogus purchases at the same rate as that of the other genuine purchases. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the addition/disallowance in terms of our aforesaid observations. The order passed by the CIT(A) is set aside and the matter is restored to the file of the A.O to give effect to our aforesaid directions.

8. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.02.2021

Sd/-
S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 04.02.2021
PS: Rohit

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "B" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai