

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI PAVAN KUMAR GADALE,
JM

ITA No. 6605/Mum/2019
(Assessment Year 2010-11)

Chandrasekhar Nathalal Trivedi 704, Akash Ganga, Near Jangid Circle, MTNL Road, Mira Road East, Thane-401107	Vs.	Income Tax Officer, Ward 2(5), Thane Room No. 13, B-Wing, 6 th Floor, Ashar IT Park, Wagle Industrial Estate, Road No.16- Z, Thane(W)-400604
(Appellant)		(Respondent)
PAN No. AAAPT3199H		

ITA No. 7432/Mum/2019
(Assessment Year 2010-11)

Income Tax Officer, 2(5), Room No. 13, B-Wing, 6 th Floor, Ashar IT Park, Wagle Industrial Estate, Road No.16-Z, Thane(W)-400604	Vs.	Chandrasekhar Nathalal Trivedi 704, Akash Ganga, Near Jangid Circle, MTNL Road, Mira Road East, Thane-401107
(Appellant)		(Respondent)
Assessee by		Shri Dharmesh Shah, AR
Revenue By		Shri RA Dhyani, DR
Date of Hearing		06/01/2022
Date of Pronouncement		22/03/2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the cross appeals filed by the parties against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Thane [The LD CIT (A)] dated 06.09.2019 for Assessment Year 2010-11.



02. ITA No.6605/Mum/2019 is filed by the assessee and ITA No.7432/Mum/2019 is filed by the Income Tax Officer, ward 2(3), Thane [The learned Assessing Officer/ AO].

03. The learned Assessing Officer has raised the following grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are verifiable/ not genuine/ bogus, the same should have been disallowed in entirety?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by 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?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by 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 and delivery of goods, stock register, etc. to arrive at disallowance at 12.5% of the purchases from the non-existent vendors?

5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchase are unverifiable/ 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?*

6. *the appellant craves leaves to add, amend, alter or delete any group of appeal.*

7. *The order of the CIT(A) may be vacated and that of the assessing officer may be restored."*

04. Assessee has raised following grounds of appeals:-

"1. The Ld. CIT(A) has erred in law and the facts in confirming the action of the assessing officer in re-opening of assessment Under Section 147 of the Act which is invalid and bad in law.

2. *The Ld. CIT(A) has erred in law and in facts confirming the disallowance of alleged bogus purchases at Rs.3,28,19,832/- being 12.5% of total purchases of Rs.26,25,58,657/- in the hands of the appellant.”*

05. Brief facts of the case shows that assessee is an individual, proprietor of M/s High Tech Engineers, engaged in the business of trading of commodities such as Iron and Steel Products and shares and securities. He filed his returned of income on 24.09.2010 declaring income of ₹3,24,686/-. The return was processed under section 143(1) of the Act.
06. Subsequently, Id AO received information from Director General of Income Tax (Investigation) and the Revenue Audit Party as Major Audit Objection. Information was that assessee was not assessed under section 143(3) of the Act on the basis of hawala purchases made from hawala operators amounting to ₹15,16,68,260/-related to receipt of accommodation entries from ‘Utkantha Group’ through its entities who were engaged in intricate circular trading without actual sales and purchases. Thus, assessee is one of the beneficiaries of the accommodation entries. Moreover, Sales Tax Department, Maharashtra gave the names and address of certain persons who have provided entries of bogus purchase to a large number of taxpayers, assessee is also one of the beneficiaries. The providers of accommodation entries have also filed affidavit before Sales Tax Department stating that they have merely provided entries to these beneficiaries and

goods were not supplies as mentioned in the purchase bills. Name of assessee is also appearing in the list of persons who have obtained such bogus bills from these parties. Based on information from Sales Tax Department survey was conducted by Income Tax authorities wherein some of the beneficiaries have admitted that purchase bills obtained by them are bogus and they offered additional income. As per such information, the assessee has received accommodation entry of ₹26,25,58,657/- in case of four persons. Therefore, after recoding reasons, notice under section 148 of the Act was issued on 07.10.2016. Assessee raised an objection that he has received notice dated 07.10.2016 issued under section 148 of the Act only on 27.07.2017. The assessee has also raised objection with respect to the service of the notice. The LD AO rejected the same while passing assessment order. Subsequently, notices under section 133 (6) were issued to those [4] parties. Out of them, three notices returned back, however, one notice did not return. Thus, no replies were received. Local inquiries also resulted that nobody knows whereabouts of these parties. On the basis of the same, the Assessing Officer issued show cause notice to assessee on 17.11.2017 that why the above sum of ₹26,25,58,657/- should not be added as unexplained expenditure under section 69C of the Act.

07. During the course of assessment proceedings, the assessee furnished the audited accounts, Tax Audit Report,

computation, bank accounts, and the details of the parties from whom assessee has purchased along with the details of sales.

08. Learned AO also obtained affidavits of these parties from sales tax Department wherein they have affirmed that they have not done any business activity of sale or purchases but only issued hawala bills to the parties for which they have been paid commission. Therefore, The Assessing Officer came to the conclusion that the above purchases were not genuine and made addition of ₹26,25,58,657/- to the returned income of the assessee amounting to ₹3,24,686/- and passed an assessment order under section 143(3) read with section 147 of the Act on 06.12.2017 determining the total income of the assessee at ₹26,28,83,343/-.
09. The assessee aggrieved with the order preferred the appeal before the learned Commissioner of Income Tax (Appeals). The assessee challenged the reopening of the assessment, which was rejected. On the merits of the addition, the learned CIT(A) held that only 12.5% of the bogus purchases amounting to ₹3,28,19,832/- is required to be added, hence, he deleted the balance addition. Therefore, the appeal of the assessee is partly allowed.
010. Thus, both the parties are aggrieved with the above order of the learned CIT – A and has preferred these appeals. The assessee is aggrieved against the confirmation of action



under section 147 of the Act also the retention of the addition to the extent of 12.5% of the bogus purchases and the learned Assessing Officer is aggrieved by the deletion of the addition to the extent of ₹22,97,38,825/-.

011. Coming to the appeal of the assessee, the learned Authorised Representative placed on record a paper book containing 151 pages and also several judicial precedents against the reopening of the assessment as well as against addition confirmed by the learned Commissioner of Income Tax (Appeals).
012. The learned Authorised Representative submitted that the notice under section 148 of the Act was issued on 07.10.2016; however, it was received by the assessee only on 27.07.2017. He submitted the dispatch record placed at pages 2 and 3 of the assessee's paper book clearly shows that these dispatch details were pertaining to the notice issued under section 143(2) and 142(1) of the Act and not the notice issued u/s 148 of the act. Therefore, he submitted that in the present case, notice under section 148 of the Act could have been served within six years from the end of the assessment year i.e. up to 31.03.2017 but the notice was served only on 27.07.2017 and therefore, the assessment order consequently passed by the learned Assessing Officer without serving any notice u/s 148 of the Act within the time limit is liable to be quashed as non est.



013. The learned Authorised Representative further referred to the approval granted by Pr. Commissioner of Income Tax on 03.10.2016 to the issue of notice under section 148 of the Act. He referred to Serial No.12 of ITNS-10 being from for recording the reasons for initiating the proceedings under section 147 of the Act and for obtaining of approval and stated that the approval is cryptic and same is not sustainable.
014. Coming to the merits of the addition, he submitted that assessee has a business of trading in steel. The accounts of the assessee are audited under section 44AB of the Act. The assessee also maintains the quantitative details of the purchase and sale. He referred to 'Schedule C' of the Tax Audit Report wherein the quantitative details are tabulated. He further referred to statement placed at page No. 56 onwards wherein the quantities purchased from the four alleged entities were shown which have been sold to one Bill power Limited. He also stated the month wise quantities of the purchases and sales of those quantities to the Bill power Limited. In the end, he referred to tabulation where the purchases from the alleged accommodation entries providers of ₹26,25,58,657/- which has been sold to Bill power Limited for ₹26,27,81,569/- and therefore, the assessee has shown the sale of the goods as well as the profit of ₹2,22,912/- on the above transactions. He supported the above facts by the copies of the bills of purchase of goods as well as sale of goods of those parties. He also referred to the bank statement where the purchases



and sales are reflected in the books of accounts. He also referred to affidavit filed by the assessee wherein the assessee has confirmed that purchases are genuine. The Authorised Representative further referred to the assessment order stated that there was no survey on the assessee and assessee has not admitted any additional income. He further referred to the fact that assessee has produced confirmation of the parties and therefore return of notice under section 133(6) of the Act by the Assessing Officer does not affect the claim of the assessee. He submitted that the copies of the statement were provided to the assessee, as Assessing Officer merely kept on record, nor assessee was asked to produce the parties. In view of this, he submitted that the addition deserves to be deleted on the merits of the case. He also referred to the decision of Hon'ble Bombay High Court in the case of Mohammad Haji Adam And Co in ITA No.1004 of 2016 dated. 11th February, 2019 and submitted that the Hon'ble Bombay High Court has affirmed the order of the co-ordinate Bench where the addition was required to be restricted to the extent of bringing GP rate of purchases at the same rate of other genuine purchases. Therefore, he submitted that the gross profit of the assessee as stated at page No.47 of the PB is 0.35% and the gross profit earned by the assessee from alleged bogus purchases is 0.09%, therefore, at the most addition could be sustained only to that extent and nothing more. Therefore, he submitted that the issue is squarely covered by the decision of Hon'ble Bombay High Court.



015. The Learned Departmental Representative vehemently objected to the challenge of reopening of the assessment. He submitted that notice under section 148 of the Act was issued on 07.10.2016 and handed over to the postal authorities on 13.10.2016; hence, the notice was correctly served within time.
016. On the issue of addition, he relied on the decision of Hon'ble Supreme Court in the case of NK proteins Ltd. and Vijay Proteins Limited and Hon'ble Delhi High court in the case of La Medica and Arun Malhotra, where 100% addition is sustained of bogus purchases. He therefore submitted that as the order of the learned Assessing Officer is in conformity with law laid down by the Hon'ble Supreme Court of India and therefore, the learned CIT (A) was not correct in restricting the addition to the extent of 12.5% of such purchases. Therefore, the order of the learned CIT (A) is required to be set aside.
017. The learned Authorised Representative in rejoinder submitted that the Hon'ble Bombay High Court in Mohammad Haji Adam And Co. (supra) which is on identical facts has accepted the addition to the limited extent because of comparison of gross profit. He also stated that in this case, the Hon'ble Bombay High Court considered the decision of N K Industries Ltd. vs. Dy. CIT in Tax Appeal No. 240 of 2003 dated 20 June 2016 in Para No. 8. He further submitted that the decision of La Medica and Arun Malhotra of Hon.



Delhi High Court are on peculiar facts where the assessee could not show any nexus between goods purchased and sales of goods. He submitted that decision of the Vijay Proteins (supra) and Hon'ble Gujarat High court affirmed by the Hon'ble Supreme Court is also on peculiar facts. In the present case, the purchase and sales are identified and therefore, the decision of the Bombay High Court squarely applies to the facts of the case. He submitted that if all the arguments of the assessee are rejected even then the addition could not exceed gross profit rate between GP from alleged bogus purchases and GP from genuine purchases. He further referred to ten judgments of various co-ordinate Benches on the similar issue.

018. On the issue of notice and satisfaction, he referred to the decision of Hon'ble Delhi High Court in the case of PCIT Vs. N.C. Cables Ltd. (391 ITR 11) as well as on approval u/s 151 of the Act on decision of Hon'ble Madhya Pradesh High Court in 231 Taxman 173. He specifically referred to the decision of the Hon'ble Bombay High Court in the case of Smt. Kalpana Shantilal Haria Vs. ACIT dated 22.12.2017, wherein the approval granted without application of mind was held to be invalid. In view of the above facts and several judicial precedents of co-ordinate Benches, he submitted that the addition is not sustainable beyond what is stated.



019. We have carefully considered the rival submissions and perused the orders of the lower authorities along with several judicial precedents put before us by the rival parties.

020. The fact of the case lies in a very narrow compass. The return of income filed for Ay 2010-11 on 24/09/2010 was accepted under section 143(1) of the Act. Thereafter on the basis of information received from DGIT (Investigation), Revenue party and Sale Tax Authorities, the case of the assessee was reopened by issue of notice u/s 148 of the Act dated 07/10/2016 wherein it was alleged that the assessee has obtained accommodation entries to the extent of ₹26,25,58,657/- from four different parties. As the reopening was beyond four years, LD Assessing Officer recorded the reason that due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and hence notice under section 148 of the Act is initiated. Such reasons were recorded purportedly within time and approval was obtained on 03.10.2016 from the Pr. Commissioner of Income Tax-1, Thane. He recorded the approval stating that

“I have gone through the reasons recorded. I am satisfied that it is a fit case for issue of notice under section 148. The proposal for issue of notice under section 148 is approved.”



021. Based on this approval, the Assessing Officer issued notice under section 148 of the Act on 07.10.2016. The Assessing Officer also issued various notices under section 142(1) of the Act. On 28.11.2017, the assessee was supplied the reasons on request of the assessee vide letter dated 27.11.2017. On 30.10.2017, the assessee submitted that notice under section 148 of the Act dated 07.10.2016 has not at all been received by the assessee, the copy of notice under section 148 of the Act was only received on 27.07.2017, and therefore, notice was not issued within the time limit prescribed under the provisions of Section 149 of the Act. Therefore, initiation of reassessment proceedings is invalid. The assessee also referred to the letter of Id AO dated 24.10.2017 in response to the letter of the assessee dated 09.08.2017 that such notice was issued within time and notice was dispatched on 13.10.2016 with the post office. The dispatch register given by the Assessing Officer to the assessee shows that there are 2 entries at serial No. 88 and 89, where the postal authorities have handed over the documents on 10.12.2017, which was received by the assessee on 11.12.2017. The speed post tracking as per the information of speed post number also shows the same. Thus, Revenue has not shown during the assessment proceedings, appellate proceedings before the learned CIT (A) as well as before us that any such notice was issued and dispatched on 13.10.2016. Contrary to this, assessee is constantly saying that the copy of the notice under section 148 of the Act was served to assessee only on



27.07.2017. We find that on the copy of notice issued u/s 148 of the Act produced by assessee has some signature and date of 16/2/2017. The assessee has also submitted the copy of such notice where somebody has shown receipt on 16.02.2017 but does not know who has signed such notices. On careful analysis of the above notice u/s 148 of the income tax act dated 7/10/2016, it shows that there is a signature put by somebody on 16/2/2017. Now looking at the signature on that letter as well as the letter, dated 30 October 2017 submitted by the assessee it is apparent that both signatures are same. The letter dated 30 October 2017 is signed by assessee Mr. Chandrasekhar N Trivedi. Therefore, apparently, signature placed on the notice u/s 148 dated 7/10/2016 and date of 16/2/2017 is also of the assessee. Now based on this it requires to be examined whether such notice has been received by the assessee in time or not. The notice for assessment year 2010 – 11 could have been issued up to 31st of March 2017. Though the notice have been issued on 7/10/2016 but as it has been served on the assessee on 16/2/2017, we do not find any infirmity in the reopening proceedings. Accordingly we uphold the reopening of the assessment made by the learned holding that assessee has e been served notice u/s 148 of the Act in time.

022. Coming to the next argument of the learned authorised representative that the assessee has not been served the notice as there was no reference that notice u/s 148 of the act on



16/2/17 have been served on whom., In view of our above finding that the signature placed on the above notice as well as the signature of the assessee completely matches, we are of the opinion that notice u/s 148 of the act has been served on the assessee himself on 16/2/2017.

023. Coming to the other aspect of the reopening of the assessment where the assessee has challenged that the approval was mechanical; we find that the reasons recorded by the learned AO remain unassailed. The learned authorised representative could not show that there is any infirmity in the reasons recorded. The satisfaction has been recorded by the learned principal Commissioner of income tax as per performa at serial number 12 has clearly recorded his satisfaction which shows that he has gone through the reasons recorded by the learned assessing officer and then he is satisfied with the proposal of issuing notice u/s 148 of the income tax act and thereafter he granted his approval. Naturally, when reasons recorded are sound enough to stand on its own legs, clear, unassailable, manner or language of recording approval does not matter much. More so, as there is no specific manner and language of recording such approval prescribed by law, therefore approval granted if shows application of sound mind, deserves to be upheld. All decision cited before us shows flawed reasons and consequently approval also failed. In view of this, we are not in agreement with the argument of the learned authorised representative that the approval granted



by the learned principal Commissioner of income tax is cryptic and does not show application of mind.

024. Accordingly, ground number 1 of the appeal of the assessee is dismissed.

025. Now we come to the issue of merits and quantum of addition. The revenue has challenged the deletion of addition partly by the learned CIT Appeals raising five grounds of appeal whereas assessee in his appeal has challenged it as per ground number 2 of the appeal. On careful perusal of the information submitted before us, it is undisputed that assessee is engaged in business of trading of iron and steel products in the name of his proprietary concern M/s High-Tech Engineers. Assessee has maintained regular books of accounts, which are audited under the provisions of Section 44AB of the act. Assessee has also maintained quantitative details. During the year assessee has dealt in sheets and coils and MS plates of 92,84,983 kg of purchases amounting to ₹ 1,061,649,351/- and same number of quantity is sold for Rs. 106,53,63,184/- earning the gross profit of 0.35% and net profit of 0.02% thereon. Allegation shows that assessee has purchased material from four different parties who are Hawala traders amounting to ₹ 262,558,657/-. Assessee has shown that purchases from Messer's Candy filters (Bombay) private limited was of 4,57,756 kg amounting to ₹ 52,158,790/-, equivalent quantity has been sold to Bill Power Ltd at ₹ 52,206,397/-. Similarly 4,51,009 kg were purchased from City base multitrade private limited



for ₹ 56,305,275/-, same quantity has been sold to Bill Power Ltd at ₹ 56,352,178/-. Quantity of 7,30,206 kg were purchased from Real Stone Exports Private Limited for ₹ 99,509,474 which was also sold to Bill Power Ltd for ₹ 99,585,419/- and 4,56,580 kg purchased from Siddhipad trading private limited for ₹ 54,585,118 was sold to Bill Power Ltd for Rs. 5,46,37,575/- . Accordingly the bogus purchases were debited in the books of account for ₹ 262,558,659 which have been sold for Rs. 26,27,81,569/- resulting into already credited gross profit in the books of account of ₹ 2,22,910/- of gross profit at 0.09%. Assessee has demonstrated the above transaction is with respect to the identical purchases transactions from above 4 parties and sale of the same quantity of material to bill Power Ltd. Copies of the purchase bill from above 4 parties as well as the copies of the sale bills to bill Power Ltd were also placed on record. The amount of purchase consideration paid to above 4 parties are through account payee cheques and the sale consideration received by assessee from bill Power Ltd is also through account payee cheques. As held by the honourable Bombay High Court in case of principal Commissioner of income tax versus Muhammad Haji Adam and Co and others in ITA number 1004 of 2016 dated 11/2/2019 that when compared the purchases and sale statement of the assessee, revenue accepted the sale, there is no reason to reject the purchases because without purchases there could not have been sale of goods. As the fact of purchases from hawala parties is not

disputed, the additions limited to the extent of bringing the gross profit rate on purchases at the same rate of other genuine purchases were upheld. In the present case, the gross profit rate on total purchases of ₹ 1,064,411,721 at the rate of 0.35%. Respectfully following the decision of the honourable Bombay High Court the addition that could have been made in the hands of the assessee is tabulated as Under:-

particulars	computation of total gross profit amount	computation of gross profit of regular trade	computation of gross profit of hawala trading
Sales	106,53,63,184	80,25,81,615	26,27,81,569
Purchases	106,16,49,351	79,90,90,694	26,25,58,657
Gross profit	37,13,833	34,90,921	2,22,912
Gross profit percentage	0.35%	0.43%	0.09%
Balance addition required to be upheld on account of how will a trading to bring eight at 0.43% Less already disclosed			9,06,090

026. Therefore, respectfully following the decision of the honourable Bombay High Court further addition of only ₹ 906,090/- can be upheld in the hands of the assessee. Therefore, the action of the Id AO in making addition of 00 % of Bogus purchase as well as action of Ld CIT (A) in retaining 12.5 % of Bogus purchases cannot be sustained.



027. The learned departmental representative vehemently supported the order of the lower authorities and relied upon the decision of the honourable Supreme Court in case of [2017] 84 taxmann.com 195 (SC) wherein 25% of the addition to the purchases on account of bogus purchases were upheld. In that, particular case the 25% of the quantum was determined based on the element of excise duty and sales tax and other taxes on oil purchased by that assessee and tribunal concluded that the purchase price of the appellant would be 25% less than the market price. In the present case, there is no such element as the details tabulated by the assessee clearly shows that Maharashtra state VAT has been collected by the assessee at the time of sale and also paid to the sellers at the time of purchases. There is no dispute that the state VAT has not been retained by the assessee. Therefore, the decision relied upon by the learned DR of the honourable Supreme Court has distinguishable facts.
028. The learned departmental representative further relied upon the decision of the honourable Delhi High Court in case of CIT Vs La Medica [2001] 117 Taxman 628 (Delhi)/ [2001] 250 ITR 575 (Delhi) however, in that decision it was not the case that the material purchased by the assessee has been sold to the third party and sales has been accepted by the revenue. In that case, raw material was purchased by the assessee and there was no correlation with the corresponding sales.



029. The learned departmental representative further relied upon the decision of the honourable Delhi High Court in case of CIT versus Arun Malhotra 2014] 47 taxmann.com 385 (Delhi) where the purchases were held to be bogus then the addition was deleted, honourable High Court sent matter back to the coordinate bench to decide afresh after considering all the material. Therefore, factually there was no guidance available that how much addition should have been upheld in that particular case.
030. Coming to the last decision in the case of Vijay Proteins Ltd [2015] 58 taxmann.com 44 (Gujarat) where 25% of purchases were held to be income of the assessee for the reason of bogus purchases of raw material and there was no corresponding sales of the same raw material but of finished goods. Therefore, the above judicial precedent does not help the case of the revenue.
031. In view of the above facts and the decision of the honourable Bombay High Court on identical facts and circumstances, we direct the learned assessing officer to retain the addition in the hands of the assessee on account of the bogus purchases of ₹ 906,090 against the addition confirmed by Id CIT (A) of ₹ 32,819,832/-. Accordingly, ground number 2 of the appeal of the assessee is partly allowed.



032. In view of our decision in the ground number 2 of the appeal of the assessee the ground number 1 – 5 of the appeal of the learned assessing officer do not survive and hence dismissed.
033. In the result, appeal filed by the assessee is partly allowed and appeal filed by the learned assessing officer is dismissed.

Order pronounced in the open court on 22.03.2022.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.03.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai