

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1166/M/2022
Assessment Year: 2011-12**

Shri Satish R. Goradio, HUF, B/5, Shalimar Apt., S.V. Road, Andheri West, Mumbai – 400 058 PAN: AAHHS8501F	Vs.	Income Tax Officer 25(1)(1), Room No.203G, Kautilya Bhavan, BKC, Bandra East, Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shailesh Hemani, A.R.
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 13 . 09 . 2022
Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Satish R. Goradio, HUF (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 16.03.2022 passed by National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals)] [hereinafter referred to as the CIT(A)] qua the assessment year 2011-12 on the grounds inter alia that :-

“1. Notice U/s 148 dated 23/2/2015 is illegal and Invalid:-

1.1.The Learned commission of Income Tax (Appeal) failed to appreciate that the notice U/s 148 dated 23/02/2015 is illegal and invalid.

1.2. The learned commissioner of Income Tax (Appeal) failed to appreciate that the Appellant was not provided the copy of reasons recorded for reopening, though the same were asked by the appellant vide letter dated 10/4/2015 submitted on 10/04/2015.

2. Reassessment order dated 28/1/2016 is Illegal and Invalid

2.1.The learned commissioner of Income Tax (Appeals) failed to appreciate that the Notice U/s 148 dated 23/2/2015 being illegal and Invalid the consequent reassessment order dated 28/01/2016 is also illegal and Invalid.

3. Addition of total purchases as Bogus purchases

3.1.The learned Commissioner of Income Tax (Appeal) erred in upholding the addition of total purchases made from hawala dealers instead of applying GP ratio on such purchases as addition to the total Income.

3.2.The learned Commissioner of Income Tax (Appeals) failed to appreciate the Appellant had sold goods and the Books of Accounts are Audited.

4. The Appellant Craves leave to amend alter, add or delete any or all the above Grounds of Appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is into the business of trading in hardware, engineering goods and provision supply to shipping companies which are purchased from different parties as per requirement from the shipping companies. Assessee filed return of income at the total income of Rs.8,18,031/- which was accepted under section 143(1) of the Act. Subsequently, assessment was reopened by way of issuance of notice under section 148 of the Act by recording reasons that on the basis of information received by DGIT (Inv.) from Sales Tax Department, the Assessing Officer (AO) noticed that the assessee has acquired bogus purchase bills from 9 parties total to the tune of Rs.37,33,260/- and as such a beneficiary of accommodation entries. Declining the contentions

raised by the assessee the AO proceeded to add the total amount of bogus purchases amounting to Rs.35,61,296/- to the total income of the assessee and thereby framed the assessment under section 144 read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by partly allowing the appeal. Feeling aggrieved 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 Sales Tax Department. It is also not in dispute that both AO as well as Ld. CIT(A) have proceeded to make the addition qua the alleged bogus purchases on the basis of estimation without bringing on record any evidence to substantiate the allegation.

6. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee contended that in such type of cases where sale is not in dispute entire addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable and in these circumstances, addition of the gross profit on overall basis in the range of 5% to 12.5% can 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 coordinate 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. The Ld. A.R. for the assessee further contended that assessee has never earned net profit more than 5.60% and brought on record the gross profit/net profit earned during the last 3 years, which is as under:

<u>Asst Year</u>	<u>Sales</u>	<u>Gross Profit</u>	<u>Net Profit</u>	<u>GP Ratio</u>	<u>NP Ratio</u>
2009-2010	15986010	1211313	711212	7.58	4.45
2010-2011	15601765	1690349	874287	10.83	5.60
2011-2012	16804303	2110855	917699	12.56	5.46

9. In view of what has been discussed above and following the order passed by the Hon'ble High Court of Bombay and co-ordinate Bench of the Tribunal discussed in the preceding paras and assessment order framed by the AO in assessee's own case for A.Y. 2009-10 wherein the assessee has purchased bogus purchases of Rs.36,01,907/- and the AO after thrashing the facts disallowed 12.5% of the bogus purchases and added the same to the income of the assessee, we are of the considered view that for this year also 12.5% of the bogus purchases i.e. Rs.36,01,907/- would fairly meet the ends of justice. Consequently, order passed by the AO and upheld by the Ld. CIT(A) is hereby set aside and AO is directed to disallow 12.5% of the bogus purchases to add the same to the total income of the assessee. Resultantly, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.09.2022.

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

Mumbai, Dated: 29.09.2022.

* 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.