

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.8009, 8010, 8011 & 8012/M/2019
Assessment Years: 2009-10, 2010-11, 2011-12 & 2012-13**

M/s. Bhavya Projects Pvt. Ltd., Aakruti Trade Centre, 6 th Floor, Marol MIDC, Andheri (East), Mumbai – 400 093 PAN: AACCB5080G	Vs.	DCIT, Central Circle-5(3), Aayakar Bhavan, Room No.11, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jitendra Singh, A.R.
Revenue by : Shri Vijay Kumar Soni, D.R.

Date of Hearing : 13.10.2021

Date of Pronouncement : 17.11.2021

ORDER

Per Amarjit Singh, Judicial Member:

The above titled appeals have been preferred by the assessee against the order even dated 29.12.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2009-10, 2010-11, 2011-12 & 2012-13.

2. At the outset we notice that the appellate order was passed on 29.12.2016 in all the above appeals however the appeals before the tribunal was filed in 27.12.2019. When this fact was pointed out to the ld AR of the assessee, he submitted that the appellate order passed by the ld CIT(A) was never served on the assessee. He also drew our attention to the affidavit filed by the

assessee in this regards and communication to the ld CIT(A) to supply the certified copy of the orders. We note from the submissions of the assessee and records before us that the business of the assessee was closed and there was hardly any employee. We also note that the registered office of the assessee was even sold in February 2012. We also note that main director who was looking after the business was seriously ill and remained hospitalized as is apparent from medical records placed before us. Though the ld DR strongly opposed the admission of these appeals but in view of the genuine hardships of the assessee we are condoning the delay in filing these appeals.

ITA No.8012/M/2019

3. The issue raised in ground Nos.1 to 4 is against the confirmation of addition of Rs.52,39,454/- by Ld. CIT(A) as made by the AO on account of bogus purchases by the assessee.

4. The facts in brief are that the assessee is engaged in the business of civil construction. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The AO noted during the course of assessment proceedings that the assessee has made purchases from hawala dealers which was observed by the AO from the official website of Sales Tax Department, Government of Maharashtra to the tune of Rs.55,01,428/- from two parties namely Ashthavinayak Trading Company of Rs.17,00,632/- and Shraddha Trading Company of Rs.38,00,796/-. The AO relied on the affidavit/statements given by these parties to Sales Tax Department wherein these parties have admitted that they are

engaged in providing accommodation entries only. Accordingly, a show cause notice was issued to the assessee as to why the purchase from these parties should not be disallowed and added to the income of the assessee which was replied by the assessee by furnishing various details such as bills, vouchers, payment details and delivery challans etc., however, reply of the assessee did not find favour with the AO and he added the entire amount of purchases to the tune of Rs.55,01,428/- to the income of the assessee.

5. In the appellate proceedings, the Ld. CIT(A) directed the AO to restrict the addition to Rs.52,39,454/- on the ground that only purchases to the tune of Rs.52,39,454/- were made from these parties and thus partly allowed the appeal of the assessee.

6. After hearing both the parties and perusing the material on record, we find that the assessee has made purchases from two hawala dealers to the tune of Rs.52,39,454/-. During the course of assessment proceedings the assessee has furnished replies before the AO in response to various queries raised by the AO by submitting bills, vouchers, payment details and delivery challans etc., however, the same were added by the AO by relying on the statement/affidavits given by these parties before the Sales Tax Department that they are engaged in providing hawala entries only. Similarly, the Ld. CIT(A) has held that the assessee has failed to establish the genuineness of these purchases and thus sustained the addition to the extent of Rs.52,39,454/-. Normally, in the case of hawala purchases, the presumption is that the assessee may have made purchases from the grey market and thus to add the entire purchases

would be excessive and an unreasonable. It is more or less settled issue wherein the co-ordinate Benches of the Tribunal have taken a consistent view that only a percentage addition on the bogus purchases can be added to the income of the assessee to assess the profit element embedded in the said purchases. Therefore, we are of the considered view that the ends of justice would be met, if a reasonable percentage of profit is applied on the bogus purchases. In the present case, it would be reasonable and fair, if a Profit rate of 3% is applied on the bogus purchases in order to assess the profit element embedded in the purchases. Accordingly, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to apply a GP of 3% on these purchases. Resultantly, the ground Nos.1 to 4 are partly allowed.

7. The issue raised in ground No.5 is not pressed at the time of hearing and therefore dismissed as not pressed.

8. The issue raised in ground No.6 is consequential in nature and needs no adjudication.

ITA No.8009 & 8011/M/2019

9. The issue raised in the various grounds of appeal is similar to one as decided by us in ground Nos.1 to 4 in ITA No.8012/M/2019 wherein the Ld. CIT(A) has sustained the addition in respect of bogus purchases. Since we have already partly allowed the assessee's appeal by directing the AO to apply a GP of 3% on the bogus purchases, in view of our decision in ITA No.8012/M/2019, we set aside the order of Ld. CIT(A) and direct the AO to apply a GP of 3% on bogus purchases of

Rs.62,235/- . Accordingly, the appeals of the assessee are partly allowed.

ITA No.8010/M/2019

10. The issue raised in ground No.1 is not arising out of the assessment order passed under section 143(3) read with section 147 of the Act dated 27.03.2015 and therefore the ground is being dismissed as not maintainable. We would like to mention that the assessee has filed a separate appeal challenging this ground against the order of the Ld. CIT(A) which in turn arose out of the assessment framed under section 144 of the Act. Accordingly, the ground is dismissed.

11. The issue raised in ground Nos.2 to 5 is similar to one as decided by us in ground Nos.1 to 4 in ITA No.8012/M/2019 wherein the Ld. CIT(A) has sustained the addition in respect of bogus purchases. Since we have already partly allowed the assessee's appeal by directing the AO to apply a GP of 3% on the bogus purchases, in view of our decision in ITA No.8012/M/2019, we set aside the order of Ld. CIT(A) and direct the AO to apply a GP of 3% on bogus purchases of Rs.2,77,160/-. Accordingly, ground Nos.2 to 5 are partly allowed.

12. The issue raised in ground No.6 is against the confirmation of addition of Rs.2,63,6 21/- as made by the AO on account of discount, commissions, scrap sales, miscellaneous receipts etc.

13. After hearing the rival parties and perusing the material on record, we note that the addition has been made on account of various incomes as stated hereinabove aggregating to Rs.2,63,621/-. The AO only has stated in the assessment order that since the income has been assessed under section 144 of the Act @ 8% of the total turnover of Rs.5,45,02,260/- and thus the other incomes shown by the assessee have remained to be added. In our opinion, once the income has been estimated by the AO on the basis of turnover then no other addition can be made to the income of the assessee. The Ld. CIT(A) has ignored this fact and failed to appreciate that once the income is estimated by applying a percentage on the turnover no other addition can be made to the income of the assessee. Accordingly, we are inclined to delete the addition of Rs.2,63,621/-. Ground No.6 is accordingly allowed.

14. In the result, all the above four appeals of the assessee are partly allowed.

Order pronounced in the open court on 17.11.2021.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Mumbai, Dated: 17.11.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.