

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

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)

I.T.A No.1951/Mum/2022      -      A.Y. 2010-11  
I.T.A No.1952/Mum/2022      -      A.Y. 2009-10

Shri Poonmaram K. Prajapati 81/83, Room No.14, 14 <sup>th</sup> Kumbharwada, Prabhu Shri Rammandir Marg, Mumbai <b>PAN : AGMPP5641C</b>	vs	ITO-19(2)(3), Mumbai Matru Mandir, Tardeo Mumbai-400 007
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Assessee represented by	Ms.Pooja Chhawachiari
Revenue represented by	Shri Rajendra Chandekar

Date of hearing	02/11/2022
Date of Pronouncement	02/11/2022

**ORDER**

The Appellant, Shri Poonmaram K. Prajapati (hereinafter referred to as the 'assessee') by filing the present appeals, sought to set aside the impugned orders dated 19/11/2019 & 25/10/2019, passed by the National Faceless Appeal Centre, Delhi and Commissioner of Income-tax (Appeals)-30, Mumbai [hereinafter referred to as the 'CIT(A)'] respectively, qua the assessment orders for Assessment Years 2009-10 and 2010-11, respectively on the grounds interalia that:-

**ITA No.1952/Mum/2022 (A.Y. 2009-10)**

*“Being aggrieved by the order passed by the Learned Assessing Officer (A.O) u/s 143(3) r.w.s. 147 of the Income Tax Act ('the Act') and as partly allowed by the CIT (A), your appellant prefers an appeal on the following grounds, which it is prayed, may be considered **without prejudice** to one another,*

*i. (a) On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the A.O and restricting the addition calculated by the A.O to 25% on alleged bogus purchases without appreciating the facts that the opinion of the A.O is based on merely presumptions and sub conjectures and not on any material evidences corroborating the purchases when it is an accepted fact that material evidences super cedes all presumptions*

*(b) The CIT (A) erred in partly reducing the addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus and the learned officer accepted the books of accounts.*

*(c) The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.*

*(d) The Appellant prays that the addition/ disallowance of entire 15881737-made in respect of Alleged purchases be deleted.” .*

*2. On the facts and circumstances of the case and in law, the CIT (A), erred in dismissing the ground for the appellant's plea of withdrawal of initiation of penalty proceedings u/s 271(1) (c).”*

**ITA 1951/Mum/2022 (AY 2010-11)**

*“Being aggrieved by the order passed by the Learned Assessing Officer (A.O) u/s 143(3) r.w.s. 147 of the Income Tax Act ('the Act') at 12.5% addition which was enhanced to 100% addition by the CIT (A), your appellant prefers an appeal on the following grounds, which it is prayed, may be considered without prejudice to one another.*

*1. (a) On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases when the books are not*

*rejected by the A.O . It is an proven fact by various judicial authorities that sales without purchases is not possible.*

*(b) The CIT (A) erred in enhancement to 100% addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus and the learned officer accepted the books of accounts.*

*(c) On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases when the appellant is a trader and the sale is substantiated with *all* the documents.*

*(d) The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.*

*(e) On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases when the appellant being aggrieved for even a 12.5% addition made by the A.O had filed an appeal before the CIT Appeals.*

*(f) The Appellant prays that the addition/ disallowance of entire 43536y6/- made in respect of Alleged purchases be deleted."*

*2. On the facts and circumstances of the case and in law, the CIT (A), erred in dismissing the ground for the appellant's plea of withdrawal of initiation of penalty proceedings u/s 271(1) (c)."*

2. Briefly stated, facts necessary for adjudication of the controversy in the appeal are:-

On the basis of information received from DGIT(Inv) dated 26/12/2013 that the assessee is involved in taking accommodation entries of non genuine purchases assessments were reopened by initiation the proceedings under sections 147 / 148 of the Income-tax Act, 1961 (for short, 'the Act). from the following parties:-

**A.Y. 2009-10**

- |                                     |                |
|-------------------------------------|----------------|
| 1. Mona / Metalex Metal Corporation | Rs. 9,46,423/- |
| 2. Mumbai Metal Corporation         |                |
| 3. Bhavikh Steels Pvt Ltd           | Rs.13,66,983/- |

4.	Murphy Metals Pvt Ltd	
	Rs.14,13,703/-	
5.	Mercury Metal Corporation	Rs.6,32,650/-
6.	Alliance Steel Industries	Rs.2,31,429/-
	<b>Total</b>	<b><u>Rs.63,52,693/-</u></b>

**A.Y. 2010 -11**

1.	Mumbai Metal Corporation	Rs.13,44,157/-
2.	Vidhi Metal Industries	Rs. 24,851/-
3.	Ambika Enterprises	Rs.17,03,095/-
4.	P M Steel (INDIA)	Rs. 4,15,895/-
5.	Hindustan Steel Impex	<u>Rs. 8,65,678/-</u>
	<b>Total</b>	<b><u>Rs.43,53,676/-</u></b>

3. In Assessment Year 2009-10, the assessee reported to have shown purchases of Rs.63,52,993/- from the aforesaid parties which were not doing genuine business of purchases and sales but merely providing accommodation bills. To verify the genuineness of the purchases made by the assessee, the Assessing Officer issued notices under section 133(6) of the Act but could not be served. The Assessing Officer consequently proceeded to hold that the assessee has failed to substantiate the purchases and thereby made the addition of Rs.63,52,693/- to the total income of the assessee and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3A. In Assessment Year 2010-11, the Assessing Officer also noticed that the assessee has shown purchases of Rs.43,53,676/- from the aforesaid parties who were not into doing genuine business of purchases and sales but only providing accommodation bills. Finding the explanation given by the assessee not tenable, Assessing Officer

proceeded to make an addition @12.5% of total amount of Rs.43,53,676/-, i.e. Rs.5,44,209/- on account of unproved / non genuine purchases and thereby framed the assessment under section 143(3) r.w.s. 147 of the Act.

4. Assessee carried the matter before Ld.CIT(A) by way of filing appeals for A.Ys 2009-10 and 2010-11. Ld.CIT(A) in A.Y. 2009-10 has restricted the addition made by the Assessing Officer to 25% of the bogus purchases made by the assessee by partly allowing the appeal. For A.Y. 2010-11, Ld.CIT(A) enhanced the addition made by Assessing Officer from 12.5% of bogus purchases of Rs.43,53,676/- to 100% by dismissing the appeal filed by the assessee. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing present appeals.

5. We have heard the learned representatives of the parties to the appeal, perused the orders passed by learned lower Revenue Authority, case law relied upon and documents available on the record in the light of the facts and circumstances of the case.

5A. Undisputedly, entire assessment in this case has been framed by the Assessing Officer on the basis of alleged information received from Sales-tax Department. It is also not in dispute that during the assessment proceedings, the assessee was called upon to prove the genuineness of purchases by producing parties as well as by way of issuance of notices under section 133(6) of the Act. It is also not in dispute that both Assessing Officer as well as the Ld.CIT(A) have proceeded to make / confirm the addition qua alleged bogus

purchases on the basis of estimation without bringing on record the evidence to substantiate this allegation.

6. In the backdrop of the aforesaid undisputed facts, the Ld.AR contended that in such type of cases entire addition or addition @25% as has been done by Assessing Officer as well as Ld.CIT(A) is not sustainable because sales in this case have not been disputed by the Revenue Authorities and in these circumstances, addition of the gross profit on average 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 co-ordinate 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 Ravindran Nair vs. Income Tax Officer in ITA 2662/M/2018 order dated 31.12.2018 and case decided by Hon'ble Bombay High Court of M/s Mohammed Haji Alam & Co (ITA No.1004/2016 dated 11/02/2019)

7. On the other hand, the Ld.DR for the Revenue relied on the order passed by Assessing Officer as well as Ld.CIT(A) and contended that in such cases, total amount of bogus purchases needs to be added to the income of the assessee as assessee has failed to prove the genuineness of the purchases.

7A. 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 I TAT, 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.AR for the assessee further contended that the assessee has never earned the GP @25% as estimated by Ld.CIT(A) in A.Y. 2009-10 and addition of 100% made by Ld.CIT(A) in A.Y. 2010-11 is not sustainable in view of the law laid down by Hon'ble Bombay High Court in M/s Mohammed Haji Adam & Co (ITA No.1004 & Others of 2016, dated 11/02/2019). The Ld.AR for the assessee further contended that assessee's gross profit never exceeded 9%.

9. In view of what has been discussed above and following the decision rendered by Hon'ble High Court and co-ordinate bench of Tribunal discussed in preceding paras, I am of the considered view that keeping in view the gross profit earned by the assessee for the preceding years which is not more than 9%, addition @25% or 100% of bogus purchases is not sustainable in the eyes of law. Hence, I direct the Assessing Officer to charge the assessee at the gross profit @9% on the bogus purchases of Rs.63,52,693/- for A.Y.2009-10 and Rs.43,53,676/- for A.Y. 2010-11. Resultantly, appeals filed by the assessee are allowed.

Order pronounced in the open court on 02/11/2022.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Mumbai, Dt : 02<sup>nd</sup> November, 2022

Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR,SMC Bench
6. Guard File

(True copy)

By order

Dy.Registrar / Asstt.Registrar  
ITAT, Mumbai Benches

