

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.237/M/2022  
Assessment Year: 2010-11**

Shri Abbasbhai Fidahusein Bhartoo, 4 <sup>th</sup> Lane Darukhana, Mumbai – 400 010 <b>PAN: AACPB5695G</b>	Vs.	Asst. CIT, Circle- 20(1), Room No.615, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug, Mumbai – 400 012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jitendra Singh, A.R.  
Revenue by : Shri Ashish Kumar, D.R.

Date of Hearing : 04 . 07 . 2022  
Date of Pronouncement : 12 . 07 . 2022

**O R D E R**

**Per Kuldip Singh, Judicial Member:**

The appellant, Shri Abbasbhai Fidahusein Bhartoo (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 14.09.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2010-11 on the grounds inter alia that:

*"1. The Ld. National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "Ld. CIT(A)"] erred in passing the order dated 14.09.2021 without providing the Appellant an appropriate opportunity of being heard. Thus, the order passed by Ld.*

***CIT(A) is against the principals of natural justice and the same may be quashed.***

***2. The Ld. CIT(A) erred in confirming the action of the Ld. A. O. in making the addition of Rs.7,91,289/- treating the same as bogus purchases without appreciating the fact that the purchases were duly accounted in the books of the appellant. Hence, treating the purchases as bogus and thereby making addition of Rs.7,91,289/- under section 69C of the Act is unjustified and the same may be deleted.***

***3. The Ld. CIT(A) further erred in confirming the action of the Ld. A. O. in making the addition of Rs.7,91,289/- invoking the provisions of section 69C of the Act without appreciating that the Appellant has all the supporting documentary evidences in his possession to prove the purchases made during the impugned assessment year. Hence, the addition of Rs.7,91,289/- under section 69C of the Act is unjustified and the same may be deleted.***

***4. Without prejudice to the above the Ld. A. O. erred in making addition of Rs.7,91,289/- under section 69C of the Act merely on the basis of certain investigation carried out by the Sales Tax Department without providing the Appellant an opportunity to cross examine the department's witnesses. Thus, the addition of Rs.7,91,289/- is not at all justified and the same may be deleted.***

***5. The appellant denies any liability to pay interest under section 234B and 234C of the Act. Therefore, the same are not leviable.”***

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is engaged into the business of iron and steel. On the basis of information received from the Sales Tax Department through Director General of Income Tax (DGIT) (Investigation) Mumbai. It has come on record that the assessee has procured bogus purchase bill of Rs.31,65,157/- from Laxhmi Steel, then after recording reasons Assessing Officer (AO) initiated the proceedings under section 148 of the Income Tax Act, 1961 (for short ‘the Act’) by way of issuance of notice under section 142(1) read with section 129 of the Act. AO issued notice under section 133(6) to the parties from whom assessee had made alleged purchases. On failure of the assessee to furnish any third party

evidence to prove the genuineness of the purchases, the AO proceeded to make the disallowance @ 25% of the alleged purchases of Rs.31,65,157/- which comes to Rs.7,19,289/- and thereby framed the assessment under section 143(3) read with section 147 of the Act at the total income of Rs.32,21,860/-.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, entire assessment in this case has been framed by the AO on the basis of alleged information received from the Sales Tax Department. It is also not in dispute that during the assessment proceedings the assessee was called upon to prove the genuineness of the purchases by producing the parties. Both the AO as well as the Ld. CIT(A) have proceeded to make the addition qua alleged bogus purchases on the basis of estimation without bringing on record any evidence to substantiate these allegations.

6. In the backdrop of the aforesaid undisputed facts the Ld. A.R. for the assessee challenging the impugned order contended that addition in this case at the rate of 25% of the alleged bogus

purchases has been made on the basis of estimation which is not sustainable because sales in this case has not been disputed by the Revenue Authority; that in the iron and steel business being carried out by the assessee gross profit more than 8% cannot be made and relied upon the decision rendered by the Hon'ble Bombay High Court in the case cited as Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 and the decision rendered by the co-ordinate Bench of the Tribunal cited as M/s. Pavapuri Metals & Tubes vs. Income Tax Officer in ITA No.1148/M/2019 order dated 29.09.2020 and in the case of Ravindranathan Nair vs. Income Tax Officer in ITA No.2662/M/2018 order dated 31.12.2018.

7. In the identical facts and circumstances of the case where though the purchases found to be bogus by the Revenue Authorities but sales by the assessee have been accepted as genuine as against these bogus purchases, we are of the considered view that when sales have been accepted being genuine the entire purchases cannot be treated as non genuine to make addition of the entire bogus purchases amount. Hon'ble High Court of Bombay in the case of JK Surface Coatings Pvt. Ltd. (supra) upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:

***“4. Having considered the memo of Appeal and the Orders passed by AO / CIT(A) and the Order of ITAT, the only issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations***

*by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.*

*5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.”*

8. In view of what has been discussed above and following the order passed by the Hon'ble High Court and co-ordinate Bench of the Tribunal, we are of the considered view that in the light of the gross profit in the iron and steel business gross profit @ 10%, which is agreed by both the parties to the appeal, is ordered to be added on the bogus purchases of Rs.31,65,157/-. AO is directed to charge the assessee at the gross profit of 10% on the bogus purchases of Rs.31,65,157/-. Resultantly, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 12.07.2022.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 12.07.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.