

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND  
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 2274/MUM/2021  
Assessment Year: 2010-11**

ITO-20(3)(1),  
Room No. 622, 6<sup>th</sup> floor,  
Piramal Chamber,  
Lalbaug,  
Mumbai-400012.

**Appellant**

Shri Ram Ujagir Ram Sabda  
Pandey,  
**Vs.** 238/5, Sethia Compound  
Kolsa Bunder, Darukhana  
Reay Road,  
Mumbai-400010.

**PAN No. AGUPP3934C  
Respondent**

Revenue by : Ms. Samruddhi Hande, DR  
Assessee by : None

Date of Hearing : 23/05/2022  
Date of : 26/05/2022  
pronouncement

**ORDER**

**PER PAVAN KUMAR GADALE, JM**

The Revenue has filed an appeal against the order of National Faceless Appeal Centre (NFAC) order passed u/s 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (in short 'the Act'). The Revenue has raised following grounds:

1. *On the facts and in the circumstances of the case, and in law, the Ld. CIT(A), erred in restricting the addition on account of bogus purchase to 12.5% of total bogus purchase ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders where involved in providing accommodation entry of purchase and the assessee was one of the beneficiary of accepting accommodation entries for the purchase.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee had failed to produce parties for verification, inspite of opportunity provided by the assessing officer.*
3. *This appeal filed because it is covered under the exception provided in para 10(e) of the CBDT Circular No. 3 of 2018 dated 11.07.2018 as amended vide F. No. 279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018.*

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of trading in Iron & steel items. The assessee has filed the return of income for A.Y.2010-11 electronically on 26.09.2010 disclosing a total income of Rs.3,64,030/- and the return of income was processed u/s 143(1) of the Act. Whereas the Assessing

Officer received information from the office of DGIT(Inv), Mumbai that the the assessee is a beneficiary of obtaining bogus bills as per the information from Maharashtra Sales Tax Authorities. The A.O. found that the assessee has obtained the purchase bills from six parties aggregating to Rs.38,21,094/-. The Assessing Officer has reason to belief that the income has escapement assessment and issued notice u/s 148 of the Act. In response to notice, the assessee has filed letter dated 10.08.2017 to treat the return of income filed on 26.09.2010 as due compliance to the notice. Subsequently, notice u/s 143(2) and 142(1) of the Act was issued and the Ld. AR of the assessee appeared from time to time and furnished details and the case was discussed. The A.O. has called for the details on genuineness of the purchase transactions and issued notice u/s 133(6) of the Act. Whereas the notices were returned 'un-served' by the postal authorities with a

remark 'left/not known'. The A.O. has issued the show cause notice on the assessee to provide the evidence and substantiate the genuineness of the purchases with supporting material of stock register, delivery challans and lorry receipts etc. But the Assessing Officer observed that the details submitted are not properly supported with the material evidence and genuineness of the purchase transactions is doubted and made addition of purchases of Rs.38,21,094/- u/s 69C of the Act and assessed the total income of Rs.41,85,120/- and passed the order u/s 143(3) r.w.s. 147 of the Act dated 21.03.2017.

3. Aggrieved by the A.O. order, the assessee has filed an appeal before the Ld. CIT(A). In appellate proceedings, the Ld. CIT(A) has considered the grounds of appeal, findings of the Assessing Officer in scrutiny assessment on the disputed issue. Finally, the Ld. CIT(A) considered the

judicial decisions and restricted the addition to 12.5% of bogus purchases and partly allowed the appeal. Aggrieved by the Ld. CIT(A) order, the Revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in restricting the addition to 12.5% irrespective of facts that no proper information was filed in the Assessment proceedings. None appeared on behalf of the assessee.

5. We heard the Ld. DR submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has restricted the addition to the extent of 12.5% of the bogus purchases considering profit element embedded. We found that the CIT(A) has dealt on the facts and considered the Hon'ble High Court/Honble Tribunal decisions and took a view.

Further, We find the Jurisdictional Honble High Court in the case of Pooja Paper Trading Co. Vs. ITO, (104 taxmann.com 95) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451) has upheld the disallowance restricting profit element on such purchases.

6. We find that the Ld.CIT(A) took a reasonable view that the only profit percentage has to be added and estimated @ 12.5% of bogus purchases. The Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material to take a different view and relied only on the A.O order. We are of the opinion that the CIT(A) dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales. The Ld.CIT(A) has relied on the decisions of Hon'ble High Court and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the

CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue.

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

**Order pronounced in the open Court on 26/05/2022.**

Sd/-

**(M. BALAGANESH))  
ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

Mumbai;

Dated: 26/05/2022

Rahul Sharma, Sr. P.S.

**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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**