

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.6428/Mum/2018

(A.Y: 2009-10)

ITO – 17(1)(4) Room No. 115, 1 <sup>st</sup> Floor, Aayakar Bhavan, Mumbai – 400 020	Vs.	M/s. Dhaval and Company, 19, 201, Nagdevi Street, 2 <sup>nd</sup> Floor, Mumbai – 400 003.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFD1095L		
Appellant	..	Respondent

Appellant by :	Shri Bharat Andhale. CIT DR
Respondent by :	Shri Rajesh Shah. AR

Date of Hearing	30.09.2021
Date of Pronouncement	06.10.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-56, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Income Tax Act, 1961. The Revenue has raised the following grounds of appeal:

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) justified in restricting the addition made by the AO to 5% of Rs. 41,31,930/- against the addition made at 12.5% of the bogus purchases, ignoring that the Notice u/s 133(6), issued by AO to the alleged suppliers,*

*were returned un-served and the assessee was also unable to prove the genuineness of the purchases either by producing the suppliers for examination or by furnishing other substantiating documents which were required by the A.O*

2. *Whether on the facts and circumstances of the cases and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the AO was based on the details of the scam unearthed by the sales tax department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchase from them?*
3. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. The brief facts of the case, the assessee is engaged in the business of trading in iron and steel. The assessee has filed the return of income on 30.09.2009 for the A.Y 2009-10 declaring a total income of Rs. 6,85,806/-and the return of income was processed u/s 143(1) of the Act. The A.O. has received the information from DGIT (Investigation), Mumbai, that as per the sales tax department of Maharashtra, the assessee has indulged in bogus purchases transactions with six parties aggregating to Rs. 41,31,930/-. Therefore, the A.O has reason to believe that the income has escaped the assessment and notice u/s 148 of the Act was issued. Subsequently the A.O. has issued notice u/s 142(1) of the Act. In compliance, the Ld. Counsel of the assessee has appeared from time to time and furnished the details and

the case was discussed. The A.O has called for various information/ details to prove the genuineness of the transactions. The A.O. has issued notice u/s 133(6) of the Act to the six parties and the same was returned unserved by the postal authorities. Subsequently, the A.O has issued a show cause notice on the assessee to substantiate the genuineness of the transactions. Since the submissions of the assessee are not satisfactory. The A.O relied on the decision of Hon'ble High Court of Gujarat in the Case of CIT Vs. Bholanath Play Fab P. Ltd., (2013) (355 ITR 290) and estimated the profit rate @ 12.5% of alleged bogus purchases of Rs. 41,31,930/- which worked out to Rs.5,16,491/- and assessed the total income of the assessee of Rs. 12,02,297/- and passed the order u/s 143(3) r.w.s 147 of the Act on 27.02.2015.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) in the appellate proceedings considered the grounds of appeal, findings of the A.O in the scrutiny assessment, submissions of the assessee on the disputed issue and restricted the addition on bogus purchases to the extent of 5% considering the Honble ITAT Mumbai decision and gross profit rate of the assessee at page 3 of the order and partly allowed the assessee's appeal.

4. Aggrieved by the CIT(A) order, the Revenue has filed an appeal before the Honble Tribunal. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in restricting the addition to 5% irrespective of facts that no proper information was filed in the Assessment proceedings and relied on the Assessing officer order. Contra, the Ld. AR supported the order of the CIT(A).

5. We heard rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has erred in restricting the addition to the extent of 5% of the bogus purchases overlooking the Assessing officer findings and observations. We find that the Ld.CIT(A) relied on the Honble Tribunal decision and gross profit rate of the assessee and granted the relief. Whereas, the Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material but relied only on the A.O order. We are of the opinion that the CIT(A) dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales and we rely on the ratio of the Honorable Jurisdictional High Court in the case of *M/s Nikunj Eximp Enterprises Vs Cit* (W.P.No 2860 dated 18-06-2014). Accordingly, we do not find any infirmity in the

order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue.

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

Order pronounced in the open court on 06.10.2021.

Sd/-  
(S RIFAUH RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 06.10.2021

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai