

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

**(Hearing through Video Conferencing Mode)**

आयकर अपील सं/ I.T.A. No.6392/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO-33(1)(1) Room No.705, 7 <sup>th</sup> Floor, Bldg. No. C-12, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	Anand Madanlal Gupta A/601, New Park Avenue, Mahatma Gandhi Road, Dahanukar Wadi, Kandivali (W), Mumbai-400067.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AINPG8467G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Brajendra Kumar (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 03/08/2021  
घोषणा की तारीख /Date of Pronouncement: 27/09/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 18.07.2018 passed by the Commissioner of Income Tax (Appeals) -45 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in restricting the amount of bogus purchase from Rs.1,50,85,096/- to Rs. 36,15,697/- without



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*appreciating the fact that the purchase party is a declared hawala dealer by the Sales Tax department, Maharashtra and hence all the transaction entered into with it by the assessee needs to be examined and brought to tax accordingly".*

*2. "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance up to the information received without appreciating the fact that the AO has held it to be non-genuine after carrying out proper independent investigation".*

*3. "The appellant prays that the order of the Ld. CIT (A) on the above ground be set aside and that of the Assessing Officer be restored."*

*4. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary".*

**3.** The brief facts of the case are that the assessee filed his return of income on 15.10.2010 declaring a total income to the tune of Rs.7,11,183/-. The return was processed u/s 143(1) of the Act. The case of the assessee was reopened upon the information received from the DGIT(Inv.), Mumbai in which it was conveyed that the assessee has taken the bogus purchase entry from the Richa Steel in sum of Rs.38,15,697/-. The notice was given and after the reply of the assessee, the AO raised the addition to the extent of 4% of the bogus purchase in sum of Rs.1,50,85,096/-. The total income of the assessee was assessed to the tune of Rs.12,91,380/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee partly but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

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4. All the issues are in connection with the restriction of the addition to the extent of 4% of the bogus purchase in sum of Rs. 1,50,85,096/-. The Ld. Representative of the revenue has argued that the AO has rightly restricted the addition to the extent of 4% of the bogus purchase in sum of Rs.1,50,85,096/- made from Richa Steel but the CIT(A) has wrongly restricted the addition to the extent of 4% of the bogus purchase in sum of Rs.38,15,697/-, therefore, the finding of the CIT(A) is not justifiable and is not liable to be set aside. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“6.3 I have considered the assessment order and statement of fact filed along with Form 35. The AO observed in the assessment order that the assessee produced the details but as per the Sales Tax Department the hawal party has not made VAT payment. During the appellate proceedings the appellant filed copies of purchase bills and copy of bank statements. It is noticed that on account of information from the Sales Tax Department that the hawala party has not paid the VAT, the AO Disallowed the VAT credit claimed by the assessee. However, the information from the Sales Tax Department only says that the bogus sales made by the assessee from the said hawala party Richa Steel was only of Rs. 3815,697/- because the VAT was not remitted on the sales of Rs.38, 15,697/- only. However, the AC) treated all the sales made by the said Richa Steel as bogus and added 4% on all the sales, which is not supported by the information received and not correct. Merely because the assessee filed all the details of all purchases, the Assessing Officer could not have treated all*



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*the purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and the information of the Sales Tax Department is regarding the sales of Rs.38,15,697, the disallowance of VAT is restricted to purchases of Rs.38,15,697 which works out to Rs.1,52,628. The AO is directed to modify the addition accordingly. The appellant gets part relief. This ground is partly allowed.”*

**5.** On appraisal of the above mentioned finding, we noticed that the CIT(A) has restricted the addition to the extent of 4% of the bogus purchase in question i.e.38,15,697/-. The information of bogus purchase was received to the effect that the assessee has taken the bogus purchase entry in sum of Rs.38,15,697/- whereas the AO has taken into consideration the whole purchase which was in fact not in question. When the bogus purchase was to the tune of Rs.38,15,697/- then whole purchase is not required to be questioned. The CIT(A) has rightly restricted the addition @ 4% of the bogus purchase i.e. 38,15,697/-. The basic logic to the restrict the addition @ 4% of the bogus purchase, was to restrict the addition to the extent of VAT if any avoided by assessee. The VAT has been added and income of the assessee was taxed accordingly. We nowhere found any illegality and infirmity of the decision of the CIT(A) in question. Accordingly, we affirm the finding of the CIT(A) on these issues and decide these issues in favour of the assessee against the revenue.



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6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 27/09/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/09/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai