

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.712/Mum/2022
(A.Y. 2010-11)**

K. Uttamlal & Company 1 st Floor, Bhagwan Bhuvan, 196-198 Samuel Street, Musjid Bunder, Maharashtra - 400009	Vs.	ACIT-13(2) Maharshi Karve Road, New Marine Lines, Churchgate - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAIFK9976H		
Appellant	..	Respondent

Appellant by :	Vijay Mehta
Respondent by :	Tejinder Pal Singh Anand

Date of Hearing	08.09.2022
Date of Pronouncement	19.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi which in turn arises from the order passed by the A.O u/s 144 r.w.s 143(3) of the Income Tax Act, 1961, for A.Y. 2010-11. The assessee has raised the following grounds before us:

- “1. Under the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeal) (hereinafter referred to in as Ld CIT-(A) had erred in confirming the rejection of the Books of Accounts us. 145(3) by the Ld Assessing Officer (hereinafter referred to in as LAO) of the

Income Tax Act. Under the facts and circumstances of the matter, Ld CIT-A ought not to have confirmed rejection of Books of Accounts..

2. *Under the facts and circumstances of the case and in law, the Ld CIT-A had erred in confirming the order u/s 144 r.w.s. 143(3) passed by LAO. Under the facts and circumstances of the matter, Ld CIT-A ought not to have confirmed the order u/s. 144 r.w.s. 143(3) of the 1.T. Act, 1961.*
3. *Under the facts and circumstances of the case and in law the Ld CIT-A had erred in confirming the order of LAO in which she has placed reliance on evidence and material to which assessee was not confronted with and consequently the trading addition is initiated.*
4. *Under the facts and circumstances of the case and in law, the Ld CIT-A had erred in confirming the order of LAO in which she had not considered the explanation of appellant duly supported by direct documentary and other primary evidence and material which sufficiently and reasonably proved the genuineness of purchase from the two parties. Ld CIT-A even failed to consider the documents of two suppliers and also erred in confirming the order of LAO in which LAO did not bring on record any direct evidence or material to prove non-genuineness of the purchases and just made the addition on suspicion.*
5. *Under the facts and circumstances of the case and in law, Ld. CIT A had erred in confirming addition of Rs.17,31,750/- being 12.5% of the purchases of Rs.1,38,54,006/- from M/s. Sumukh Corporation and M/s. International Trade Agency. Under the facts and circumstances of the matter, Ld CIT-A ought not to have confirmed the said addition.*
6. *Under the facts and circumstances of the case and in law, the Ld. CIT-A had erred in confirming an addition of Rs.2,90,073/- in the G.P. in respect of purchases from M/s. Sumukh Corporation and M/s. International Trade Agency. Under the facts and circumstances of the matter, CIT-A ought not to have confirmed the said addition.*
7. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law."*

2. The fact in brief is that return of income declaring total income at Rs.2,71,01,849/- was filed on 21.09.2010. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 26.08.2011. During the course of assessment the A.O stated that assessee explained that many transaction of purchases were made through brokers. The

sales bills and details corresponding to purchases made from the parties were submitted. The A.O observed that other than invoices and entries in the stock register no other documents were submitted to prove that purchases were actually made from the following parties:

Name of Parties	Date	Amount (Rs.)
M/s International Trade Agency	01.06.2009	18,42,162
M/s International Trade Agency	03.06.2009	18,42,162
M/s International Trade Agency	05.06.2009	18,42,094
M/s Sumukh Corporation	06.06.2009	2,74,790
M/s International Trade Agency	06.06.2009	18,42,095
M/s Sumukh Corporation	08.06.2009	16,45,915
M/s Sumukh Corporation	09.06.2009	16,45,914
M/s Sumukh Corporation	15.06.2009	16,45,914
M/s International Trade Agency	01.01.2010	12,72,960
Total		1,38,54,006

The A.O also observed that transportation details in the form of transportation bills and delivery challans were not signed. Therefore, the A.O was of the view that both these documents cannot be considered as valid proof of movement of goods. The A.O further stated that assessee has produced both the suppliers for verification, however they could not establish the genuineness of the transactions. Therefore, the A.O held that genuineness of purchases were not proved. The A.O also observed that books of accounts submitted by the assessee found to be incomplete and the same were rejected u/s 145(3) of the Act. Therefore, A.O held that 12.5% of the amount of purchases made from aforesaid parties which comes to Rs.17,31,750/- as non genuine purchases and same was added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee reiterating the fact stated by the A.O.

4. During the course of appellate proceedings before us the ld. Counsel submitted paper book comprising copies of document and detail of information furnished before the A.O and CIT(A) by the assessee at the time of assessment and appellate proceedings. The ld. Counsel referred various pages of paper book comprising copies of delivery challan transportation receipts ledger account stock statement etc, furnished before the lower authorities and contended that A.O has not considered all these supporting document and other primary evidences and material in support of the genuineness of purchases made from the aforesaid two parties. The ld. Counsel also submitted detail of year wise turnover and gross profit ratio of the assessee from assessment year 2007-08 to A.Y. 2011-12 showing constantly every year gross profit ratio of more than 6%. The assessee has also referred the copies of statements recorded of the assessee and the sale parties confirming the transaction of sale and purchase along with other explanation during the course of assessment proceedings.

On the other hand, the ld. D.R relied on the order of the lower authorities and also referred page no. 14 of the paper book stating that on the delivery challan signature of the receiver was not made. In the rejoinder the ld. Counsel submitted that copy of delivery challan which was kept with the assessee generally not signed because original copy of delivery challan used to be returned to the supplier after signing.

5. Heard both the sides and perused the material on record. During the course of assessment the A.O made addition of Rs.17,31,750/- to the total income of the assessee being 12.5% of the purchases of Rs.1,38,54,006/- treated as bogus mainly because of not furnishing evidences like lorry receipt, weighbridge, measurement receipt etc. We

have perused the copies of document placed in the paper book i.e bills, delivery challan, transportation receipt, ledger account of the parties and copies of bank statement showing that payment of purchases were made through account payee cheques placed at page no. 12 to 42 of the paper book. The assessee has also placed copy of statement recorded u/s 131 of the Act of Shri Janak Kanhayalal Shah partner of the assessee firm recorded by the A.O u/s 131 of the Act wherein he was questioned about the genuineness of purchases made from Sumukh Corporation & International Trade Agency and he submitted that the supporting bills will be furnished before the A.O on 17.01.2013. Thereafter it is noticed that on 17.01.2013 before the A.O the assessee has furnished the following document in respect of purchases made from the aforesaid parties as mentioned in the statement:

- i. Xerox copies of the bills are attached herewith. Originals are produced herewith for your verification.*
- ii. Ledger accounts of both the parties.*
- iii. Delivery challans and order copy.*
- iv. Copies of L.R. receipt as proof of transportation from the seller's godown/warehouse of the assessee firm at Warehouse/Godown at Navi Mumbai.*
- v. Stock register in respect of the purchase from these parties.*
- vi. Copies of corresponding sale bills along with their order copy, dispatch L.R. copy.*
- vii. Further as desired by our honour, we are producing herewith Shri Rupesh Sanghvi, Prop. of M/s Sumukh Corporation and Shri Naresh M. Dudhela, Prop. of M/s International Trade Agency."*

The assessee has also provided the copy of statement of Shri Rupesh Jayantilal Sanghvi proprietor of Sumukh Corporation supplier of the goods recorded by the A.O. during the course of assessment wherein in his answer to question no. 15 he stated that he has sold goods genuinely to the assessee and would submit the copies of delivery challan etc, by 22.01.2013. Thereafter on 22.01.2013 Mr. Rupesh J. Shanghvi submitted before the A.O copies of delivery challan of goods delivered to

the assessee, copies of goods sent through D.S.R transline, copy of certificate dated 21.01.2013 of Shri Raj Warehouse Bhivandi with whom the goods were stored and the copy of bank statement showing the detail of payment received from the assessee. The assessee also placed in the paper book copy of statement of supplier Shri Naresh M. Dudhela proprietor of International Trade Agency who admitted in his statement in answer to question no. 15 that he had sold goods genuinely to the assessee and agreed to submit the delivery challan/lorry receipt etc. by 22.01.2013. Thereafter on 22.01.2013 as placed in the paper book at page no. 43 to 47 he has submitted before the A.O certificate of M/s Sai Raj Warehousing Bhivandi for storing purpose, bank statement showing payment received against sale to the assessee, the consigner copies of goods sent through DSR Transline and delivery challans of goods delivered to the assessee etc. The assessee has also placed at page No. 64 of the paper book detail of purchases made from the aforesaid two suppliers and detail of selling of the purchase goods along with gross profit earned. At para 4.3 of his order A.O mentioned in a general manner that these parties had disowned the transactions before the sales tax but nowhere particularly A.O had discussed the information received from the sales tax. The ld. Counsel also placed reliance on the decision of ITAT, Mumbai, in the case of ACIT Vs. Shri Mahesh K. Shah, ITA No. 5194/Mum/2014 wherein held that the A.O has not brought on record any material evidence to conclusively prove that the said purchases were bougs and mere reliance by the A.O on the information obtained from the Sales Tax Department would not be itself suffice to treat the purchases as bogus. The ld. Counsel also placed reliance on the decision of Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. S Kapoorji Palonji & Company Ltd, 423 ITR 220, wherein it is held that A.O

ought not to have made the addition without carrying out independent inquiry and without affording due opportunity to the assessee to controvert the statement made by the sellers before the other authority. He also placed reliance on the decision of ITAT, Mumbai, in the case of ITO Vs. Vaman International Pvt. Ltd. ITA No. 794/Mum/2015.

In the light of the above facts and findings we observe that during the course of assessment the assessee has brought on record the relevant supporting material i.e bills and delivery challan, transportation receipt, copies of bank statement, detail of selling of purchase goods, copies of statement recorded u/s 131 of the supplier and detail of responses made by the assessee to the different query raised by the A.O along with supporting documents and material as discussed supra in this order. However, the A.O has not brought any material on record to controvert the claim of the assessee and supporting evidences as discussed supra to conclusively prove that the said purchases were bogus. We find that there is no any other material which demonstrate that the information and relevant supporting material furnished by the assessee and by the two supplier were not genuine. We have also gone through the detail of year wise turnover and G.P ratio shown by the assessee from A.Y. 2007-08 to A.Y. 2011-12:

Details of Year wise Turnover & G.P. Ratio

A/c Yr.	Asst. Yr.	Turn Over (Rs.)	G.P. Ratio %
2007-08	2008-09	43.56 Crores	6.69%
2008-09	2009-10	86.69 Crores	6.40%
2009-10	2010-11	112.82 Crores	6.56%
2010-11	2011-12	149.87 Crores	6.34%
2011-12	2012-13	141.39 Crores	5.73%

Wherein constantly assessee has been showing gross profit on an average more than 6%, therefore, we considered that making disallowance of 12.5% of purchases without any basis is not justified. Therefore, this ground of appeal is allowed.

2nd Ground: Addition of Rs.2,90,073/-:

6. During the course of assessment the A.O noticed that profit declare by the assessee was at 6.56%, however, the assessee had shown gross profit on the sale of goods purchase from the two supplier @ 4.48%, therefore, the A.O had made addition @ 2.08% at Rs.2,90,073/- to the total income of the assessee. The ld. CIT(A) has sustained the addition.

7. Heard both the sides and perused the material on record. The assessee had made purchases to the amount of Rs.1,39,45,860/- from two parties i.e International Trade Agency & Sumukh Corporation. It is noticed that as per the statement of purchases of corresponding sales with gross profit working, the assessee had shown gross profit @ 4.48% of the sale made from the goods purchases from the said two parties as against the overall gross profit shown during the year under consideration @ 6.56%. The assessee has not demonstrated with the support of any relevant material the reason for showing less gross profit from the purchases allegedly made from the two supplier whose purchases were under verification during the course of assessment, therefore, we don't find any infirmity in the decision of ld. CIT(A) in sustaining this addition. Accordingly, this ground of appeal of the assessee is dismissed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.09.2022

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 19.09.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai