

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी" , मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
आअसं. 7996/मुं/2019 (नि.व.2008-09)  
ITA NO.7996/MUM/2019 (A.Y.2008-09)  
आअसं. 7997/मुं/2019 (नि.व.2009-10)  
ITA NO.7997/MUM/2019 (A.Y.2009-10)  
आअसं. 7998/मुं/2019 (नि.व.2010-11)  
ITA NO.7998/MUM/2019 (A.Y.2010-11)  
आअसं. 7999/मुं/2019 (नि.व.2011-12)  
ITA NO.7999/MUM/2019 (A.Y.2011-12)

M/s Himalaya Plywood  
Shop No.11, Gold Coin Apartments,  
Vakola Pipe Line, Nehru Road,  
Santacruz (E), Mumbai-400054.

PAN: **AABFH1856Q**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-22(1)(5),  
Piramal Chambers, Lalbaug,  
Parel, Mumbai--400012.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : None  
प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi  
सुनवाई की तिथि/ Date of hearing : 07/06/2021  
घोषणा की तिथि/ Date of pronouncement : 10/08/2021

आदेश / ORDER

**PER VIKAS AWASTHY, J.M:**

These four appeals by the assessee for Assessment Years (AYs) 2008-09 to 2011-12 are directed against the order of Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 12.09.2019 common for the aforesaid AYs.

2. Since, the issue raised in all these four appeals and the grounds of appeal are identical, these appeals are taken up together for adjudication and are decided by this common order. For the sake of convenience, the appeals are decided in seriatim of AYs. The facts are narrated from appeal for A.Y. 2008-09.

**ITA No. 7996/Mum/2019 (AY-2008-09)**

3. The assessee is a dealer of Plywood, Teakwood, Laurinetes, etc. During the course of assessment proceedings, the assessment for AY 2008-09 in the case of assessee was re-opened on the basis of information received from the DGIT (Investigations), Mumbai regarding assessee's involvement in obtaining accommodation entries from hawala operators. During the course of assessment proceedings, the Assessing Officer (AO) held that the assessee has obtained bogus purchase bills amounting to Rs. 28,76,102/- from following four dealers, declared as hawala operators:

<b>Name of the Party</b>	<b>Amount</b>
Nikhil Enterprises	5,10,854/-
Supreme Enterprises	10,81,332/-
Elora States & Marketing Pvt. Ltd.	10,16,467/-

Senior Corporation	2,67,449/-
<b>Total</b>	<b>28,76,102/-</b>

The AO after examining the facts made disallowance of 25% of bogus purchases and made addition of Rs. 7,19,026/-. Against the assessment order dated 28.03.2016 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], the assessee filed appeal before the CIT(A) inter alia challenging validity of re-opening of assessment and addition on account of bogus purchases. The CIT(A) upheld the findings of AO to the extent of assessee's involvement in obtaining bogus bills, however, the CIT(A) restricted the addition to 12.5%. Still aggrieved, the assessee is in appeal before the Tribunal *inter alia* assailing the addition sustained by the CIT(A).

4. Sh. Sanjay J. Sethi representing the Department vehemently supporting the impugned order prayed for dismissing the appeal of the assessee. The Id. Departmental Representative (DR) submitted that the assessee has failed to discharge its onus in proving genuineness of the purchases and the dealers. Neither the dealers were produced nor any confirmations from the dealers were filed. No document to prove trail goods were either filed by the assessee. Since, the sales turnover declared by the assessee was accepted, the Gross Profit (GP) was estimated by the AO at 25% of bogus purchases. The First Appellate authority has granted further relief and has restricted the addition to 12.5%. The impugned order is fair and reasonable and hence, the same should be sustained.

5. Submissions made by Id. DR heard, orders of the authorities below examined. The assessee in appeal has assailed the findings of CIT(A) in upholding the validity of re-opening of assessment and the addition on account of alleged bogus purchases sustained by the CIT(A).

6. In so far as ground no. 1 & 2 relates to re-opening of assessment, we are leaving these grounds open for adjudication, if required at future point of time.

7. In ground no. 3 of appeal, the assessee has assailed estimated addition of bogus purchase sustained by the CIT(A) @ 12.5%. A perusal of the assessment order reveals that the assessee has failed to furnish documentary evidence in the form of lorry receipts, delivery challanes, octroi receipts, inward register, stock register, etc. to substantiate transportation of the goods. Further, the assessee has failed to file confirmations from suspicious dealers to prove authenticity of the dealer and the purchase transactions with the said dealers. The AO made estimated disallowance of 25% on alleged bogus purchases and made addition of Rs. 7,19,026/-.

8. In First Appellate proceedings, the CIT(A) restricted the addition by estimating GP @ 12.5%. In such like unproved transactions, it is only the profit element embedded in the transactions that can be brought to tax. In our considered view estimation of suppressed profit margin at 12.5% is on higher side. To meet the ends of justice, we deem it appropriate to restrict the disallowance on alleged bogus purchases to 6%. The ground no.3 of appeal is partly allowed, accordingly.

9. The assessee has assailed charging of interest under section 234B & 234C of the Act. Charging of interest is mandatory and consequential, hence, ground no.5 of the appeal is rejected.

10. In the result, appeal of the assessee is partly allowed.

**ITA No. 7997/Mum/2019 (AY-2009-10)**

11. We find that the facts in AY 2009-10 are identical to the facts in AY 2008-09. The nature of transactions and the manner of disallowance are identical to that of AY 2008-09, except the amount involved in bogus purchases. The assessee in AY 2009-10 has made alleged bogus purchases from following parties:

<b>Name of the purchase Party</b>	<b>Amount of purchase</b>
Om Corporation	11,65,912/-
Nageshwar Enterprises	3,74,172/-
Nikhil Enterprises	13,96,503/-
Jainam Trade Corporation	16,29,742/-
N.B. Enterprises	16,70,933/-
Parasnath Enterprises	17,30,647/-
Sharika Incorporation	1383/-
Supreme Enterprises	14,986/-
Elora States & Marketing Pvt. Ltd.	1,72,000/-
Impex Trading Co.	27,078/-
Senior Corporation	6,15,190/-
<b>Total</b>	<b>87,98,546/-</b>

12. The ground of appeal in the impugned AY are identical to AY 2008-09, therefore, the detailed finding given while adjudicating the appeal of the assessee in AY 2008-09 would mutatis mutandis apply to the impugned AY.

13. In the result, appeal of assessee for AY 2009-10 is partly allowed.

**ITA No. 7998/Mum/2019 (AY-2010-11)**

14. We find that the facts in AY 2010-11 are identical to the facts in AY 2008-09. The nature of transactions and the manner of disallowance are identical to that of AY 2008-09, except the amount involved in bogus purchases. The assessee in AY 2010-11 has made alleged bogus purchases from following parties:

<b>Name of the purchase Party</b>	<b>Amount of purchase</b>
N.B. Enterprises	3,98,408/-
Jainam Trade Corporation	18,41,059/-
Hans Trading Co.	18,57,526/-
Parasnath Enterprises	21,41,120/-
J.K. Agency	4,156/-
Samarht Sales Styndicate	1,33,627/-
<b>Total</b>	<b>63,78,896/-</b>

15. The ground of appeal in the impugned AY are identical to AY 2008-09, therefore, the detailed finding given while adjudicating the appeal of the assessee in AY 2008-09 would mutatis mutandis apply to the impugned AY.

16. In the result, appeal of assessee for AY 2010-11 is partly allowed.

**ITA No. 7999/Mum/2019 (AY-2011-12)**

17. The facts in AY 2011-12 are identical to the facts in AY 2008-09. The nature of transactions and the manner of disallowance are identical to that of AY 2008-09, except the amount involved in bogus purchases. The assessee in AY 2011-12 has made alleged bogus purchases from following parties:

<b>Name of the purchase Party</b>	<b>Amount of purchase</b>
Hans Trading Co.	78,309/-
Vasundhara Enterprises	21,45,136/-
Bhatiya Agencies	2,44,557/-
<b>Total</b>	<b>24,68,002/-</b>

18. The ground of appeal in the impugned AY are identical to AY 2008-09, therefore, the detailed finding given while adjudicating the appeal of the assessee in AY 2008-09 would mutatis mutandis apply to the impugned AY.

19. The assessee in grounds of appeal in A.Y. 2011-12 has raised two more issues in ground no.5 & 6. The same are reproduced herein below:

“5) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating ground No.5 of the revised grounds of appeal, which reads as “On the facts and in the circumstances of the case and in law, the Ld. AO has erred in making ad-hoc disallowance of Rs. 32438/- without pointing out any defect or infirmity in the books of accounts of the appellant. The same is arbitrary, unlawful and untenable. Kindly quash it.”. The said ground may kindly be adjudicated.

6) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating ground No.6 of the revised grounds of appeal, which reads as “On the facts and in the circumstances of the case and in law, the Ld. AO

has erred in making addition of Rs. 1100000/- u/s 68 of the IT Act without appreciating that the loans in question are genuine and provisions of s. 68 are not applicable on the same. The said addition may kindly be deleted.” The said ground may kindly be adjudicated.”

These grounds were raised by the assessee before the CIT(A) in revised grounds of appeal filed on 05.08.2015 in First Appellate proceedings. The assessee has furnished a copy of amended grounds of appeal filed before the First Appellate authority. A perusal of the same shows that the amended grounds were duly delivered in the office of CIT(A), as is evident from acknowledgment stamp on the forwarding letter dated 04.08.2015.

Both these grounds of appeal have not been adjudicated by the CIT(A). Without commenting on the merits of issues raised in ground no.5 & 6, we deem it appropriate to restore these grounds to the file of CIT(A) for adjudication after granting opportunity of hearing to the assessee, in accordance with law. Ground No. 5 & 6 of the appeal are allowed for statistical purpose, with the aforesaid direction.

20. In the result, the appeal of assessee for AY 2011-12 is partly allowed.

21. To sum up, appeals of the assessee for A.Y. 2008-09 to 2011-12 are partly allowed.

Order pronounced in the open court on **Tuesday**, the **10<sup>th</sup>** day of August, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**