

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.1305/M/2020
Assessment Years: 2011-12**

**ITA Nos.1306/M/2020
Assessment Years: 2010-11**

Shri Bhagwanram Harchandji Prajapat, 158/160, Ground Floor, Chaurasia Mansion, Sant Sena Maharaj Marg, 2 nd Kumbharwada, Mumbai - 400004 PAN: AWDPP4534H	Vs.	Income Tax Officer, 19(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Praful L. Vora, A.R.
Shri Samir R. Kapadia, A.R

Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 16.03.2019

Date of Pronouncement : 19.03.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the order dated 26.06.2019 and 24.06.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12 & 2010-11 respectively.

ITA No.1305/M/2020

2. The only issue raised by the assessee in various grounds of appeal is against the order of Ld. CIT(A) enhancing the addition

on account of bogus purchases to 100% as against 12.5% made by the AO.

3. The facts in brief are that the assessee is a trader of various articles of ferrous and non ferrous items and filed the return of income on 23.09.2011 declaring an income of Rs.2,26,444/- which was processed under section 143(1) of the Act. Thereafter, the AO reopened the case of the assessee after receiving information from DGIT, Investigation and from Sales Tax Department, Government of Maharashtra that assessee is one of the beneficiaries of hawala bogus purchases. Accordingly the case of the assessee was reopened under section 147 by issuing notice under section 148 of the Act dated 24.09.2014 which was complied with by the assessee vide letter dated 09.10.2014 requesting the AO to treat the return filed originally as being filed in response to notice under section 148 of the Act. During the course of assessment proceedings the AO found that assessee has made bogus purchases from 7 parties aggregating to Rs.62,33,481/-. Accordingly, the assessee was asked to file the supporting evidences to prove the genuineness of purchases. The assessee filed various evidences of purchases comprising bills, vouchers, details of payments before the AO, however, could not produce the parties for verification as they were not available on the given addresses and finally the AO rejecting the contentions of the assessee, treated the entire said purchases as non genuine. The AO applied @ 12.5% on the bogus purchases to bring the profit element to tax by following the decision of Hon'ble Gujarat High Court and thus made an addition of Rs.7,79,185/- by framing assessment under section 143(3) read with section 147 of the Act vide order dated 02.03.2016.

4. In the appellate proceedings, the Ld. CIT(A) enhanced the assessment by directing the AO to add 100% of the purchases.

5. The Ld. A.R. at the outset pointed out that the issue is squarely covered by the decision of co-ordinate bench of the Tribunal in ITA No.7914/M/2019 A.Y. 2010-11 passed in the case of related party wherein under the identical circumstances the co-ordinate bench of the Tribunal has reversed the order of Ld. CIT(A) wherein the 100% addition of bogus purchases was ordered to be made by Ld CIT(A) as against 12.5% made by the AO and the Hon'ble Tribunal has directed the AO to apply 3% of the bogus purchases. The Ld. A.R. submitted that the issue may kindly be decided in terms of the order of co-ordinate bench of the Tribunal.

6. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A) by submitting that this is a case of accommodation entries only and therefore 100% addition may kindly be sustained.

7. After hearing both the parties and perusing the material on record, we observe that the co-ordinate bench of the Tribunal passed an order under identical facts wherein the co-ordinate bench of the Tribunal has directed the AO to apply 3% on the bogus purchases. In this case also the Ld. CIT(A) has enhanced the addition to 100% as against 12.5% made by the AO. Since this is a case of related party to the assessee, we are of the view that the bogus purchases should be assessed to tax @ 3% as the assessee is as trader in ferrous and non ferrous items wherein

the profit margins are very less. For the sake of convenience, the co-ordinate bench decision is reproduced as under:

“6. After hearing both the parties and perusing the material on record, we observe that in this case the assessee has undisputedly made purchases from 9 parties aggregating to Rs.84,30,492/- which was alleged to be bogus and accordingly the AO during the course of assessment proceedings made an addition of 12.5% of the said bogus purchases as the AO did not doubt genuineness of the corresponding sales. Id. CIT(A), in the appellate proceedings, directed the AO to add 100% of the bogus purchases thereby enhancing the assessment. In our view, when the corresponding sales which were made out of the alleged bogus purchases is not doubted and is accepted by the AO during the assessment proceedings, the order passed by Id CIT(A) appears to be wrong and can not be sustained. Therefore, we do not find any reason for 100% addition of the bogus purchases as that would lead to unrealistic and hypothetical profits of the assessee which is not possible and practicable as the assessee is a small time iron trader. Under these circumstances, we are not in agreement with the conclusion drawn by Id. CIT(A) on this issue that a 100% addition of bogus purchases is required to be made to the income of the assessee. In the present scenario, the only presumption that could be made is that the assessee might have purchased the goods from the grey market thereby making savings on account of non payment of VAT and other incidental levies. Therefore the addition can only be made in order to assess the profit element in bogus purchase based upon the saving which the assessee might have made by purchasing the goods from the grey market. Accordingly, in the present circumstances and facts, we are of the view that a reasonable addition based upon profits should be made. Since the assessee is a dealer in ferrous and non ferrous item, in our opinion, it would be reasonable and fair if an addition of 3% is made to assess the profit of the assessee embedded in the bogus purchases of the assessee which would be over and above the profits declared by the assessee. Accordingly, we set aside the order of Id. CIT(A) and direct the AO to apply 3% of the bogus purchases.”

8. Therefore, following the decision of the coordinate bench , we are inclined to is set aside the order of Id. CIT(A) and direct the AO to apply a rate of 3% on the bogus purchases. In the result the appeal of the assessee is partly allowed.

ITA No.1306/M/2020

9. The issue raised in this appeal is identical to one as decided by us in ITA No.1305/M/2020 wherein we have directed the AO to apply 3% on the bogus purchases. Therefore our

decision in ITA No. 1305/M/2020 would, mutatis mutandis, apply to this as well.

10. In the result both the appeals of the assessee are partly allowed,

Order pronounced in the open court on 19.03.2020.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.03.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.