

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1243/MUM/2020  
(Assessment Year: 2007-08)

ITA No. 1244/MUM/2020  
(Assessment Year: 2009-10)

ITA No. 1245/MUM/2020  
(Assessment Year: 2010-11)

ITA No. 1246/MUM/2020  
(Assessment Year: 2011-12)

ITA No. 1247/MUM/2020  
(Assessment Year: 2012-13)

&

ITA No. 1248/MUM/2020  
(Assessment Year: 2013-14)

Prashant Madhusudan Mahagaokar,  
803/804, Kasturi Towers,  
Opp. Red Cross Bhavan, L.B.S. Marg,  
Thane - 400602  
[PAN: AAWPM9226A]

..... Appellant

Deputy Commissioner of Income Tax,  
Central Circle 2, Thane,  
Aayakar Sadan, Bodhi Towers,  
Salisbury Park, Gul Tekdi, Pune - 411037

Vs

..... Respondent

Appearances

For the Appellant/ Assessee

Shri Subramanian

For the Respondent/Department

Shri Sanjay V. Deshmukh

Date of conclusion of hearing

09.06.2022

Date of pronouncement of order

25.08.2022

**ORDER**

**Per Bench:**

1. This is a batch of six appeals filed by the Appellant/Assessee for the Assessment Years 2007-08, 2009-10, 2010-11, 2011-12,

2012-13 and 2013-14. Except for the appeal for Assessment Year 2013-14 where regular assessment has been framed under Section 143(3) of the Act, for all the assessment years the assessments have been framed under Section 153A read with Section 143(3) of the Act sequent to a search action on the Appellant on 23.05.2012. The appeals involving identical issues arising from common factual matrix were heard together and are being disposed by way of common order.

**ITA No. 1243/Mum/2020 (Assessment Year 2007-08)**

2. We would first take up appeal for the Assessment Year 2007-08 preferred by the Appellant/Assessee against the common order dated, 19.11.2019, passed by the Ld. Commissioner of Income Tax (Appeals) - 11, Pune [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] dismissing six appeals including the appeal for the Assessment Years 2007-08 filed by the Appellant against the Assessment Order, dated 27.03.2015, under Section 153A read with Section 143(3) of the Act.
3. The Appellant has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) r.w.s. 153A of the act is invalid and bad in law.*

*2. On the facts and in the circumstances of the case and in law the learned C.I.T.(A) erred in dismissing the appeal and that too without appreciating fully and properly the facts of the case.*

3. *On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in upholding the action of the A.O. in making an addition of an amount of Rs. 5,39,547/- as disallowance of purchases."*

Appellant has also raised the following additional grounds of appeal vide letter dated 10.05.2022:

- “1. *On the facts and in the circumstances of the case & in law, the assessment order u/s 143(3) r.w.s. 153A of the I.T. Act, is invalid and bad in law.*
2. *Without prejudice to the grounds of appeal raised in Form No. 36 and on the facts and in the circumstances of the case and in law, the addition if any, to be made as disallowance of purchases could not be more than an amount of Rs. 1,18,080/- being the total purchases made from M/s D.M. Enterprises."*

4. The relevant facts, in brief, are that the Appellant was, at the relevant time, a director of SMC infrastructure Private Limited a company engaged in the business of civil construction and contract work. A search took place on the SMC Group on 23.05.2012 in which the Appellant was also covered. Consequent to the search action on the Appellant on 23.05.2012, notice under Section 153A of the Act was issued to the Appellant on 01.01.2013. In response to the same, the Appellant adopted the original return filed by the Appellant as one filed in response to notice issued under Section 153A of the Act. Vide order dated 27.03.2015, assessment under Section 153A read with Section 143(3) of the Act was framed on the Appellant at income of INR 27,37,396/- as against the returned income of 20,87,850/- after making addition of INR 5,39,547/- on account of bogus purchases.

5. Being aggrieved, the Appellant went in appeal before the CIT(A). The CIT(A), after taking into consideration the remand report dated 24.08.2018 and 05.09.2019 submitted by the Assessing Officer, dismissed the appeal.
6. The Appellant is now in appeal before us.
7. When the appeal was taken up for hearing the Learned Authorised Representative for the Appellant, relying upon the Ground No. 1 and Additional Ground No.1, submitted that during the course of search and search assessment no incriminating material whatsoever was found. Since the assessment for the Assessment Year 2007-08 stood completed and did not abate, no addition could be made in the absence of incriminating material as has been held in the following judgments by the Hon'ble Bombay High Court.
  - CIT – II, Thane Vs Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645 (Bom)
  - CIT Central –II, Mumbai Vs. Gurinder Singh Bawa 386 ITR 483 (Bom)
  - CIT Vs. SKS Ispat & Power Ltd. 398 ITR 584 (Bom)
8. Responding to the above, the Learned Departmental Representative vehemently contended that the Appellant has challenged the validity of the additions made on the ground of absence of incriminating material for the first time in appellate proceeding before the Tribunal and this ground was not raised before the CIT(A). Therefore, the ground raised by the Appellant must be rejected. In response to a query regarding the incriminating material, the Learned Departmental Representative placed on record letter dated 01.06.2022 received from Additional

Commissioner of Income Tax, Central Range Thane and on the basis of the same submitted that a search was conducted on SMC Group. The Appellant was a director of SMC Infrastructure Private Limited and was subjected to search. During the search at the premises of SMC Infrastructure Private Limited, at Akurti Building, Near Khopat, ST Depot, Thane (W) bills were found wherein steel has been shown as purchased but not delivered at the respective project site. Further, ledger extracts of steel suppliers, i.e., M/s Heena Enterprises and M/s D.P. Steel Traders (for purchase of amounting to INR 5,31,117/- for F.Y. 2010) were also found. Accordingly, list of the following suspicious vendors found in the case of SMC Infrastructure Private Limited was prepared:

Sr. No.	Name of the Hawala Vendors	Amounts of Purchases (Amounts in Lakhs)
1	D.P. Steel Traders	5.31
2	Dipen Trading Company	44.01
3	J.K. Ispat	11
4	Liberty Steel Processors	93.57

On the strength of the above facts, the Learned Departmental Representative submitted that addition was based on the material impounded during the course of the search and therefore, the contention of the Appellant that the additions are liable to be deleted in absence of incriminating material is liable to be rejected.

9. We have heard the rival submissions and perused the material on record.
10. As per the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT: 229 ITR 383 (SC), and keeping in view the facts and circumstances of the case, we admit the additional grounds raised by the Appellant as the same

are legal in nature and arise from the facts which are already on record.

11. As rightly pointed out by the Learned Authorised Representative for the Appellant, the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. [*supra*] has held that no addition can be made in respect of unabated assessments which have become final in absence of any incriminating material found during search. The aforesaid view stands approved by the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society and Others vide judgment dated 29.08.2017 in Civil Appeal No. 11080 of 2017, reported in 397 ITR 344 (SC). We note that the material relied upon by the Revenue was found during search on SMC Infrastructure Private Limited and not during search on the Appellant. Such material has a bearing on the assessment of income in the hands of the SMC Infrastructure Private Limited. The Appellant was director of the SMC Infrastructure Private Limited and was subjected to a separate consequential search on the same day (i.e. 23.05.2012). The assessment has been framed on the Appellant under Section 153A of the Act (and not under Section 153C of the Act). The Assessment Order, dated 27.03.2015, passed under Section 153A read with Section 143(3) of the Act also makes no reference to incriminating material. There was no incriminating material found during the search/assessment proceedings qua the Appellant. Thus, in view of the aforesaid judgment of the Hon'ble Bombay High Court and the Hon'ble Supreme Court, we set aside the order of the CIT(A) to the extent it confirms the additions for the Assessment Year 2007-08, and delete the addition of INR 5,39,547/- made by the

Assessing Officer. Ground No. 1 and Additional Ground No. 1 raised by the Appellant are allowed. In view of the aforesaid, Ground No. 2&3 as well as Additional Ground No. 2 are disposed off as being infructuous.

12. The appeal preferred by the Appellant/Assessee for the Assessment Year 2007-08 (i.e. ITA No. 1243/Mum/2020) is allowed.

**ITA No. 1244/Mum/2020 (Assessment Year 2009-10).&  
ITA No. 1245/Mum/2020 (Assessment Year 2010-11)**

13. In these appeals the Appellant has raised grounds identical to those raised for the Assessment Year 2007-08 reproduced in paragraph 3 above. It is admitted position that as was the case for the Assessment Year 2007-08, the assessments for the Assessment Year 2009-10 and 2010-11 were also completed/final and did not abate. Further, the order of the CIT(A) dismissing the appeals of the Appellant/Assessee for Assessment Year 2007-08, 2009-10 and 2010-11 is a commons order. Facts and issues being identical, our findings in paragraph 10 and 11 above in appeal for Assessment Year 2007-08 shall apply mutatis mutandis to the present appeals. Accordingly, we set aside the order of the CIT(A) to the extent is confirms additions for the relevant assessment years and delete the addition of INR 4,49,848/- and INR 17,97,137/- made by the Assessing Officer for the Assessment Year 2009-10 and 2010-11, respectively.

14. In view of the above, Ground No. 1 and Additional Ground No. 1 raised by the Appellant in the respective appeals are allowed. Ground No. 2&3 as well as Additional Ground No. 2 raised in the respective appeals are disposed off as being infructuous. The

appeals preferred by the Appellant/Assessee for the Assessment Year 2009-10 and 2010-11 (i.e. ITA No. 1244&12445/Mum/2020) are allowed.

**ITA No. 1246/Mum/2020 (Assessment Year 2011-12)**

15. Grounds of Appeal and Additional Grounds raised by the Appellant in this appeal for Assessment Year 2011-12 are identical to those raised for the Assessment Year 2007-08 (reproduced in paragraph 3 above). Since the appeal pertains to abated assessment, the contention of the Appellant that no addition could be made in the absence of any incriminating material would not be of aid to the Appellant and is, therefore, rejected. Accordingly, Ground No. 1 and Additional Ground No. 1 raised by the Appellant are dismissed. We would take up Ground No. 2&3 as well as Additional Ground No. 2 raised by the Appellant whereby the Appellant has challenged the additions made on the merits.
16. We note that the Assessing Officer has made addition on account of bogus purchases holding as under:

*“Bogus Purchases*

*10. During the course of assessment proceedings the assessee was asked to file the details of all its purchases of above one lakhs. The assessee filed the details vide its submissions. It was found that the assessee has purchased material from:-*

<i>Sr.</i>	<i>Name and Address</i>	<i>Amount</i>
<i>1</i>	<i>M/s J.K. Ispat, 188, Masjid Bunder Road, 1<sup>st</sup> Floor, Mumbai</i>	<i>Rs. 17,93,445/-</i>
<i>2</i>	<i>Dipen Trading Co. 7/218, Sant Tukaram Rd, Carnac Bunder, Mumbai</i>	<i>Rs. 20,58,576/-</i>
	<i>Total</i>	<i>Rs. 38,52,021/-</i>

*These are hawala bill providers who are already mentioned by the Sales Tax Department of Maharashtra on its website.*

*All such parties (Bogus Bill Providers) have submitted their respective affidavits before the Sales Tax department admitting their involvement in issuing of non-genuine bills without physical delivery of goods for the purpose of accommodation entries and to generate commission. The list of all such Hawala operators is also available on the website of Sales Tax Department, Maharashtra i.e. 'Mahavat'. The Sales Tax Department has cancelled the Tax Identification Number (TIN) issued to such Hawala Operators.*

*Therefore the purchases made from the said vendors is held to be bogus and hence disallowed. Penalty proceedings u/s 271(1)(c) of the I.T. Act, are initiated separately for furnishing of inaccurate particulars of income and concealment of income of Rs. 38,52,021/-"*

17. Learned Authorised Representative for the Appellant submitted that during the course of assessment proceedings the Appellant was asked to submit the details of purchases above 1 Lakh which were submitted. Apart from the aforesaid no further details/information was sought from the Appellant. He submitted that the Assessing Officer committed grave error in making additions without confronting the Appellant with the material on the basis of which the Assessing Officer concluded that purchases were bogus. According to the Learned Authorised Representative for the Appellant the suppliers/vendors were genuine and were never placed in a list of hawala operators or bogus suppliers. He submitted that a list consisting of 2060 dealers was put up on the website of the Sales Tax Department which were considered as bogus dealers. However, this list did not contain the names of any of the dealers from whom the Appellant had made purchases. The Settlement Commission while dealing with the case of SMC

Infrastructures Pvt. Ltd., after hearing and considering the evidences produced, has concluded that out of the 65 suspected dealers identified by in the case SMC Infrastructures Pvt. Ltd only purchases from M/s. Alpha Steel Tubes Pvt. Ltd. could not be proved satisfactorily and the Appellant has not made any purchase from M/s. Alpha Steel Tubes Pvt. Ltd. Referring to the application, dated 08.04.2015, filed by the Appellant before Assessing Officer under Section 154 of the Act for seeking rectification of the assessment order, the Learned Authorised Representative for the Appellant submitted that all the vendors/suppliers from whom the Appellant had made purchases were genuine and their registration and TIN numbers were active.

18. Per contra the Learned Departmental Representative submitted that in appellate proceedings, the CIT(A) had called for remand report from the Assessing Officer. On receiving the remand report the Assessing Officer asked the Appellant to furnish documents to substantiate the purchases. However, the Appellant expressed inability to provide the same and only furnished balance confirmations. The Assessing Officer also made inquiries by issuing notices under Section 133(6) of the Act. Inspectors also carried out site visits and enquiry but found that the vendors/suppliers were not present at the addresses. Placing reliance on the remand report dated 29.08.2018 and 25.05.2016, Learned Departmental Representative submitted that the purchases were rightly held as bogus.
19. In rejoinder, the Learned Authorised Representative for the Appellant, referring to letter dated 18.02.2019, submitted that the Appellant had again provided address details of the

suppliers/vendors during the remand proceedings. However, the Assessing Officer has failed to carry out proper inquiry during the assessment as well as remand proceedings. The Learned Authorised Representative for the Appellant placed reliance on the following judgments/decisions and contended that the additions made by the Assessing Officer should be deleted:

- CIT vs. Odeon Builders Pvt. Ltd. 418 ITR 315 (SC)
- Pr. CIT vs. Vaman International Pvt. Ltd. [IT Appeal No. 1940 of 2017, decided on January 29, 2020]
- CIT vs. Nikunj Eximp Enterprises (P) Ltd. 372 ITR 619(Bom)

20. We have considered the rival submission and perused the material on record including the remand reports dated 29.08.2018 and 25.05.2016. The Appellant had contended before the CIT(A) that the Assessing Officer has failed to grant proper opportunity to the Appellant and has failed to make proper enquiry before making the addition/disallowance. The CIT(A) having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority to have ensured that effective inquiry was carried out if deemed proper by way of making or causing to be made a *'further inquiry'* in exercise of the power under Section 250(4) of the Act. [CIT-II Vs Jansampark Advertising & Marketing (P.) Ltd 375 ITR 373 (Delhi) [11-03-2015], Once the CIT(A) has granted the Appellant opportunity to substantiate the claim and has directed conduct of inquiry the grievance of the Appellant that the Assessing Officer did not confront the Appellant with documents on the basis of which the purchases were held to be bogus does not survive.

Therefore, the Appellant can no longer seek benefit of the judgment in the case of Nikunj Eximp Enterprises (P) Ltd. (supra). Further, in our view the findings of the settlement Commission in the case of SMC infrastructure Private Limited cannot be used as the basis to prove genuineness of the purchases made by the Appellant. We note that the CIT(A) had called for remand report from the Assessing Officer. In the remand proceedings the Assessing Officer asked the Appellant to furnish documents showing delivery of goods since the allegation pertained to bogus purchases. The Appellant only furnished address and VAT/TIN details of the suppliers/vendors, and expressed inability to provide details showing delivery of goods such as delivery challans, transport receipts, stock registers etc. The judgment in the case of Odeon Builders Pvt. Ltd (supra) and Vaman International Pvt. Ltd (supra) on which reliance has been placed by the Appellant are, therefore, distinguishable on facts and do not come to the aid of the Appellant as in those cases the aforesaid documents were furnished by the assessee. Further, in the instant case the disallowance has not been made solely because the Appellant had failed to produce the suppliers/vendors. In paragraph 3.3 of the Remand Report dated 05.09.2019, the Assessing Officer has given the status of the response to notice 133(6) notice received from various vendors/suppliers. According to the Assessing Officer who conducted inquiry in the remand proceedings the vendors/suppliers were not present at the addresses provided and were not genuine. The findings returned by the Assessing Officer in the remand report are not based upon statements/affidavits filed before the Sales Tax Department but on the basis of spot inquiries conducted by the inspectors. However, the Learned

Authorised Representative still vehemently refuted the findings in the remand report stating that possibly the inquiries were not conducted on the correct address and submitted that the vendors/suppliers were genuine. We have noticed that there is difference in the addressed of some of the suppliers from which purchases were made by the Appellant during the assessment years involved in the present batch of appeals as per TIN Details enclosed with rectification application, dated 08.04.2015, filed by the Appellant before the Assessing Officer and the address details furnished by the Appellant in remand proceedings vide letter dated 18.02.2019. Therefore, we are inclined to grant another opportunity to the Appellant to substantiate his claim of purchases being genuine. Accordingly, we remand the issue back to the file of the Assessing Officer for fresh adjudication after giving the Appellant reasonable opportunity of being heard and taking into account further information/documents, if any, furnished by the Appellant. The Appellant is directed to provide to the Assessing Officer, both, the present/updated address of the suppliers/vendors as well as the address of the suppliers/vendors at the time of making the purchases. In view of the aforesaid directions, the additions of INR 38,52,021/- is set aside. Accordingly, Ground No. 2&3 are allowed for statistical purposes. Additional Ground No. 2 is disposed off as being infructuous. The appeal preferred by the Appellant/Assessee for the Assessment Year 2011-12 (i.e. ITA No. 1246/Mum/2020) is partly allowed.

**ITA No. 1247/Mum/2020 (Assessment Year 2012-13) &  
ITA No. 1248/Mum/2020 (Assessment Year 2013-14)**

21. In these appeals the Appellant has raised grounds identical to those raised for the Assessment Year 2007-08 reproduced in

paragraph 3 above. It is admitted position that these appeal pertains to abated assessments, the contention of the Appellant that no addition could be made in the absence of any incriminating material would not be of aid to the Appellant and is, therefore, rejected. Accordingly, Ground No. 1 and Additional Ground No. 1 raised by the Appellant are dismissed. As regards Ground No. 2&3 as well as Additional Ground No. 2 raised by the Appellant are concerned, our findings in paragraph 20 above dealing with the merits of the additions/disallowance on account of bogus purchases pertaining to appeal for the Assessment Year 2011-12 would apply mutatis mutandis to the present appeals. Accordingly, for Assessment Year 2012-13 and 2013-14, we remand the issue back to the file of the Assessing Officer for fresh adjudication after giving the Appellant reasonable opportunity of being heard and taking into account further information/documents, if any, furnished by the Appellant. The Appellant is directed to provide to the Assessing Officer, both, the present updated address of the suppliers/vendors as well as the address of the suppliers/vendors at the time of making the purchases. In view of the aforesaid directions, the additions of INR 12,27,288/- and INR 3,54,100/- for the Assessment Year 2012-13 and 2013-14, respectively, are set aside. Accordingly, Ground No. 2&3 of the respective appeals are allowed for statistical purposes. Additional Ground No. 2 of the respective appeals is disposed off as being infructuous. The appeals preferred by the Appellant/Assessee for the Assessment Year 2012-13 (i.e. ITA No. 1247/Mum/2020) and Assessment Year 2013-14 (i.e. ITA No. 1248/Mum/2020) are partly allowed.

22. In the result, appeal filed by the Appellant for Assessment Year 2007-08, 2009-10, 2010-11 are allowed, whereas appeals for the Assessment Year 2011-12, 2012-13 and 2013-14 are partly allowed.

Order pronounced on 25.08.2022.

*Sd/-*  
(Om Prakash Kant)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

**मुंबई** Mumbai; **दिनांक** Dated : 25.08.2022  
*Alindra, PS*

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