

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1598/Mum/2021

(A.Y: 2011-12)

Shri Rohinton Cyrus Malesra A-201, Simla House, Opp L.D.Ruparel Marg Nepean Sea Road, Mumbai – 400026.	Vs.	ITO – 19(3)(1) Matru Mandir, Tardeo Mumbai – 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPM5502K		
Appellant	..	Respondent

Appellant by :	Shri Anil Gala.AR
Respondent by :	Shri Pavan Kumar Beerla.DR

Date of Hearing	21.03.2022
Date of Pronouncement	24.03.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-30, Mumbai passed u/s 147 r.w.s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

*Disallowance of bogus purchases*

1) *The learned Commissioner of Income Tax (A) erred in confirming addition of Rs. 260449 being 100% of*

*purchases from Newspark Trading Co. Pvt. Ltd. and Nakoda Marbles treating this as bogus/non-genuine purchases on surmises and conjunctures.*

*2) The learned CIT(A) erred in confirming the addition though*

*a) The learned ITO has not given for rebuttal the document/information received from sales tax department and relied upon by him for making addition.*

*b) The learned ITO has not allowed cross examination of the supplier whose statement is relied upon by him for making addition.*

*c) The material purchased from Newspark Trading Co. Pvt. Ltd. and Nakoda Marbles has been sold and profit thereon is offered to tax.*

*Reopening of Assessment*

*3) The learned CIT(A) erred in confirming the reopening of the assessment u/s. 147 and issuing notice u/s. 148 of the Income Tax Act, 1961 merely based on information received from sales tax department without forming independent belief with regard to escapement of income.*

*Other ground*

*4) The Appellant craves, leave to add to, amend, alter or withdraw any of the above grounds of appeal before or at the time of hearing of the appeal, if necessary.*

*5) In support we are here by attached ITAT Order ITA NO. 4752/Mum/2018 dated on 02/12/2019 (A.Y. 2010-2011) where tribunal has consider disallowance of 12.5% of Jjogus purchases, supported from Hon'ble jurisdictional high court decision in case of nikunj eximp enterprises. In this case the Honbie high court upheld 100% allowances for the purchases said to be bogus when sales are not doubted.*

2. The Brief facts of the case are that the assessee is engaged in the business of interior construction and housekeeping services. The assessee has filed the return of income on 29.09.2011 disclosing a total income of Rs. 22,99,801/-.The return of income was processed u/s 143(1) of the Act. The A.O has received information from the DGIT(Inv) Mumbai that the assessee has obtained the bogus purchase bills from two parties namely Newspark Trading Co. Pvt Ltd of Rs. 2,19,082 and Nakoda Marples of Rs. 41,367/-.Hence the A.O. has reason to believe that there is a income escapement assessment and issued notice u/s 148 of the Act. Subsequently, notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance to the notices the Ld. AR of the assessee appeared from time to time and furnished the details. During the course of assessment proceedings the assessee was asked to produce the details of purchases along with name, address TIN No and amount debited in the profit and loss account. The assesee has filed the requisite details and on perusal of the information, the A.O was not satisfied with the genuineness of the transactions and rejected the books of account U/sec 145(3) of the Act and made 100% addition of non genuine purchases of Rs.2,60,449/- and assessed the total income

of Rs.25,60,250/- and passed the order u/s 143 r.w.s 147 of the Act.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A).The CIT(A) considering the grounds of appeal, findings of the A.O, has confirmed the addition made by the A.O and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT (A) has erred in confirming the action of the A.O. overlooking material facts and evidences filed in support of the transactions. Contra the Ld. DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material available on record. The sole disputed issue is in respect of addition of bogus purchases made by the A.O. and confirmed by the Ld.CIT(A). We find on perusal of the Assessment Order, the Assessing Officer has made addition 100% addition of purchases in respect of parties and also there is no proper compliance to the notices. Whereas the assessee has made bogus purchases from the dealers and in turn it provides savings to the assessee in nonpayment of state taxes. We considered the facts and circumstances and the decisions of the Honble Tribunal in the identical cases and the judicial

precedence were estimating the profit element embedded @ 12.5% of bogus purchases was accepted. We find that the assessing officer has not doubted the sales but made 100% addition of purchases. We rely on the ratio of decision of Hon'ble Jurisdictional High Court in the case of CIT v. Nikunj Eximp (216 Taxman.com 171). Accordingly, we restrict the addition to the extent of 12.5% of the bogus purchases and modify the Ld.CIT(A) order sustaining the addition @ 12.5% of purchases and partly allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24.03.2022.

Sd/-  
(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated 24.03.2022

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai