

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

BEFORE SHRI PRASHANT MAHARISHI, AM

ITA No. 298/Mum/2021

(Assessment Year 2011-12)

Shri Bansilal S. Bhatti  
155 Steel Apartment, 6<sup>th</sup>  
Floor, Kumarwada,  
Mumbai-400 004

Vs.

Income Tax Officer  
Ward 19(1)(2)  
2<sup>nd</sup> Floor, Matru Mandir  
Grant Road,  
Tardeo Road, Mumbai

(Appellant)

(Respondent)

PAN No. AoDPB5366B

Assessee by : None  
Revenue by : Shri Ujjwal Chavan, DR

Date of hearing: 20.09.2022  
Date of pronouncement: 25.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against appellate order passed by the learned Commissioner of Income-tax (Appeals)-30, Mumbai [the learned CIT (A)] dated 12<sup>th</sup> September 2019 for A.Y. 2011-12.
02. The only ground raised by the assessee is that learned AO made addition of 100% of the purchases of ₹15,15,211/- under Section 69C of the Act and the learned CIT – A conform to the same.
03. Brief fact of the case shows that assessee is an individual who filed his return of income on 10<sup>th</sup> August 2011 declaring income of ₹1,53,643/-. This

return was processed under Section 143(1) of the Act.

04. Subsequently, information was received from Sales Tax Department and DGIT (Investigation), Mumbai with respect to the bogus purchases booked in a proprietor concern of the assessee M/s Padmavati forge and fitting, which is engaged in business of trading in stainless steel from three different parties amounting to ₹15,52,111/-. After recording of the reasons, notice under Section 148 of the Act was issued on 10<sup>th</sup> February 2015. On 2<sup>nd</sup> March 2015, assessee reiterated the original return.
05. The learned Assessing Officer noted that assessee is running a proprietary concern in the name of Padmavati Forge and Fittings carrying on the business of stainless steel. Assessee has booked purchase amounting to ₹15,52,111/- from three different parties. These parties are found to be bogus parties and therefore, purchases were not genuine. The assessee was apprised of this fact. Assessee was asked to produce these parties. He expressed his inability to do so. Accordingly, the learned Assessing Officer held that assessee has failed to prove the primary onus cast upon him of genuineness of purchases and assessee has not even provided the address of these parties where the learned Assessing Officer could have verified. Accordingly, the learned Assessing Officer made an addition of ₹15,15,111/-

as unproved purchases as per order dated 24<sup>th</sup> November 2015 passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act), determining total income of the assessee at ₹17,05,760/- against the return of income of ₹1,53,643/-.

06. The assessee preferred the appeal before the learned CIT (A). Assessee submitted that assessee has earned gross profit at the rate of 8.23% during the year. Disallowance of the above purchases will result into gross profit at 34.11% which is not possible. Assessee further stated that it has booked total purchases of ₹67.28 lacs and has also recorded the sale which could not have been possible without purchasing the goods. He otherwise submitted that even otherwise the addition could have been only to the extent of gross profit.
07. The learned CIT (A) dismissed the appeal of the assessee on all counts and upheld the action of the learned Assessing Officer in addition of 100% of the bogus purchases. He confirmed the disallowance because that assessee has failed to show any evidence that the purchases have gone into the sale. It was held that if the appellant claims that it did indeed the sales as claimed, then it is for the appellant to establish how the purchases were made, if these purchases were from grey market, it is for the appellant to establish from whom those



purchases were made, how payments were made and how the corresponding sales took place. Unless this is shown, the gross profit only cannot be added. Accordingly, the addition made by the learned AO were confirmed.

08. Assessee is aggrieved and is in appeal before us. Assessee has not challenged the reopening of assessment but has challenged the addition on merits.
09. Despite notice to the assessee on 6<sup>th</sup> occasions, none appeared, therefore, the appeal of the assessee is disposed of on the merits of the case as per information available on record.
010. The learned departmental representative vehemently supported the orders of the lower authorities. It was submitted that it is for the assessee to establish genuineness of the purchases, if the same are not proved, hundred percent of such purchases are required to be added. The learned DR vehemently supported the various judicial precedents mentioned by the learned CIT (A) in his order.
011. We have carefully considered the rival contention and perused the orders of the lower authorities. Assessee is an individual engaged in the business of trading in stainless steel. Out of the total purchases shown by the assessee of 67.29 lakhs, the purchases amounting to ₹ 1,552,111 with respect to 3 different

parties were found to be bogus which could not be substantiated before the lower authorities and therefore the addition to the extent of the whole of the purchases were made. The assessee has stated that the addition with respect to the above bogus purchases should be restricted to the gross profit. The anomaly pointed out was that that gross profit earned by the assessee is in the range of 8.23% in the current year and if the disallowance of ₹ 1,552,111/- is made it will give the unreasonable gross profit of 34.11% which is not possible in the trading line. It is not the case of the revenue that sales made by the assessee are bogus. In fact, assessee has failed to correctly state the address and whereabouts of the parties from whom purchases of ₹ 1,552,111/- is shown. In such circumstances only the gross profit embedded in such transaction can be added to the total income of the assessee. *In* [2022] 141 taxmann.com 245 (Bombay) PCIT versus Batliboi Environmental Engineering Limited Honourable Bombay High Court has held that: -

"4. As regards first question, the Tribunal has upheld the finding and conclusion of the Commissioner of Income-tax (Appeals) whereby the Commissioner (Appeals) directed the Assessing Officer to disallow 12.5% **bogus purchases** and to add 12.5% of the amount of **purchases** as income of the Appellant. The argument advanced is that the **bogus**

**purchases** ought to have been disallowed in totality. The learned counsel for the parties have placed before us the decisions of the Division Bench in the cases of *Pr. CIT v. Mohommad Haji Adam & Co.* [2019] 103 taxmann.com 459 (Bom.) and *Pr. CIT v. Paramshakti Distributors (P.) Ltd.* [IT Appeal No. 413 of 2017, dated 15-7-2010] wherein the Division Bench has observed that if the factum of sales has been accepted by the Department then even if it is established that there were **bogus purchases**, it is not necessary that entire amount should be added to the income of the Assessee as there cannot be a sale without **purchase**. The facts of the present case are identical wherein the sales have been accepted. Therefore, considering the aforesaid decisions first question of law does not survive for consideration.”

012. Honourable Bombay High Court on the issue whether hundred percent addition on account of bogus purchases can be made or not has dealt with in *Principal Commissioner of Income-tax-17 v. Mohmmad Haji Adam & Co.* [2019] 103 taxmann.com 459 (Bombay) [11-02-2019] as Under: -

‘8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in **bogus** billing activities. A.O. found that the **purchases** made by

the assessee from these entities were **bogus**. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire **purchase** amount should be added by way of assessee's additional income, or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the **purchases** shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the **purchases** cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on **purchases** at the same rate of other genuine **purchases**. The decision of the Gujarat High Court in the case of *N.K. Industries Ltd.* (*supra*) cannot be applied without reference to the facts. In fact, in paragraph 8 of the same Judgment the Court held and observed as under—

" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the

assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. "

013. Therefore, respectfully following the decision of the Honourable Bombay High Court, we disapprove the orders of the lower authority in making hundred percent addition on account of the bogus purchases. We direct the learned assessing officer to only make an addition to the extent of gross profit earned by the assessee embedded in the bogus purchases made by considering the above 2 decisions of the Honourable Bombay High Court. Accordingly solitary



ground raised by the assessee is allowed with above directions.

014. In the result appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.10.2022.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 25.10.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai