

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2016/M/2020  
Assessment Year: 2010-11**

O/o Income Tax Officer, Ward – 1(1), 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Kalyan West-421 301	Vs.	Shri Kantilal Kachara Gada, Flat No.A-202, H. No.1164, Green Acre Society, Behind Oshwal Sagar Hall, Anjurphata, Bhiwandi - 421302 <b>PAN: ACKPS4697P</b>
(Appellant)		(Respondent)

**CO No.147/M/2021  
(Arising out of ITA No.2016/M/2020)  
Assessment Year: 2010-11**

Shri Kantilal Kachara Gada, Flat No.A-202, H. No.1164, Green Acre Society, Behind Oshwal Sagar Hall, Anjurphata, Bhiwandi - 421302 <b>PAN: ACKPS4697P</b>	Vs.	O/o Income Tax Officer, Ward – 1(1), 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Kalyan West-421 301
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Mayur J. Gosrani, A.R.  
Revenue by : Shri Hoshang B. Irani, D.R.

Date of Hearing : 14.02.2022  
Date of Pronouncement : 25.02.2022

## **ORDER**

### **Per Kuldip Singh, Judicial Member:**

Aforesaid appeal filed by the Revenue and cross objections filed by the assessee bearing common question of law and facts challenging the common order dated 08.09.2020 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the Ld. CIT(A)], are being disposed of by way of composite order for the sake of brevity.

2. Appellant ITO, Ward No.1(1), Kalyan (hereinafter referred to as the Revenue) and the assessee Shri Kantilal Kachara Gada by filing the present appeal and cross objections sought to set aside the impugned order dated 08.09.2020 passed by the Ld. CIT(A) on the grounds inter alia that:

### **ITA No.2016/M/2020 (Revenue)**

*“1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors as per information received from Law enforcement agency of State Govt. of Maharashtra i.e. Sales Tax Department, and established by the Assessing Officer.*

*2. On the facts and in the circumstances of the case, and in law, the Ld.CIT(A) has erred in not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors.*

*3. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in ignoring, the fact that the*

*assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement of goods, stock register, etc. to restrict the addition to 25 % is estimated on so called alleged bogus purchases from the non-existent vendors.*

*4. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in not appreciating the law correctly that once the purchases are un verifiable/not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court.*

*5. It is humbly requested that present appeal is being filed in accordance with the CBDT's Instruction No. 3/2018 dated 11.07.2018 amended vide letter dtd. 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.*

*6. The appellant craves leave to add, amend, a<sup>l</sup> any ground of appeal.”*

### **CO No.147/M/2021**

*“1) Ld. CIT (A) ignored the fact as well as of Law that proceeding under section 147 of Income Tax Act, 1961 initiated by the Assessing Officer is itself bad in Law void ab initio and illegal and liable to quash for the Assessment Year 2010 -11*

*2) Ld. CIT(A) erred of law as well as of fact that the re-opening of the assessment cannot be done solely on the basis of the information received from the sales tax department without providing documentary evidence and cross examination of the so called hawala dealers to the appellant.*

*3) Ld. CIT (A) ignored the submissions of Appellant and also ignored Hon'ble Supreme Court and Jurisdictional High Courts Judicial Pronouncements (part of the*

*appellant submissions) in relation to the Assessment Order u/s 143 (3) r.w.s 147 of Income Tax Act, 1961. Further Ld. CIT(A) neither provided any documentary evidence on the basis of which AO established a reason to believe for reopening of assessment nor provided Cross Examination of the concern third party even after specifically requested by the appellant during the course of CIT(A) proceedings and also specifically mentioned / requested in its submission. As the order passed against the principal of natural justice hence liable to quash.*

*4) The Ld. CIT(A) disallowed the claim of the appellant on the basis of N.K. Proteins Ltd vs DCIT Order of Gujarat High Court and SLP of Supreme Court of India, which was neither discussed during the course of hearing nor issued a show cause notice of his intention to apply N.K. Proteins Ltd to the case of appellant. The order was passed without providing opportunity of Hearing as it amounts to Denial of Principle of Natural Justice.*

*5) However, the Facts and circumstances of the case of N.K. Proteins Ltd vs DCIT (ITA No. 240-242/2003) (Gujarat High Court)(As mentioned in the CIT(A) Order) are not applicable to the case of appellant as the fact and circumstances are different. Hence even the ratio of the above case is not applicable to the appellant.*

*6) The Ld. CIT(A) erred of fact as well as of law that the Ld. AO had accepted the entire sales of the appellant and there cannot be sales without purchases.*

*7) The Ld. CIT(A) erred of fact as well as of law by restricting the estimated addition on so called bogus purchases to the extent of 25% without appreciating the fact that the gross profit of the appellant is around 2.5% only.*

**Comparison of Gross Profit Ratio: -**

<i>Particulars / Assessment Year</i>	<i>08-09</i>	<i>09-10</i>	<i>10-11</i>	<i>11 -12</i>	<i>12-13</i>
<i>Sales</i>	<i>1,27,84,543</i>	<i>3,15,35,248</i>	<i>8,79,09,414</i>	<i>9,02,79,280</i>	<i>5,77,56,205</i>

<b>Purchases</b>	<b>1,12,40,783</b>	<b>2,79,44,763</b>	<b>7,71,85,261</b>	<b>8,11,42,014</b>	<b>3,97,79,873</b>
<b>Gross Profit</b>	<b>709,316</b>	<b>13,07,086</b>	<b>21,29,174</b>	<b>24,04,579</b>	<b>19,38,564</b>
<b>Net Profit</b>	<b>2,61,084</b>	<b>4,88,149</b>	<b>8,05,318</b>	<b>11,71,205</b>	<b>10,28,127</b>
<b>% of G.P. to Sales</b>	<b>5.55%</b>	<b>4.14%</b>	<b>2.42%</b>	<b>2.66%</b>	<b>3.36%</b>

**8) The Order of Ld. CIT (A) was against the Principle of Natural Justice and hence liable to quash.**

**9) The order appeal against is bad in Law and against the principle of natural justices and tax jurisprudence.**

**10) The order appeal against is based on surmises and conjectures.**

**11) The appellant carves leave to add, amend, alter and vary any grounds of appeal either before or at the time of hearing of the appeal.**

**12) Each ground of appeal is distinct and separate.”**

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the Assessing Officer (AO) on the basis of information received from the Sales Tax Department, Government of Maharashtra that assessee has obtained bogus purchase bills from the entry providers as under;

s. No.	Name of the entry provider	Maharashtra VAT No.	A.Y.	Amount in the bills taken by the assessee
1	Samir Trading Corporation	27830386376v	2010-11	5960656
2	Skand Industries	2750053744lv	2010-11	9265092
3	Mahavir Enterprises	27560556517v	2010-11	5573880 .
4	Rahul Traders	27590509892v	2010-11	13026780

		Total Rs.		33826408

initiated the reassessment proceedings under section 147 and 148 of the Income Tax Act (the Act). During the assessment proceedings the AO noticed that the assessee has debited purchases of Rs.7,72,11,266/- which includes purchases of Rs.3,38,26,408/- claimed to be made from the aforesaid party. On failure of the assessee to prove genuineness of the purchases by producing the party for verification, the AO proceeded to conclude that since the assessee has failed to prove that the purchases in question are genuine, the purchases amounting to Rs.3,38,26,408/- being not genuine are added to the total income of the assessee and thereby framed the assessment at the total income of Rs.3,45,05,530/- under section 143(3) read with section 147 of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has restricted the addition made by the AO to Rs.84,56,602/- as against Rs.3,38,26,408/- @ 25% of the bogus purchases by partly allowing the appeal. Feeling aggrieved with the impugned order both Revenue as well as assessee have come up before the Tribunal by way of filing the present appeal and cross objections respectively.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly, entire assessment in this case has been framed by the AO on the basis of alleged information received from the Sales Tax Department. It is also not in dispute that during the assessment proceedings the assessee was called upon to prove the genuineness of the purchases by producing the parties. Both the AO as well as the Ld. CIT(A) have proceeded to make the addition qua alleged bogus purchases on the basis of estimation without bringing on record the evidence to substantiate these allegations.

7. In the backdrop of the aforesaid undisputed facts the Ld. D.R. for the Revenue relied upon the order passed by the AO that in such cases total amount of the bogus purchases needs to be added to the income of the assessee. However, on the other hand, the Ld. A.R. for the assessee to repel the argument addressed by the Ld. CIT(A) contended that in such type of cases entire addition or the addition @ 25% as has been done by the Ld. CIT(A) is not sustainable because sales in this case have not been disputed by the

Revenue Authorities and in these circumstances addition of the gross profit on average basis in the range of 5% to 12.5% can be made and relied upon the decision rendered by the Hon'ble Bombay High Court in the case cited as Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 and the decision rendered by the co-ordinate Bench of the Tribunal cited as M/s. Pavapuri Metals & Tubes vs. Income Tax Officer in ITA No.1148/M/2019 order dated 29.09.2020 and in the case of Ravindranathan Nair vs. Income Tax Officer in ITA No.2662/M/2018 order dated 31.12.2018.

8. In the identical facts and circumstances of the case where though the purchases found to be bogus by the Revenue Authorities but sales by the assessee have been accepted as genuine as against these bogus purchases, we are of the considered view that when sales have been accepted being genuine the entire purchases cannot be treated as non genuine to make addition of the entire bogus purchases amount. Hon'ble High Court of Bombay in the case of JK Surface Coatings Pvt. Ltd. (supra) upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:

***“4. Having considered the memo of Appeal and the Orders passed by AO / CIT(A) and the Order of ITAT, the only***

*issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.*

*5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.”*

9. The Ld. A.R. for the assessee further contended that in this case the assessee has never earned the gross profit @ 25% as estimated by the Ld. CIT(A) and brought on record its gross profit earned and accepted by the Revenue in the earlier years as under:

articulars / Assessment Year	08-09	09-10	10-11	11-12	12-13
Sales	1,27,84,543	3,15,35,248	8,79,09,414	9,02,79,280	5,77,56,205
Purchases	1,12,40,783	2,79,44,763	7,71,85,261	8,11,42,014	3,97,79,873
Gross Profit	709,316	13,07,086	21,29,174	24,04,579	19,38,564
Net Profit	2,61,084	4,88,149	8,05,318	11,71,205	10,28,127
% of G.P. to Sales	5.55%	4.14%	2.42%	2.66%	3.36%

10. In view of what has been discussed above and following the order passed by the Hon'ble High Court and co-ordinate Bench of the Tribunal, we are of the considered view that in the light of gross profit earned by the assessee in the last five years the average gross profit comes to 5% which is a reasonable gross profit earned by the assessee on the bogus purchases, hence, we direct the AO to charge the assessee at the gross profit @ 5% on the bogus purchases of Rs.3,38,26,408/-. Resultantly, the appeal filed by the Revenue is dismissed and cross objections filed by the assessee are allowed.

**Order pronounced in the open court on 25<sup>th</sup> Feb .2022.**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 25<sup>th</sup> Feb.2022.

\* 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.