

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 1727/MUM/2020  
Assessment Year: 2010-11**

Assistant Commissioner of Income Tax – 32(1), Mumbai, Room No. 702, 7 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	<b>Vs.</b>	M/s RPS Chirag NT (Consortium), 104/105, Gopal Puri, S V Road, Borivali (E), Mumbai - 400066 PAN: AAAAR7068J
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Bharat Andhle (DR)

Assessee by : Shri R. U. Jain (AR)

Date of Hearing : 08/04/2022

Date of Pronouncement: 01/06/2022

**ORDER**

**PER S. RIFAUR RAHMAN, AM**

This is an appeal by the revenue against the order dated 20.01.2020 of Ld. Commissioner of Income Tax (Appeals)-46, Mumbai for the assessment year 2010-11.

2. The return of income for assessment year 2010-11 declaring total income of Rs. 2,58,32,040/- was filed on 23.09.2010 and return of income was processed under Section 143(1) of the Act. Subsequently, proceedings under Section 147 of the Act were initiated after recording reasons. Accordingly, notice under Section 148 of the Act was issued and served on the assessee. The other notices under Section 143(2) and 142(1) of the Act were issued and

served on the assessee along with questionnaire. In response to the notices, AR of the assessee attended from time to time and filed the information as called for.

3. The assessee is engaged in the civil contractor for Government and Semi-Government Departments. The Assessing Officer received information from Sales Tax Department and DGIT (Investigation), Mumbai that the assessee has indulged in the transactions of bogus purchases, obtained bills from hawala parties who provide accommodation bills. During assessment proceedings, assessee has filed objections to the re-opening of the assessment and filed objections for treating the genuine purchases as bogus purchases. During assessment proceedings, the Assessing Officer observed that assessee has purchased from M/s Anmol Industries to the extent of Rs. 3,56,213/-. In order to verify the genuineness of purchases, the Assessing Officer issued notice under Section 133(6) of the Act on 14.09.2015 by Speed Post. The above said notices were returned unserved from Postal Department. The Assessing Officer has also deputed an Inspector to locate the address of the party and he reported that no such party exists. In view of the above facts, the Assessing Officer treated the above purchases are bogus purchases and proceeded to make 100% addition of bogus purchases. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and CIT(A) considered the detailed submissions of the assessee and restricted the disallowance @ 12.5% of the bogus purchases to the extent of Rs. 44,527/- with the following observations:

*“6.31 As narrated earlier, the Ld. A.O. in this case held that the parties from whom the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of Rs. 44,527/- being 12.5% of Rs. 3,56,213/-, of the purchases made from the bogus entities, as the*

*suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellant. Accordingly, this ground of appeal is party allowed.”*

3. Aggrieved with above order, revenue is in appeal before us arising following grounds of appeal:

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition’ to 12.5% on account of bogus purchases, without | appreciating the fact that the Sales Tax Department Maharashtra has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation for the purchases.”*
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 failed to produce the parties for verification, in spite of opportunity provided by the AO.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the ratio of the decision of Gujarat High Court in the case of N.K. Proteins Ltd. wherein it was confirmed that in the event of bogus purchases, the addition on the whole of such purchases was ‘required to be made and this particular ratio was confirmed by the Hon’ble Supreme Court in SLP No. CC No. 769 of 2017 dated 16.01.2017, by dismissing the SLP of that assessee.*
4. *On the facts and circumstances of the case, the Hon’ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT Circular No 17/2019 dated 08.08.2019 r.w. Circular No. 3/2018 dtd. 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10e of the said Circular in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities.*

5. *The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.*
6. *The appellant craves leave to amend or alter any ground or add a new ground.”*

4. Considered the rival submissions and perused the material placed on record. We observed from the record that assessee has purchased of Rs. 3,56,213/- from M/s Anmol Industries, not satisfied with the information submitted by the assessee, the Assessing Officer treated the above purchases from the M/s Anmol Industries as bogus purchase and has disallowed the same @ 100% treating the same as non-genuine. However, the Ld. CIT(A) observed that no doubt, assessee has purchased from such dealer. However, the Assessing Officer has not disputed the sale declared by the assessee and disallowed only the non-genuine purchases. Accordingly, he has disallowed @ 12.5% of the alleged bogus purchases. Therefore, we are in agreement with the Ld. CIT(A) that no doubt the above purchases are disputed. However, Assessing Officer cannot reject the purchases and accept the sales without there being purchases, even though from the grey market, the assessee would not have achieved sales. Therefore, we are inclined to agree with the findings of the Ld. CIT(A). The revenue raised Ground No. 1 & 2 that the Sales Tax Department has proved beyond doubt that these are non genuine transactions and parties not presented before AO are proved that these are non genuine purchases. We do agree with the proposition that these are non genuine but as explained above, without there being purchases, assessee would not have achieved sales. It is only inflated benefit in the transaction has to addressed, not the whole purchase value. Accordingly, appeal filed by the revenue is dismissed.

5. In the result, appeal is dismissed.

Order pronounced in the open court on 01.06.2022.

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 01.06.2022  
Alindra, PS

**आदेश 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.  
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai