

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE OM PRAKASH KANT, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 592/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO, Ward-3(1) 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (W) 421301.	<b><u>बनाम/</u></b> Vs.	Potdar Ajit Krishnaji (HUF) V Krishna Steel Trading, Vijay Baug, Varap Village, Murbad Road, Kalyan (W)- 421301.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHP2434D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sanjiv Brahme	
Revenue by:	Ms. Bhoomika Patel	

सुनवाई की तारीख / Date of Hearing: 02/12/2021

घोषणा की तारीख /Date of Pronouncement: 31/01/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 03.02.2020 passed by the Commissioner of Income Tax (Appeals) -01, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

*“A) Grounds of Appeal*

*1. The learned Income Tax Officer has erred in reopening the Assessment u/s 148.*



*WITHOUT PREJUDICE TO THE ABOVE*

2. *The learned Income Tax officer has erred in making additions of Rs.7,77,700/- towards alleged bogus purchases.*
3. *The Assessing Officer has erred in rejecting Books of Accounts without giving opportunity to the Appellant.*
4. *The Appellant craves leave to add, Alter, amend, modify aforesaid grounds of the appeal at or any time before the hearing as they may be advised from time to time.*

*B) Relief Claimed*

1. *The reopening of the Assessment u/s 148 bearing bad in law, the Assessment, be declared as void ab- initio.*

*WITHOUT PREJUDICE TO THE ABOVE*

2. *The results as emanated from the Books of Accounts be accepted.*
3. *The addition of Ps. 7,77,700/- made by Assessing Officer towards alleged bogus purchases be deleted.*
4. *Any other relief as may be deemed by the authority.”*

**3.** The brief facts of the case are that the assessee filed his return of income on 01.10.2010 declaring total income to the tune of Rs.9,58,150/-. The return was processed u/s 143(1) of the Act on 28.06.2011. Thereafter, the assessment of the assessee was reopened on receipt of the information from the DGIT(Inv.), Pune in which it was conveyed that the assessee has taken the bogus purchase entry from the one party M/s. Chanchal Tube Corporation of Rs.7,77,700/-. Notices u/s 143(2) & 142(1) of the Act were



issued and served upon the assessee. Notices to the party u/s 133(6) was also issued but finding no reasonable explanation, the AO raised the addition to the tune of Rs.7,77,700/- u/s 69C of the Act. The total income of the assessee was assessed to the tune of Rs.17,85,850/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of Rs.12.5% of the bogus purchase in sum of Rs.7,77,700/- i.e. 97,213/-. The revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully filed. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

*“5.3. 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. It is observed that the assessee, during the course of assessment proceedings as well as appellate proceedings has produced the copies of bills, bank statement, ledger extract showing material purchased from the alleged hawala party and sale invoice evidencing sale of material to M/s Gautam Enterprises, The appellant has given details of turnover, NP and GP of year under consideration as well as previous year, which reveals that the GP and NP to turnover ratio in the previous financial year are more or less similar to the year under consideration. However, the fact remains that information called for from the bogus party — Chanchal Tube Corporation, u/s 133(6) of the Act by the AO, remained un-served and was returned by the Postal*



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*Authorities. The AO requested the appellant to produce the party but the appellant failed to do so. It is noted that the AO was in possession of information received from the DGIT(Inv), indicating strongly that the supplier concerned was only providing accommodation entries and was not carrying out any real business. Thus, the onus that was case on the appellant was of a greater degree to prove the genuineness of this party as well as these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.*

*5.3.1 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 cost of purchase from Sales, otherwise it would amount to levy of income tax on gross receipts or sales. Such recourse is not permissible unless it is specifically authorized under any provisions contained in the Act. The Hon'ble Jurisdictional High Court in the case of Harima Bharubhai - ITA No. 313 of 2013) has held that only the profit attributable to the unaccounted sales can be brought to tax. It is further observed that the Hon'ble Gujarat High Court in the case of Simit P Seth ( 38 taxmann 385) has held that not the entire purchases but only the profit element embedded in such purchases can be added to the income of the assessee. Similar view has been taken by the Gujarat High Court in the cases of Vijay M Mistry Construction Pvt Ltd (355 ITR 498), Bholanath Polyfab (P) Ltd (355 ITR 290) and Vijay Proteins Ltd (58 taxmann 44).*



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5.3.2 *The Hon'ble Ahmedabad ITAT, in the case of Simit P Sheh v/s ITO, in ITA No. 3238 and 3293/Ahd/2009 has held that "the malpractice of bogus purchase is mainly to save 10% sales tax etc. It has also been informed that in this industry about 2.5% is the profit margin. Therefore, respectfully the decisions of the co-ordinate bench pronounced on identical circumstances, we hereby direct that the ITA No. 3238 & 3293/Ahd/2009 A.Y. 2006-07 Sh. Simit P Sheth Vs. ITO wd 2(2), BRD page 6 disallowance is required to be sustained at 12.5% of the purchases from those parties". The order of the ITAT was also sustained by the Hon'ble Gujarat High Court wick order dated 16.01.2013, 38 taxmann 385) wherein it was held that "This being the question, the only question that survives is what should be the fair be added back to the income of the profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted ratio of 30% of such total sales. The Tribunal, however, scaled down to 12.5%. We may notice that in the she immediately preceding year to the assessment year under consideration the assessee had declared gross profit @ 3.56% of the total turnover. If the yardstick of 30%, as adopted by the commissioner, is accepted GP rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted."*

5.3.3 *Considering the facts of the case and in view of various decisions as discussed above, it is held that only 12.5% of the bogus purchases of Rs.7,77,700/-, that is Rs.97,213/- is to be of case and in*



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*view of various decisions as discussed above, it is added to the income of the appellant. Accordingly, the disallowance of Rs 97,213/- is confirmed and balance amount of Rs.6,80,487/- is deleted and the above ground of appeal is partly allowed.”*

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble Bombay High Court in the case of **Vijay M. Mistry Construction Pvt. Ltd. (355 ITR 498), Bholanath Polyfab (P.) Ltd. (355 ITR 290) and Vijay Proteins Ltd. (58 taxmann 44) and the case of Simit P. Sheth Vs. ITO in ITA. No.3238 and 3293/Ahd/2009**). The addition of bogus purchase has been restricted to the extent of 12.5%. The addition restricted to the extent of Rs.97,213/- of the bogus purchase nowhere seems unjustifiable. The CIT(A) has also considered the G.P. Ratio of profit of the assessee. Considering 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 interfered with at this appellate stage. Accordingly, we decide all the issues in favour of the assessee against the revenue.

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

Order pronounced in the open court on 31/01/2022

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2022

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)  
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