

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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1910/MUM/2020  
(Assessment Year: 2012-13)**

ACIT-27(2) Room No. 420, 4 <sup>th</sup> Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai – 400 703	Vs.	M/s Poonam Enterprises C-72A, Chandika Prasad, Station Avenue Road, Chembur, Mumbai – 400 071
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**PAN No. AAFFP5113H**

**(Revenue)**

**(Assessee)**

Assessee by : Shri Sanjay Shah, A.R  
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 06/10/2021  
Date of pronouncement : 08/10/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-25, Mumbai, dated 25.08.2020, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act') dated 20.03.2015 for A.Y 2012-13. The revenue has assailed the impugned order on the following grounds before us:

- "1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.15,26,518/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee has failed to produce bills, vouchers and other documentary evidences in support of its claim and without considering the latest Apex Court decision in the case of N.K. Protein Ltd Vs DCIT in SLP (Civil) No. 769 of 2017 dated 16.01.2017 wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases."

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.2,25,482/-, being @ 12.87% of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc. were not fulfilled by the assessee.
3. The appellant craves leave to amend, modify and alter any grounds of appeal during the course of hearing of this case.”

2. Briefly stated, the assessee firm which is engaged in the business of a contractor had e-filed its return of income for A.Y 2012-13 on 30.09.2012, declaring a total income of Rs.3,79,62,690/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) 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 made purchases of Rs.17,52,000/- from the following two parties :

Sr. No.	Particulars	Amount
1.	M/s Pioneer Trading Co.	Rs. 10,27,000/-
2.	M/s Universal Trading	Rs. 7,25,000/-
	Total	Rs. 17,52,000/-

In order to verify the genuineness and veracity of the aforesaid purchase transactions the A.O issued notices u/s 133(6) to the aforementioned parties, which, however, were returned unserved by the postal authorities. Backed by the aforesaid facts the A.O called upon the assessee to substantiate the authenticity of the aforesaid purchase transactions by producing the supplier parties a/w supporting documents. However, the assessee failed to substantiate the genuineness of the aforesaid purchase transactions to the satisfaction of the A.O. Observing that the assessee had failed to discharge the onus that was cast upon it as against proving the authenticity of the impugned purchases which were claimed to have been made from the aforementioned parties, the A.O dubbed the same as bogus/unverifiable purchases. Also, it was observed by the A.O that the enquiries made in respect of the aforementioned parties revealed

that they were black listed as hawala dealers by the Sales Tax Department, Maharashtra. Accordingly, on the basis of his aforesaid observations the A.O added the entire value of the impugned purchases of Rs.17,52,000/- u/s 69C of the Act. Vide his order passed u/s 143(3), dated 20.03.2015 the income of the assessee was determined at Rs. 3,97,14,690/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A), who observed that the assessee firm had during the year under consideration made sales to various corporates and to Rashtriya Chemicals & Fertilizers Ltd. (RCF Ltd.) i.e a Public Sector Undertaking, wherein all work was allotted by inviting tenders. Observing that as the corresponding sales/turnover of the assessee had not been disputed by the A.O, the CIT(A) was of the view that it could safely be concluded that the assessee had purchased the goods, though not from the aforesaid hawala parties, but from the open/grey market. Backed by his aforesaid conviction the CIT(A) was of the view that the possibility of over invoicing of the impugned purchases by the assessee to reduce the profit could not be ruled out. In the backdrop of his aforesaid deliberations, the CIT(A) was of the view that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit which it would have made by procuring the goods at a discounted value from the open/grey market. It was observed by the CIT(A) that his predecessor in the assessee's own case for A.Y 2010-11 had restricted the addition as regards identically placed bogus/unverified purchases made in the said year upto the amount that was worked out by applying the GP rate of the said year i.e 15.88% to the value of the impugned purchases. It was further noticed by him that the aforesaid order of his predecessor was thereafter upheld by the Tribunal in ITA No. 5736/Mum/2015, dated 06.10.2017. Backed by the aforesaid fact, the CIT(A) directed the A.O to restrict the addition as regards the impugned purchases in question by applying the G.P rate i.e 12.87% for the year under consideration to the value of the impugned purchases. Accordingly, on the

basis of his aforesaid observations the addition in the hands of the assessee was restricted by the CIT(A) to an amount of Rs.2,25,482/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The revenue is aggrieved with the scaling down of the addition of the entire value of the impugned purchases made by the A.O to an amount of Rs.2,25,480/- i.e to the extent of the G.P rate of 12.87% by the CIT(A). Admittedly, it is a matter of fact borne from the record that the assessee had failed to substantiate the genuineness and veracity of the impugned purchases in question to the satisfaction of the A.O. At the same time, we cannot remain oblivious of the fact that the assessee had in the course of the proceedings before the lower authorities tried to fortify its claim of having made genuine purchases from the aforementioned parties by leading certain documentary evidence, as well as drawing support from the fact that the payment of the purchases consideration was made to the aforesaid supplier parties through banking channel. As observed by the CIT(A), and rightly so, as the A.O had not disputed or dislodged the corresponding sales/turnover of the assessee firm, therefore, it could safely be concluded that the assessee had purchased the goods in question at a discounted value from the open/grey market and not from the aforementioned parties. Backed by the aforesaid facts, we find that the CIT(A) taking cognizance of the fact that as the A.O had not doubted the sales/turnover of the assessee, therefore, the addition qua the impugned purchases was liable to be restricted only to the extent of the profit which the assessee would have made by procuring the goods at a discounted value from the open/grey market. Insofar the quantification of the aforesaid profit element by applying the GP rate of 12.87% for the year under consideration to the value of the impugned purchases is concerned, we find no infirmity in the same. In fact, we find that the aforesaid view taken by the CIT(A) is duly supported by the judgment of the Hon'ble High Court of Bombay 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). In its said order, the Hon'ble High Court 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 of other genuine purchases. The Honble 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 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 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."

Accordingly, the Honble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus/unverifiable 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 follow the aforesaid judgment of the Hon'ble High Court and concur with the view taken by the CIT(A), who had rightly restricted the addition as regards the impugned purchases to the extent the same would work out by applying the GP rate of 12.87% for the year under consideration. Accordingly, finding no infirmity in the view taken by the CIT(A) we uphold his order.

6. Resultantly, the appeal filed by the revenue being devoid and bereft of any merit is dismissed.

Order pronounced in the open court on 08.10.2021

Sd/-  
(Prمود Kumar)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 08.10.2021

PS: Rohit

**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.

BY ORDER,  
//True Copy//  
(Sr. Private Secretary)  
**ITAT, Mumbai**