

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI**  
**BEFORE SHRI S. RIFAUZ RAHMAN, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. Nos. 4352 to 4354/Mum/2016  
(निर्धारण वर्ष / Assessment Years:2009-10, 2010-11 & 2011 -12)

Mr. Himanshu Vasantrai Doshi HUF 29/CC/4, Ambika Apartment, Nahur Road, Survodaya Nagar, Mulund (W), Mumbai-400080.	<b>बनाम/</b> Vs.	ITO-23(2)(3) 1609, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
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आयकर अपील सं/ I.T.A. Nos. 3688 to 3690/Mum/2016  
(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12)

ITO-29(1)(4) C-10, 1 <sup>st</sup> Floor, Pratyaksha Kar Bhavan, BKC, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	Mr. Himanshu Vasantrai Doshi HUF 29/CC/4, Ambika Apartment, Nahur Road, Survodaya Nagar, Mulund (W), Mumbai-400080.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHH6248D

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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Assessee by:	Shri Bhupendra Shah
Revenue by:	Shri Shambhu Yadav

सुनवाई की तारीख / Date of Hearing: 11/01/2022  
घोषणा की तारीख /Date of Pronouncement: 02/03/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH (JM):**

The assessee as well as revenue have filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -40, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2009-10, 2010-11 & 2011-12.

**ITA. NO.4352/Mum/2016**



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

2. The assessee has filed the present appeal against the order dated 21.03.2016 passed by the Commissioner of Income Tax (Appeals) -40, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

3. The assessee has raised the following grounds: -

*"a. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in co pig an addition of Rs. 48,43,566/- by arbitrarily estimating the additional Gross profit @ 20% of Turnover as against 6.55 % already offered to tax by the Appellant.*

*b) The appellant submit that he had been engaged in trading of the electrical goods, and Gross profit @ 5.98% have been assessed w/s 143(3) by ITO in AY 2007-08.*

*1. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in confirming an addition of Rs. 48,43,566/- Just on relying the investigation carried by the third party i.e. sales Tax Department in respect of the Hawala dealers and its beneficiaries.*

*2. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in confirming an addition of Rs. 48,43,566/- by denying the fact that the stock register showing back to back transactions of purchases and sales & record showing movements of goods produced before the CIT) for verification which was already in the record of the AO.*

*3. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in confirming an addition of Rs. 48,43,566/-*



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

*by just observing that the appellant could not produce the suppliers for verification.*

*4. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in confirming an addition of Rs. 48,43,566/- by invoking the section 69C of the Income tax Act, 1961.*

*5. The Learned Commissioner of Income Tax (Appeals) has erred in law and facts on records in confirming an addition of Rs. 48,43,566/- by not appreciating the fact that no sales could take place without first making the purchases.*

*The appellant prays that the appeals prayed for be admitted and allowed and additions confirmed by the CIT (A) be deleted. The appellant craves leave to add, to alter or to amend any of the grounds of appeal at or before the time of hearing.”*

**4.** The brief facts of the case are that the assessee filed his return of income on 22.10.2007 declaring total income to the tune of Rs.3,62,509/-. The return was processed u/s 143(1) of the Act. The return was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of trading in Industrial Electrical Goods, Cables etc. The total turnover declared by the assessee was to the tune of Rs.2.26 crores. The gross profit was declared to the tune of Rs.13.51 lacs being 5.98% of the sales. The net profit was shown to the tune of Rs.4.39 lacs. The return was accepted as returned by assessee. Thereafter, the case of the assessee was again reopened by issuance of notice u/s 147 of the Act on the basis of information received about the accommodation entry of the different purchase to the tune of Rs.2,42,17,832/-. The AO raised the addition to the extent of Rs.



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

2,42,17,832/- assessing the total income to the tune of Rs.2,48,32,240/-.  
Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 20% of the bogus purchases but the assessee was not satisfied, therefore, the assessee has filed the present appeal before us.

5. All the issues are in connection with the restriction of addition to the extent of 20% of the bogus purchase. The contention of the Ld. Representative of the assessee is that the restriction of the bogus purchase should be restricted to the extent of G.P. ratio i.e. 5.98% of the bogus purchase. However, on the other hand, the Ld. Representative of the revenue has argued that the whole bogus purchase is liable to be added to the income of the assessee in accordance with law. The Hon'ble Bombay High Court in the case of **PCIT Vs. M. Haji Adam & Co. (ITA. No. 1004 of 2016 dated 11.02.2019)** has held as under: -

*“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the*



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

*purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.I. rate on purchases at the same rate of other genuine purchases.*

*The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same judgment the Court held and observed as under*

*“So far the question regarding addition of Rs.3,70,78,125/- as gross profit on sale of Rs.37.08 crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during F.Y. 1997-98 is concerned; we are of the view that the assessee be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125% which comes to Rs.20,98,621.88 we think if fit to direct the revenue to add Rs.20,98,621.88 as gross profit and made necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”*

6. Hon'ble Bombay High Court has restricted the addition to the extent of G.P. Ratio as declared by assessee in his books of accounts. In the instant case the sale is not disputed and the assessee has declared the G.P. ratio @ 5.98% which has been shown in the assessment order dated 25.11.2009 on



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

the file. Applying the ratio determined by jurisdictional high court in the case of **PCIT Vs. M. Haji Adam & Co. (ITA. No. 1004 of 2016 dated 11.02.2019)** mentioned above, we restrict the addition are to the extent of 6% of the bogus purchase i.e. 2,42,17,832/-. Accordingly, we decide this issue in favour of the assessee against the revenue.

**ITA. Nos. 4353 & 4354/Mum/2016 & ITA. No.3688 to 3690/Mum/2016**

7. All the appeals are having similar matter of controversy, therefore, the decision in the case bearing ITA. No.4352/Mum/2016 would be applicable as mutatis and mutandis in all the cases. Accordingly, we partly allowed the appeals of the assessee and dismissed the appeals of the revenue.

8. In the result, the appeals filed by the assessee are hereby partly allowed and the appeals filed by the revenue are hereby dismissed.

Order pronounced in the open court on 02/03/2022

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 02/03/2022

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No.4352 to 4354/Mum/2016  
3688 to 3690/M/2016  
A.Y. 2009-10 to 2011-12

**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**