

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 1558/MUM/2021
Assessment Year: 2008-09
&
ITA No. 1559/MUM/2021
Assessment Year: 2009-10
&
ITA No. 1560/MUM/2021
Assessment Year: 2010-11
&
ITA No. 1556/MUM/2021
Assessment Year: 2011-12
&
ITA No. 1557/MUM/2021
Assessment Year: 2012-13**

HGP Community Pvt. Ltd.
successor to Alpha Associates,
514, Dalamal Towers, 211, F P J
Marg, Nariman Point,
Mumbai-400021.

PAN No. AADCH 8389 P

Appellant

Vs. Dy. CIT, Central Circle-1(2),
906, 9th floor, Pratistha Bhavan,
Old CGO Building, (Annexe),
M.K. Road, Mumbai-400020.

Respondent

**ITA No. 1851/MUM/2021
Assessment Year: 2008-09
&
ITA No. 1846/MUM/2021
Assessment Year: 2010-11**

Dy. Commissioner of Income-tax,
Central Circle-1(2),
906, 9th floor, Pratishtha Bahvan,
Old CGO Bldg. (Annexe), M.K. Road,

Vs.

HGP Community Pvt. Ltd.
successor to Alpha Associates,
514, Dalamal Towers, 211, F P
J Marg, Nariman Point,



Mumbai-400020.

Mumbai-400021.

Appellant

**PAN No. AADCH 8389 P
Respondent**

Revenue by : Mr. Rakesh Ranjan, CIT-DR
Assessee by : Mr. K. Gopal, Sr. Adv.
a/w Om Kandalkar, Adv.

Date of Hearing : 27/09/2022
Date of pronouncement : 27/10/2022

ORDER

PER OM PRAKASH KANT, AM

The captioned appeals by the assessee for assessment years 2008-09 to 2012-13 have been preferred against the respective orders passed by the learned CIT(Appeals)-47, Mumbai [in short the Ld. CIT(A)]. The cross appeals by the Revenue have been filed for assessment years 2008-09 and 2010-11. Identical grounds have been raised by the assessee as well as by the Revenue in their respective appeals and therefore, these appeals were heard together



and disposed off by way of this consolidated order for sake of convenience and avoid repetition of facts.

2. Consequent to conversion of the assessee namely M/s Alpha associates(i.e. a partnership firm), into a private limited company namely HGP community private limited, the assessee and Revenue have filed revised for No. 36, which are placed on record.

3. Briefly stated facts of the case are that the assessee filed regular returns of income for relevant assessment years from AY 2008-09 to 2012-13 ,which were subjected to scrutiny assessments wherever applicable as per records. Subsequently, a search action on the premises of “ M/s Hiranandani Group” was carried out on 11/03/2014 by the Investigation wing of Income-tax Department Mumbai. During search proceeding on 12/05/2014, Sh. Niranjana Hiranandani, Managing Director of various companies of the group/ Partner of firms of the group, accepted booking of bogus purchases in books of accounts of the group entities amounting to



₹57,37,26,731/-. In post search proceeding before the Investigation wing, this amount was revised to ₹ 60,28,51,896.50/-. This amount was determined by aggregating purchases from parties listed by the Maharashtra VAT authorities as suspicious dealers in the case of various entities of the group. In respect of 11 other entities of group, petitions were preferred before the Settlement Commission and amount of ₹58,47,66,021/- was offered for settlement, but in respect of the assessee no settlement application was preferred.

3.1 In view of incriminating material belonging to the assessee seized and found at the premises of Hiranandani Group, after recording satisfaction under the provisions of the Act, a notice under section 153C of the Income-tax Act, 1961 (in short 'the Act') was issued on 05/01/2015 for assessment year 2008-09 to AY 2012-13. Subsequently statutory notices under the Act were issued and assessment under section 153C read with section 143(3) of the Act were completed on 18/06/2015, wherein addition/ disallowance



including disallowance for bogus purchases were made. The Ld. CIT(A) adjudicated the appeals vide respective impugned orders . Aggrieved with the same, the assessee and Revenue are before the ITAT (in short the ‘Tribunal’) by way of raising respective grounds.

4. The grounds raised by the assessee in assessment year 2008-09 to 2012-13 are identical except change of amount of disallowance of bogus purchases. A list of party-wise disallowance of purchases for various assessment years is as follows:

Name of the vendor	AY. 2008-09	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	Total
AbhinavBuildmat P. Ltd.			13420			13420
Baba Srichand Enterprises			21606	13588		35194
H.H Enterprises					29495	29495
J.D Brick & Sand Suppliers	239139	1157971	418905			1815915
Top Brick and Sand Suppliers		402475	772368			1174843
Total	239139	1560446	1226299	13588	29495	3068867

4.1 As the issue in dispute of disallowance of bogus purchases in the appeals of the assessee is identical, except name of the parties and amount thereon , therefore, case for AY 2008-09 is taken as lead



case and which would be followed in other assessment years. The ground raised in 2008-09 is reproduced as under:

"1. The learned Commissioner of Income Tax (Appeals) erred in confirming action of the Assessing Officer in disallowing purchases from J D Bricks and Sand Suppliers of Rs. 2,39,139/- stating that the same are non-genuine and reducing the same from WIP.

2. The appellant prays that:

- i. Work in progress may be determined as per books of accounts,*
- ii. any other relief your Honours may deem fit.*

3. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

5. The alleged non-genuine purchases corresponding to the assessment year 2008-09 are amounting to ₹2,39,139/-. The Ld. Assessing Officer has made the disallowance mainly due to three reasons. Firstly, the documentation of the purchase bills in dispute was not made according to the standard procedure followed by the purchase department of the assessee group and bills have not been passed through certain checks by the purchase Department which were required in normal course. Secondly, the entries of purchases



made in SAP system (i.e. books maintained electronically) using the user ID CLA0016 have been offered before the settlement commission in case of other entities of the 'Hiranandani group', therefore the entries of the purchase bills in dispute made in the SAP system using the tainted User ID: CLA0016 are also bogus and liable for disallowance. Thirdly, these purchase parties were already in the list of 'Hawala' Parties of Maharashtra Sales Tax Department i.e. a list of the parties which were engaged in issuing accommodation bills without actual delivery of goods. Fourthly, the 'Hiranandani group' has offered the purchases from very same parties as non-genuine before the settlement commission in case of other entities of the group.

6. Before the Ld. CIT(A) it was explained that working of bogus purchases submitted during the course of the search was tentative ,which contained some of the genuine purchases entered in SAP system through users Id other than tainted user "ID: CLA0016". The



assessee produced bills and vouchers of the parties listed in above table along with details of payments made to them through cheque. The assessee also relied on the decision dated 26/09/2016 of the learned first appellate authority in the case of sister concern namely M/s Sears Constructions, wherein he directed to delete identical addition.

7. The Ld. CIT(A) vide impugned order upheld the disallowance observing as under:

“10.4 I have considered the arguments of the assessee and do not agree with the same. It appears that the fact about purchase as per ID 'CLA0062', as calmed by the assessee now, were never mentioned by the assessee at the time of search and seizure action. Neither Shri Deepak Vibhute, purchase head of the company mentioned this fact nor Shri Niranjan Hiranandant director of the group stated anything in this regard. In fact it appears that during the course of assessment proceedings also, these facts were not mentioned by the assessee. On the contrary the working of bogus purchase as per Annexure-3 to the statement of Shri Deepak Vibhute and as per Annexure-2 to the statement on oath u/s 132(4) of the Act and shri Nirannjan Hiranadani at the time of search and selzure action clearly



indicated the above mentioned purchases as bogus. In these circumstances I am not in a position to accept the contention of the assessee that these purchases were genuine, Though the assessee argued that amount of such purchases were so small and therefore there is no reason at to why the assessee should have made such bogus purchases but the important fact is that these purchases are part of overall bogus purchases of over Rs. 57 crores detected during the course of search and seizure action and surrendered by both Shri Deepak Vibhute and Shri Niranian Hitanandant. Therefore this explanation of the assessee also fails.

10.5 The assessee in this regard also relled upon the order of my Ld.Predecessor in case of Sears Construction Pvt. Ltd. dated 26.09.2016, wherein he accepted the claim of the assessee towards purchases, as per ID "CLA0062'. However, I respectfully disagree with the findings of my Ld. Predecessor. Asfacts stand today, these purchases were surrendered both by the purchase head of the assessee group as also by Shri Niran an Hiranandani the Director and the main person of the assessee company. Further complete working of such bogus purchases were given as part of Annexure-3 of the statement of Shri Deepak Vibhute and Annexure A-2 to the statement of Shri Niranja n hiranandant where details of above purchases from JD Brick & Sand Suppliers is clearly appearing. No clarifications were given by the assessee elther during the course of post search investigation or during the assessment proceedings in this regard, nor any statement given by the above mentioned two persons in the records of bogus purchases were retracted even untill today. in these



circumstances 1 do not find any reason to deviate the view taken by the AO. Therefore the addition made by the AO. is upheld."

8. Before us, the Ld. Counsel of the assessee submitted that purchases in dispute were made in routine course of the business. Further, the assessee had already submitted copies of the ledger account of the parties in the books of accounts of the assessee ; invoices issued by the parties; goods receipt note internally prepared; octroi receipt; bank payment vouchers; copy of bank statement etc. demonstrating that purchases were made in regular course of business. Regarding the statements of the parties before the Sales Tax Department of providing accommodation entry bills, the Ld. Counsel submitted that same are self-serving statements and the VAT amount has already been paid by the purchaser and therefore those purchase /sale transactions are no longer bogus transaction as per VAT Authorities. . Further, it was submitted that purchases enteries in question have been made using user ID CLF0076 whereas the other purchases which have been admitted by



the Hiranandani Group as bogus were entered in the save statement from the ID No. CLA0016. The Ld. Counsel before us, submitted that all the steps, which Mr. Deepak T Vibhute Senior Purchase Manager admitted in statements during the course of search proceedings, have been duly recorded by the Purchase /Accounts Department in case of these purchases in question and therefore, there is no irregularity in recording purchase in case of the assessee in the years under consideration. The Ld. Counsel relied on the decision of the ITAT 'J' Bench in the case of M/s Sears Construction Pvt. Ltd. v. DCIT (ITA No. 6975/M/2016) for assessment year 2012-13, wherein identical disallowance made by the Assessing Officer in respect of the purchases from hawala parties which were surrendered by the Director of the Hiranandani Group, have been deleted.

9. The Ld. DR on the other hand, submitted that the fact that document in support of purchases including weighment slips; excise



gate pass etc. have not been filed by the assessee in respect of those purchase bills before either the Assessing Officer or the Ld. CIT(A) and therefore, it could not be established that those purchases were made in regular course of the business. He also submitted that as far as the evidences justifying different steps by the account department /audit of the purchase bills after receipt in the account Department is concerned, the documents have been filed for the first time before the Tribunal and therefore same being in the nature of additional evidences, need to be referred to the Assessing Officer for proper verification. Further, he submitted that when the other tax payers of the Hiranandani Group has offered undisclosed income before the settlement commission in case of purchases shown from the very same parties , then how the claim in respect of same parties in the case of the assessee could be treated as genuine purchase without any contrary evidence.



10. We have heard, rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. We find that in the instant case, the dispute is regarding the purchases of ₹2,39,139/- from M/s J.D. Bricks, whether the same is genuine or not. According to the Assessing Officer, purchase documents does not meet the list of supporting other documents / various steps prescribed by the Hiranandani group for passing of bills , like weighment slip; goods receipt note, etc. The Ld. Assessing Officer has also pointed out that the purchases in dispute have been recorded in the SAP system by using same user ID which was used for recording non-genuine purchases from parties, the undisclosed income in respect of which has already been declared before the Settlement Commission. The Ld. AO also held that purchases from same parties have been admitted as non-genuine in case of other entities and corresponding amount has been offered as undisclosed income before the settlement commission. Before us, the assessee



has filed copies of the purchase bills which has passed during through the different channels of the account section to show that relevant entries have been recorded on those purchase bills .

11. During the search, inconsistencies in documents maintained for purchase were found, therefore statement of Sh Deepak Tukaram Vibhute, Sr. project Manager purchase was recorded on 13/03/2014. In said statement he explained the regular practice of documentation for purchase records. He stated that in case of purchases of steel purchase documents must contained purchase bill, delivery Challan, test results , excise gate pass, weighment slip and engineer certificate. On receiving of the goods in-store, certain entries were made in records including marking of security and store entry at the backside of the challan, signature of the person who received the material and mentioning of goods received note No. (GRN) on the bill by the store in-charge. In the account department also six entries were made including stamp of received



with date at the time of receiving of the bill at the account office, junior accountant signature after checking quantity with GRN and attaching challan received from store, entry of Bill booking and octroi, passing of bill for **Rs_____** by Assistant Manager and signature on front part of the bill, checking of all entries and approval, after checking all entries signature by the audit team in green pen and then bill goes for payment, where stamp of “Bill paid” along with cheque No. and entry No. of the payment are marked.

12. During the course of statement, he admitted that standard operating procedure had not been followed in purchases from few parties and bills from those parties were directly sent by the management to the account department for entry and for making payment. He admitted that bills of those parties were given by the director for entry in the books of accounts maintained on computer system and purchases were in the nature of ingenuine purchases.



13. In the light of statements of Sh Deepak Vibhute, which were duly affirmed by the Principal Person of the Group , this contention of the Ld Counsel raised before us as to whether all the relevant entries have been made on those purchase bills, need verification at the end of the Assessing Officer.

14. As regards, the user ID is concerned, Sh Deepak Vibhute admitted that entries in respect of those ingenuine purchases were made in SAP systems (software for maintaining business transaction) using the userid “CLA0016”. He confirmed that said userid was of Sh Kishire Sawant, who expired on 20th No. 2012. The assessee has filed before us a certificate from the system administrator that purchases in question have been entered by another user ID CLF 0076. This certificate was directed to be countersigned by the Managing Director of the assessee but same has not been complied. Therefore, this issue also needs verification at the end of the Assessing Officer.



15. Further, the Hon'ble Tribunal in the case of M/s Sears Construction Pvt. Ltd. (supra) has decided as under :

"3.2. In the light of the above recording, we are reproducing hereunder a decision from Hon'ble jurisdictional High Court in the case CIT vs Nikunj Exim Enterprises Pvt. Ltd. (2015) 372 ITR 619 (Bom.):-

"7. We have considered the submission on behalf of the Revenue. However, from the order of the Tribunal dated April 30, 2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement, i.e., reconciliation statement but also in view of the other facts. The Tribunal records that the books of account of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department, i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the Commissioner of Income-tax (Appeals), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers



and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated April 30, 2010, of the Tribunal.”

3.3. If the aforesaid decision is analyzed with the facts of the present appeal, we note that the addition was made by the Ld. Assessing Officer on the basis of information available with the Maharashtra VAT authorities with respect to suspicious dealers. The amount of purchases involved in the present appeal includes both genuine and non-genuine purchases. There is uncontroverted finding in the impugned order that the purchases from Abhinav Buildmat Pvt. Ltd. of Rs.7,848/-, H. H. Enterprises of Rs.98,618/- and Krishna Structural Steel of Rs.49,20,751/- which are included in the addition are genuine purchases, which are passed by user ID CLA0076 and EO425. No adverse material was brought to our notice by the Revenue. So far as, remaining non-genuine purchases are concerned, the assessee approached the settlement commission and a particular decision, wherein, vide application under section 245C made by the Group companies admitted of inflating the purchases. Thus, for the remaining purchases, we find no infirmity in the conclusion drawn by the Ld. Commissioner of Income Tax (Appeal), consequently, this ground of the Revenue is dismissed.”

15.1 In view of the above facts and circumstances, we feel it appropriate to restore the issue to the file of the Assessing Officer



for deciding afresh in accordance with law after considering the submission of the assessee. The ground of appeal of the assessee is accordingly allowed for statistical purposes.

15.2 The ground raised by the assessee in other years are identical , therefore , same are also allowed for statistical purposes.

16. Now we take up the cross-appeal of the Revenue for assessment year 2008-09.

17. The first and second ground relates to amount of ₹3,23,12,047/- which has been deleted by the Ld. CIT(A). This amount consisted of material maintenance and overheads; municipal taxes; interest on loan and brokerage.

18. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. During the year, the assessee gave few flats (i.e. which were ready to use,) on lease and shown lease rental income form the same under the head



income from house property, and balance construction of the flats/ property was in progress. The assessee incurred certain expenses in relation to the property, which were transferred to closing work in progress. According to the Assessing Officer, a part of the expenses transferred to Closing work-in-progress pertained to the portion of the property i.e. flats , which was leased out and deduction for the same stood already allowed under the head “ income from house property” and thus, same cannot be allowed to be transferred to closing work in progress. The dispute is regarding the amount of ₹3,23,12,047/- reduced by the Assessing Officer out of closing work-in-progress claimed by the assessee for the year under consideration. The detail of amount reduced by the Assessing Officer is reproduced as under:

S. No.	Head of Expenses	Amt. claimed u/s 24	Amt. debited to P/L/WIP A/c	Amt. of expenses reduced from WIP
1.	Material & Maintenance overheads	Std. deduction @ 30 per cent = 97,85,173/-	53,16,79,357/-	7,16,027/-
2.	Municipal taxes	35,00,000/-	35,00,000/-	35,00,000/-
3.	Interest on loan	1,12,60,020/-	4,78,10,339/-	1,12,60,020/-



4.	Brokerage	Nil	1,68,36,000/-	1,68,36,000/-
Reduction from WIP			3,23,12,047/-	

18.1 Regarding brokerage expenses, it was claimed by the assessee that same was incurred towards development of the project and not to the lease rental income. However, the Assessing Officer was of the view that the brokerage is related to the only lease rental income and therefore, same should be reduced from the work-in-progress. We find that before the Assessing Officer, the assessee has not brought on record any evidence that said brokerage expenditure was in relation to lease rental income. Before the The Ld. CIT(A) no such evidence have been brought on recorded and the Ld CIT(A) simply presumed that brokerage expenses were related to property under construction or property for sale. Therefore , in the interest of substantial justice we feel appropriate to restore this issue back to the file of the Assessing officer for deciding afresh , with the direction to the assessee to file necessary evidence in support of the claim that the brokerage expenses in question were incurred in



relation to property under construction. The assessee may file contract agreement with brokers and other documents including details of brokerage income declared by them in their return of income.

19. Regarding the amount of interest on loan of ₹12,60,020/- which according to the Assessing Officer pertains to the flats already constructed and leased out and therefore, he directed to reduce the same amount from the work-in-progress. We are of the opinion that interest on loan in respect of leased portion of the building cannot be allowed as work-in-progress as same is eligible for deduction u/s 24 of the Act under the head 'income from house property'. Accordingly, we direct the Assessing Officer to verify if the same has been claimed separately u/s 24 in the computation of income filed by the assessee. If so, then deduction for the same cannot be allowed under closing work-in-progress. However, if no deduction for the interest of the loan u/s 24 of the Act has been allowed to the



assessee, then deduction for the corresponding amount of ₹1,12,00,020/- should be allowed under the head 'income from house property' declared by the assessee. The issue is accordingly allowed for statistical purposes.

18.2 Amount of expenditure of ₹3 lacs relates to municipal taxes ,which has been reduced by the Assessing Officer out of work-in-progress. According to the Assessing Officer entire amount pertains to the leased part of the building and therefore, same is eligible for deduction u/s 24 of the Act under the head 'income from house property' and therefore cannot be allowed to be included in closing work-in-progress. We are of the opinion that Assessing Officer must verify the payment of the municipal taxes relates to which part of the building. If same pertains to the leased part of the building, then he is directed to allow the same under the head 'income from house property' and if the said municipal taxes pertains to under construction part of the building, then same is directed allowed part



of work-in-progress. The issue is accordingly allowed for statistical purposes.

19. The next issue is regarding material and maintenance and overhead expenses of ₹7,16,027/- which the Assessing officer has reduced out of work-in-progress. The details of expenses is as under:

S. No.	Head expenses	Total expense	Disallowance @ 23.75 per cent
1.	House keeping charges	7,212	1713
2.	Fire fighting work	19,01,526	4,51,612/-
3.	Infra Dev. Charges	6,63,804/-	1,57,653
4.	Security expense	4,42,312/-	1,05,049/-
		30,14,854	7,16,027/-

20. According to assessee, these expenses pertain to the entire building and it was not possible to bifurcate the expenses towards the leased building. The contention of the assessee is that primarily these are incurred for the construction work-in-progress and whatever benefit to the leased building is unintentional and therefore entire expenses are eligible for closing work-in-progress. We find that the issue in dispute is what proportion of the expenses



relate to the leased building. This is a matter of verification from the bills and vouchers and other documents, although may not be with precise accuracy but may be with some estimate. Therefore, this issue is also restored to the file of the Assessing Officer. Thus, the ground of the appeal of the Revenue is allowed for statistical purposes.

21. In the result, the grounds No. 1 and 2 appeal of the Revenue are accordingly allowed for statistical purposes.

22. Now we take up the appeal of the assessee for AY 2010-11. As far as grounds of the appeal of the assessee for AY 2010-11 are concerned same are identical to ground decided in the case of the assessee for AY 2008-09, therefore, following our finding in AY 2008-09 this ground of appeal is decided *mutatis mutandis*. This ground of appeal of the assessee is dismissed.



23. In the result, the appeals of the assessee and by the Revenue are allowed for statistical purposes.

Order pronounced in the open Court in 27/10/2022.

Sd/-

sd/-

**(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/10/2022

Dragon Legal / Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai