

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos. 420 to 422/Mum/2021
(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12)

ITO Ward-4(1), Thane Room No.03, A- Wing 6 th Floor, Ashar IT Park, wagle Industrial Estate, Thane(W)- 400604.	बनाम/ Vs.	Shri Akshay Anil Sawant Prop M/s. Akshay Plastics, 12, Sarang Industrial Estate, Navghar Road, Vasai (E)- 401210.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BHGPS4851P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Prasoon Kabra (DR)	
Assessee by:	Shri Vinay Bhoir (AR)	

सुनवाई की तारीख / Date of Hearing: 22/11/2021
घोषणा की तारीख /Date of Pronouncement: 17/12/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -03, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys.2009-10 to 2011-12.

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2. The revenue has filed the present appeal against the order dated 25.02.2020 passed by the CIT(A)-03, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2009-10.

3. The revenue has raised the following grounds: -



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"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Thane erred in deleting the addition of Rs.3,63,304/- out of the total addition of Rs.4,84,406/- made on account of bogus purchases, despite holding that the purchases were not genuine and the assessee failed to prove genuineness of the transactions.*

2. *On the facts and in the circumstances of the case and in law, Ld. CIT(A)-3, Thane erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.*

3. *The appellant prays that the order of the Ld. CIT(A)-3, Thane, may be set-aside and that of the Assessing Officer be restored.*

4. *The appellant craves leave to add, amend or alter or alter any ground/grounds, which may be necessary."*

4. The brief facts of the case are that the AO received information from the higher authorities that the assessee has received the bogus purchases bills from the entry providers. On the basis of said information, the AO has reason to believe that the income of the assessee for the assessment under consideration has escaped assessment within the provision of 147 of the Act. After recording the reason, the notice u/s 148 of the Act was issued and served upon the assessee. The assessee filed the return of income on 30.09.2009 which he had already filed declaring the total income to the tune of Rs.1,94,960/-. Subsequently, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Thereafter, the notice u/s 133(6)



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were issued but nobody responded. The assessee has taken the bogus purchase entry from the following four parties: -

S. No.	Name	MVAT No.	Amount
1	Pioneer Trading Corporation	27430617262V	90,740/-
2	Deep Enterprises	27750595164V	92,768/-
3	Hiten Enterprises	27880265244V	89,778/-
4	Krish Corporation	27890606533V	2,11,120/-

Since no explanation came from the assessee and no parties appeared, therefore, the AO raised the addition to the extent of 100% of Rs.4,84,406/- . The total income of the assessee was assessed to the tune of Rs.6,79,366/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 25% of the bogus purchase but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 TO 3

5. We have heard the argument advanced by the Ld. Represented of the parties and perused the record. Before going further, we deem it necessary to advert the finding of the CIT(A) on these issues: -

“5. I have considered the facts of the case and the submission of the appellant. As the relevant purchases have been debited to the P&L Account and claimed as deduction in computing the profits of the business chargeable to tax, the onus was on the appellant to prove the genuineness of the purchases with satisfactory evidences. During the course of assessment proceedings the appellant neither attended nor



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filed any written submissions to substantiate the purchases made from the alleged hawala parties. However, during the course of appellate proceedings the appellant has produced the copies of ledger accounts, purchase bills, bank statements, etc, to substantiate his claim. It is noted that the AO was in possession of information received from the Sales Tax Department, indicating strongly that the suppliers concerned were only providing accommodation entries and were not carrying out any real business. Thus, the onus that was cast on the appellant was of a greater degree to prove the genuineness of the parties as well as of these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.

5.1. There cannot be any dispute about the well settled legal proposition that tax can be levied only on real income. It is elementary rule of accountancy as well as of taxation laws that the profit from business cannot be ascertained without deducting the cost of purchase from sales, otherwise it would amount to levy of income tax on gross receipts or sales.

5.2 Disallowance @ 25% out of Bogus purchases was held as reasonable in the case of Vijay Proteins Ltd. by the Hon'ble Gujarat High Court, in view of the fact that the savings occurred to the suppliers on account of sales tax, duties and Income-tax, by buying the goods from grey market at lower rates and booking the purchases at normal rate, the assessee got the benefit of this proportion. It is pertinent to mention here that the Hon'ble Supreme Court, vide order dated 6.4.2015, dismissed the SLP filed by the assessee and confirmed the finding of the Hon'ble Gujarat HC in the case of Vijay Protein and



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other decisions of the Gujarat HC in the case of Sanjay Oilcake Industries Vs. CIT (2009) 316 ITR 274 and N.K Industries Ltd. Vs. DCIT.

5.3 Considering the facts of case and in view of various decisions as discussed above, it is held that the appellant has made sales so the purchases cannot be totally bogus. Therefore 25% of the bogus purchases, ie. Rs.1,21,102/-, out of total purchases of Rs. 4,84,406/may be added to the income of the appellant. Accordingly, the disallowance of Rs. 1,21,102/- confirmed and balance amount of Rs.3,63,304/- is deleted and the grounds of appeal raised as above are partly allowed.”

6. On appraisal of the above mentioned finding, we noticed that the CIT(A) has restricted the addition to the extent of 25% of the bogus purchase on the basis of the decision of Hon’ble Gujarat High Court in the case of **Vijay Proteins Ltd. And Sanjay Oilcake Industries Vs. CIT (2009) 316 ITR 274**. It is specifically held that the 100% of the bogus purchase is not liable to be added. Now, the issue has been decided by various authorities in which it has been held that 100% addition of the bogus purchase is not justifiable. No law has been produced before us to which it can be assumed that the 100% addition of bogus purchase is justifiable. The CIT(A) has restricted the addition to the extent of 25% of the bogus purchase on the basis of the decision mentioned in the order which nowhere seems unjustifiable. Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with



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at this appellate stage. Accordingly, we decide the issue no. 1 to 3 in favour of the assessee against the revenue.

ISSUE NO. 4

7. Issue no. 4 is formal in nature which nowhere required any adjudication.

In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

ITA. No.421 & 422/Mum/2021

8. The facts of the present case are quite similar to the facts of the case as discussed above while deciding in ITA. No.420/Mum/2021, therefore, there is no need to repeat the same. However, the figure is different. The finding given above while deciding the ITA. No.420/Mum/2021 is quite applicable to the facts of the present case also as mutatis and mutandis. Accordingly, we dismiss the appeals of the revenue bearing ITA. No. 421 & 422/Mum/2021 also.

9. In the result, the appeals filed by the revenue are hereby dismissed.

Order pronounced in the open court on 17/12/2021

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/12/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**