

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

**BEFORE SHRI AMARJIT SINGH, JM AND AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No. 5738/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

ACIT 5 <sup>th</sup> Floor, Room No.506, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	Jasmino Polymertech Pvt. Ltd. L-61, MIDC Industrial Area, Taloja, Raigad, Maharashtra- 410208.
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Cross Objection No.41/Mum/2021

आयकर अपील सं/ I.T.A. No. 5738/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

Jasmino Polymertech Pvt. Ltd. L-61, MIDC Industrial Area, Taloja, Raigad, Maharashtra- 410208.	<b>बनाम/</b> Vs.	ACIT-6(3)(1) 5 <sup>th</sup> Floor, Room No.506, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ5175G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Ujjawal Kumar
Assessee by:	Shri Devendra Jain

सुनवाई की तारीख / Date of Hearing: 19/01/2022

घोषणा की तारीख /Date of Pronouncement: 08/03/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The Revenue as well as assessee have filed the above mentioned appeal as well as cross-objection against the order dated 21.05.2019 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.



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2. The revenue has raised the following grounds: -

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the Assessing Officer to disallow 12.5% of the bogus purchases rather than the whole of such purchases amounting to Rs.10,36,723/-”.*

2. *“On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in directing the Assessing Officer to disallow 12.5% of the bogus purchases rather than the whole of such purchases without appreciating that such allowance of 87.5% of expenditure imply allowance of purchases made in cash from the ‘grey’ market, thereby rendering the provisions of section 40(A)(3) of the Income Tax Act, 1961 totally redundant which could not have been the intention of the statute.”*

2. *“On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in failing to abide by the landmark decision of Hon'ble Supreme Court in the case of N.K. Proteins Ltd dtd 16/01/2017 wherein the Hon'ble Supreme Court has confirmed the addition of 100% of the bogus purchases”.*

4. *“On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in deleting the quantum addition to the extent of Rs. 9,07,133/- made by the AO on account of bogus bill purchases from seven parties by not appreciating that the assessee had failed to produce the parties/furnish the confirmation of transaction with the purchase parties/transporters and also failed to establish that delivery of goods has actually taken place.”*



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5. *“On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in restricting the quantum addition ignoring that the information on account of bogus purchases is received from the external agency that the assessee had received accommodation entry from such parties.” Though the tax effect in this case is Rs.2,80,303/- of the Board Circular 17/2019 dtd 08/08/2019, however this appeal has been filed because it is covered by exception mentioned in para 10(e) of the CBDT Circular No. 3/2018 dt 11-7-2018 as subsequently clarified by Board letter dtd 20/08/2018 vide no. 279/misc./142/2007-ITJ (Pt.) which is effective as on date.*

6. *The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.*

7. *The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 14.10.2010 declaring total income to the tune of Rs.52,92,043/- for the A.Y.2010-11. The return was processed u/s 143(1) of the I. T. Act. Thereafter, the case of the assessee was reopened on the basis of information received from the DGIT (Inv.), Mumbai and subsequently from the Sales Tax Department, Mumbai in which it was conveyed that the assessee has taken the bogus purchase entry from the following seven parties: -

<i>Sr. No.</i>	<i>Name of concerns</i>	<i>Amount (Rs.)</i>
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1	<i>Siddhivinayak Steel</i>	3,63,333
2	<i>Chanchal Tube Corporation</i>	2,27,932
3	<i>Asian Steel</i>	99,320
4	<i>Surat Tube Corporation</i>	1,01,348
5	<i>Shriti Enterprises</i>	1,49,474
6	<i>Kotsons Impex Pvt. Ltd.</i>	70,252
7	<i>Riddhi Siddhi Impex (India)</i>	25,064
	<i>Total</i>	10,36,723

Thereafter, the case of the assessee was reopened u/s 147/148 of the Act. Necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Thereafter, the necessary notices u/s 133(6) of the Act were issued to the concerns parties which were received back unserved. Thereafter, the AO raised the addition of bogus purchase to the tune of Rs.10,36,723/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 12.5% but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

**4.** All the issues are in connection with the restriction of the addition to the extent of 12.5% of the bogus purchase. The contention of the revenue is that the 100% bogus purchase is liable to be added in the income of the assessee. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

*“5.2. I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO held in the*



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*assessment order that the appellant produced the details with regard to purchases made and filed copies of purchases invoices, ledger account of parties, stock register and also the bank statement showing the each and every payment for purchases. It is noticed that on account of non-production of suppliers and brokers, transportation bills etc. the AO added 100% as non-genuine purchases. It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO, one cannot conclude that the purchases were not made by the assessee. In the case of Nangalia Fabrics 40 taxmann.com 206, Gujarat High Court has held that where purchases were supported by the bills, entries were made in the books of accounts and payment was made by cheque, the said purchases could to be held as bogus. I agree with the contentions of the Ld. AR. that there are many decisions wherein the ITAT, Mumbai, has upheld addition of a percentage of alleged bogus purchases under similar facts. Apart from the cases cited by the AR, in the following decisions also the ITAT, Mumbai, has upheld estimation out of alleged bogus purchase instead of addition of total purchases.*

- 1. Salim EbrahimPetuqK Vs. ITO 17(3)(2) ITA. No. 4772/Mum/2017*
- 2. Tubes India Vs. ACIT Circle 19(3) ITA. No.2230 to 2232/Mum/2016*
- 3. The ACIT 19(2) Vs. M/s. Nocil Steels ITA. No.4505/Mum/2015*
- 4. Satish R. Rathod Vs. ITO 15(3)(1) ITA. No.567/Mum/2016*
- 5. Vinod H. Sanghvi Vs. DCIT 15(2)(Old) ITA. No.125 to 127/Mum/2016*



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6. *M/s. Pentagon System and Services Pvt. Ltd. Vs. DCIT (OSD) Cir 2(3) ITA. No. 4804/Mum/2016*

7. *Turnkey Glass Fibre Vs. DCIT 2(2) ITA. No.1520/Mum/2017*

8. *Montex Glass Fibre v/s. DCIT 2(2) ITA No 1520/Mum/2017*

9. *R.A. Industrial Metals v/s. ITO 14(1)(1) ITA No 1850/Mum/2015*

10. *Mehul K. Mehta v/s. ITO 15(1)(3) ITA No 3227/Mum/2016*

11. *Nangalia Fabrics P Ltd 40 taxmann.com 206 (Guj)*

12. *PCIT vs Tejua Rohitkumar Kapadia SLP No. 12670/2018 (SC)*

*5.3 Further, this is also not case where signed blank cheque books are found with the buyer to hold that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore, the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. Therefore, the saving on account of VAT and other incidental charges made' by the appellant on the said bogus purchases can be brought to tax as additional profit. In the case of CIT vs. Simit P Sheth, 356 ITR 451, Hon'ble Gujarat High Court has upheld estimation @ 12.5% of alleged bogus purchases by holding as under:*

*"If the payments to the abovementioned parties are made through cheque and the subsequent sales made have been accepted in total by the assessing officer, then it can be concluded that purchases have been made from persons in the open market. That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee."*



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*5.4 Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12.5% of such purchases. Therefore, the AO is directed add 12.5% of Rs.10,36,723 working out to 1,29,590 and modify the addition accordingly. Appellant gets part relief. This ground is partly allowed.*

*6 Ground No. 6 relates to levying interest u/s.234B & C of the Act. The levy of interest is mandatory as held by the Hon'ble Supreme Court in the case of CIT V Anjum M H Ghaswala (2001) 252 ITR 1 (SC). Hence, the contention of the appellant cannot be considered to be legally tenable. Therefore, the ground of appeal is dismissed.*

*7 In Ground No. 7 the assessee contested initiation of penalty u/s 271(1)(c). AO while passing the order has only initiated penalty. There cannot be a grievance against initiation of penalty and the ground of appeal is premature. Therefore, this ground of appeal is dismissed.*

*8. The next ground of appeal is that the appellant craves leave to add, to alter, or amend or with draw any of the grounds of appeal. No such option has been exercised by the appellant during the appeal proceedings. Therefore, this ground of appeal is dismissed.”*

**5.** On appraisal of the above mentioned finding, we noticed that the CIT(A) has restricted the addition to the extent of 12.5% on the basis of the decision in the case of **Tubes India Vs. ACIT Circle 19(3) ITA. No.2230 to 2232/Mum/2016 & CIT Vs. Simit P. Sheth (2013) 38 Taxmann.com 385 (Guj) etc.**, which have been discussed above while deciding the issue. The CIT(A) has also kept in mind about the profit embedded in the bogus



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purchase. The addition has been restricted on the basis of the above mentioned law which nowhere seems unjustifiable. Taking into account 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 affirm the finding of the CIT(A) on this issue and decide this issue in favour of the assessee against the revenue.

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

### **Cross Objection. 41/Mum/2021**

6. Since the matter of controversy has been adjudicated while deciding the ITA. No.5738/Mum/2019 for the A.Y. 2010-11, therefore, in the said circumstances, the matter of controversy raised in the present cross-objection has become infructuous, hence, is not required to be adjudicated and is dismissed.

7. In the result, the appeal filed by the revenue is hereby dismissed and cross objection filed by the assessee is hereby dismissed.

Order pronounced in the open court on 08/03/2022

Sd/-

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 08/03/2022

*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)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**