

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.1823, 1819 & 1821/Mum/2021
(निर्धारणवर्ष / Assessment Year: 2014-15, 2015-16 & 2016-17)

M/s Nickunj Eximp Enterprises Pvt. Ltd. 4 th floor, Sri Joravar Bhavan, 93, M. K. Road, Marine Lines, Mumbai-400 020	<u>बनाम/</u> Vs.	ACIT Cen. Cir,- 2(4), R. No. 802, Pratistha Bhavan, Old CGO Annexe, M. K. Marg, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCN0991K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपीलसं./ I.T.A. No. 1856, 1855 & 1853/Mum/2021
(निर्धारणवर्ष / Assessment Year: 2014-15, 2015-16 & 2016-17)

ACIT Cen. Cir,- 2(4), R. No. 802, Pratistha Bhavan, Old CGO Annexe, M. K. Marg, Mumbai- 400 020	<u>बनाम/</u> Vs.	M/s Nickunj Eximp Enterprises Pvt. Ltd. 4 th floor, Sri Joravar Bhavan, 93, M. K. Road, Marine Lines, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No AABCN0991K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vijay Mehta, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Dr. Mahesh Akhade, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	13.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	31.10.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid cross appeals have been filed by the assessee as well as by the revenue against separate impugned order dated 08.07.2021 for AY 2014-15;; dated 14.07.2021 for AY 2015-16; and dated 20.07.2021 for AY 2016-17, passed by Ld. CIT(A)-48 Mumbai for the quantum of assessment passed u/s 153C r.w.s. 143(3).

2. Since the issues involved in all the appeals are common arising out of identical set of facts, therefore the same were heard together and is being disposed of by way of this consolidated order.

3. As a lead case, we are taking cross appeals for AY 2014-15 wherein the revenue has raised the following grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in Partly allowing the Bogus purchase of Rs. 53,00,05,608/- which was rightly disallowed by Assessing Officer as unexplained expenditure u/s. 69C of the Act"*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the decision in Nova Promoters and Finlease 342 ITR 169 (2012) wherein the Hon'ble Delhi High Court held that mere filing of PAN, ITRS, account confirmations and bank statements of the creditors is not sufficient enough to discharge the onus cast upon the assessee u/s 68 of the*

Income Tax Act, 1961 when there are sufficient evidences of accommodation entry.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition made by the AO on account of bogus purchases to 10% instead of 100% in view of decision of Hon'ble Supreme Court in the case of NK Proteins Ltd. in SLP 759 of 2017, dated 16 01-2017, wherein it was held that once it is proved that the purchases are bogus, then the addition should be made for the entire purchases and not for profit element embedded in such purchases.

4. Whereas the assessee has raised the following grounds:-

1. Whether on the facts and circumstances of the case and in law, CIT (A) erred in making addition of Rs.5,88,89,512/- in absence of any incriminating materials found in the course of search, hence the entire assessment proceedings are vitiated and bad in law based on settled judicial pronouncements.

2. Whether on the facts and circumstances of the case and in law, Assessing Officer ought to have proceeded only on the basis of seized material and evidence found during the course of search, travelling beyond that would make proceedings bad in law based on decision of Kabul Chawla's judgement (61 taxmann.com 412) and other settled case laws.

3. Whether on the facts and circumstances of the case and in law, CIT (A) erred in making addition of Rs.5,88,89,512/- on account of bogus purchases.

4.1 Whether on the facts and circumstances of the case and in law, Assessing Officer erred in levying interest u/s. 234A of Rs.81,21,140/-, when infact there is no delay and that the return was filed as soon as the notice u/s. 153A was received and the delay is not attributable to the cause of the appellants.

4.2 The Notice was on the portal in January 2019, when e-assessment was existing, however the rules exempted search and seizure returns as soon as appellants were aware, the returns were filed in August, 2019. Thus, there is no delay attributable to the appellants, hence section 234A is not attracted.

5. Assessee has not pressed Ground no. 4.1 & 4.2, therefore, the same are dismissed as not pressed.

6. The main issue involved in the cross appeals is addition on account of bogus purchases. The AO has added 100% of bogus purchases which has been restricted to the addition on account of gross profit of 10% on such bogus purchases; accordingly, both are in appeal before us.

7. The facts in brief are that Assessee Company is engaged in trading of over 4000 products involving high-tech industrial products across various sectors. A search and seizure action was carried out in the case of Nickunj Group on 16.11.2017 in which

assessee was one of the flagship company of the group promoted and managed by Mr. Nickunj Shah. The return for AY 2014-15 was filed on 09.03.15 declaring total income of Rs. 2,47,59,170/- which was duly accepted u/s 143(1) vide intimation dated 20.05.2015. The Ld. AO noted that during the course of search proceedings, the investigation wing has given certain findings. For the sake of ready reference, the same is reproduced below:-

The Group follows standard operating procedure (SOP) as explained in detail in the statement recorded of Shri Manohar Balkrishna Pai dated 17.11.2017 in reply to Q.38 & Q.40. However, it was found that this SOP is followed only for their approved list of vendors and not for all the vendors through whom purchases are recorded in the regular books of account. The following are the parties from whom purchases are made without following the required SOP-

- Ranka Silk House*
- Risa International*
- Ronak Overseas*
- Navratna Oil Industries*
- Daman Oil Industries*
- Richway International*
- Vienna Multiventure*

During course of search action, Shri Manohar Pai was asked to furnish various supporting evidences for the purchases made from

the above parties including invoices, purchase order copy, goods receipt note, etc. to substantiate the purchases made from the above parties. However, no supporting evidences were filed except copies of invoice and ledger accounts and bank statement reflecting payment. However, no evidence is filed to substantiate the delivery of goods, movement of goods by way of transport invoice, confirmations from parties, etc., which goes to show that these are bogus purchases.

It is also seen that the material purchased from these parties are fabrics and food-grains whereas the Group is prima facie engaged in the business of manufacture of non-ferrous wires and machining of graphite. This also goes to prove that the purchases made from these parties are mere accommodation entries in order to reduce the profits.

As the Group has not followed SOP in respect of purchases made from the above parties and no supporting material or evidence is filed to substantiate the purchases made from the above parties as genuine, the same are to be treated as bogus purchases. The year-wise chart of purchases made from the above parties is annexed the statement recorded of Shri Manohar Pai on 17.11.2017 as Annexure 3. The aggregate of the purchases for all the years i.e. from FY 2010-11 till date of search action amount to Rs.342,06,11,640/-. The entity-wise details of such purchases are reproduced as under:

<i>Name of the party</i>	<i>Year</i>	<i>Purchase (In Rs.)</i>
<i>Ramka Silk House</i>	<i>2013-14</i>	<i>6,65,00,000</i>
<i>Risa International</i>	<i>2013-14</i>	<i>15,08,75,120</i>
<i>Roank Overseas</i>	<i>2013-14</i>	<i>27,10,00,000</i>
<i>NavRatan Oil Ind</i>	<i>2013-14</i>	<i>10,05,20,000</i>
<i>Daman Oil Industries</i>	<i>2014-15</i>	<i>69,95,49,000</i>
<i>Daman Oil Industries</i>	<i>2016-17</i>	<i>102,79,36,500</i>
<i>Richway International</i>	<i>2015-16</i>	<i>61,37,83,853</i>
<i>Richway International</i>	<i>2016-17</i>	<i>8,34,22,759</i>
<i>Vienna Multiventure</i>	<i>2015-16</i>	<i>39,49,23,346</i>
<i>Vienna Multiventure</i>	<i>2016-17</i>	<i>1,21,01,062</i>
TOTAL		342,06,11,6407-

Physical verification of offices of Ramka Silk House Pvt Ltd, Vienna Multiventures and Richway International Trade Ltd was done during the course of search action and it was found that no such entities are operating from the addresses mentioned. Inspectors reports were made part of the statement of Sh. Nickunj Shah and he did not offer any comment on the same. Further, it is worth to be noted that M/s Risa International was a penny stock which was operated by Sh. Naresh Jain and Sh. Abhinandan Jain.

8. Accordingly, the AO issued show cause notice to prove the purchases with documentary evidence and from time to time he asked for details of purchases made from these parties and in response, assessee submitted the following reply:-

"During the course of search operation, it was pointed that few parties with respect to trading activities were not genuine. So we are providing with party wise details of items purchased and corresponding sales to substantiate the purchases. Along with the delivery details of the items sold it was either got delivered to the purchasers premises directly by the suppliers or delivered to our godown and then transported to the buyers site.

For each purchase of traded goods there is a corresponding sales and in most of the cases both the sale and purchases are back to back of same quantity. In support we are enclosing here purchase bill with corresponding sales, stock register recording both sales and purchase of each stock items, details for payment of purchases made and in case of sales, payment received into the bank account to substantiate both sales and purchases.

Since we are providing back to back sales details for each purchases duly supported by bills and payment details just to substantiate that both sales and purchases are genuine. It is not a case where the purchases could be termed as bogus as we are providing details of corresponding sales for each and every purchases.

Further we have been informed that some Inspector visited the address of the purchase parties and found to be non existing, however no efforts were made by the authorities to find them when their PAN, bank account details and bills which were available even on the date of search.

Now we are giving the party wise details as called, for all the purchases made from them and corresponding details of sales of such goods to substantiate that the transaction were being done in regular course of business. As proper bills, payment details of both sales and purchases are being made available and there are reasonable profits from such activities then no adverse inference can be drawn by only taking adverse finding regarding the purchases without verifying the corresponding sales. There is a specific corresponding sales for each and every purchases of the traded goods duly supported by documentary evidence maintained/generated in normal course of business.

1. Ramka Silk House P Ltd

With respect to above stated purchase party we submit that the party had shifted to new address.

The current address is 3, White Rose, 1st floor Ang, Mori Road, Opposite State Bank of Mysore Mahim (West), Mumbai 400016.

During the AY 2014-15, total purchases from the them were Rs. 6,65,00,000/-

We are submitting herewith the following;

- a. *Sample copy of Purchase order raised by assessee dated 22/12/2013., containing the details of goods ordered, wherein it also contains the signatures of assessee's staff for 'prepared by', 'checked by' and further signed by an Authorised Signatory.*
- b. *Delivery Note (challan) no. 640 dated 11/01/2014 for goods supplied by party as per Purchase order and contains place of delivery of the assessee's godown. It also bears the 'Material Receipt Stamp' of the assessee's godown bearing a serial number and which is dated and signed by store keeper for receipt of goods.*
- c. *Purchase Invoice no. 640 dated 11/01/2014 for Rs 13,26,579/- for goods supplied by party as per Purchase order.*
- d. *Extract of the Stock Book reflecting Inward of goods and also further Outward of Sales of such goods with quantities sold.*
- e. *Ledger confirmation duly signed by party,*
- f. *Bank statement reflecting the payment made by Account Payee Cheque/RTGS/NEFT.*
- g. *Details of all sales made, for the goods purchased from M/s Ramka Silk House Pvt. Ltd., we are enclosing a sample sale bill of customers- Dolertake and Rochlon Enterprises and and their ledger account in our books reflecting the details of payments received for sales made.*

2. Risa International Ltd

With respect to above stated purchase party we submit that during the AY 2014-15, total purchases from the them were Rs. 15,08,75,120/-We are submitting herewith the following;

- a. *Sample of Purchase order raised by assessee dated 24/12/2013, containing the details of goods ordered, wherein it also contains the signatures of assessee's staff for 'prepared by', 'checked by' and further signed by an Authorised Signatory,*
- b. *Delivery Note (challan) no. RISA/13-14/315 dated 20/01/2014 for goods supplied by party as per Purchase order and contains place of delivery of the assessee's godown. It also bears the 'Material Receipt Stamp of the assessee's godown bearing a serial number and which is dated and signed by store keeper for receipt of goods,*
- c. *Purchase Invoice No. RISA/13-14/315 dated 20/01/2014 for Rs 85,32,725/- for goods supplied by party as per Purchase order,*
- d. *Extract of the Stock Book reflecting Inward of goods and also further Outward of Sales of such goods with quantities sold,*
- e. *Ledger confirmation provided by party from their books*
- f. *Bank statements of reflecting the payment made by Account Payee Cheque/RTGS/NEFT.*
- g. *Income tax Return acknowledgement copy for AY 2014-15- Risa International Ltd.*
- h. *Details of all sales made, for the goods purchased from M/s Risa International Ltd, we are enclosing a sample sale bill of customer- Jetspeed Tradecom P Ltd and copy of their ledger account in our books reflecting the details of payments received for sales made.*

3. Ronak Overseas

With respect to above stated purchase party we submit that during the AY 2014-15, total purchases from the them were Rs. 27,10,00,000/-We are submitting herewith the following;

- a. Purchase Invoice no. 251 dated 13/01/2014 for Rs 17,00,000/- for goods ,(supplied by party*
- b. The party was based at Silvassa (Gujrat). Material were delivered by the party at silvasa godown of the company and the supplies were billed to Ahmedabad branch of the company.*
- c. Extract of the Stock Book reflecting Inward of goods and also further Outward of Sales*
- d. Ledger confirmation duly signed by the party.*
- e. Bank statements of reflecting the payment made by Account Payee Cheque/RTGS/NEFT.*
- f. Details of all sales made, for the goods purchased from M/s Ronak Overseas, sale bills and details of payments received for sales made.*
- g. Details of all sales made, for the goods purchased from M/s Ronak Overseas, we are enclosing a sample sale bill of customer- R R Oils and copy of their ledger account in our books reflecting the details of payments received for sales made.*

4. Navratan Oil Industries

With respect to above stated purchase party we submit that during the AY 2014-15, total purchases from the them were Rs. 10,05,20,000/-We are submitting herewith the following;

a. Purchase Invoice no. 280/14 dated 05/03/2014 for Rs 3,96,000/-for goods supplied by party,

b. The party was based at Silvassa (Gujrat). Material were delivered by the party at silvasa godown of the company and the supplies were billed to Ahmedabad branch of the company,

c. Extract of the Stock Book reflecting Inward of goods and also further Outward of Sales

d. Ledger confirmation duly signed by the party.

e. Bank statements of reflecting the payment made by Account Payee Cheque/RTGS/NEFT. f. Details of all sales made, for the goods purchased from M/s Navratan Oil Industries, we are enclosing a sample sale bill of customer- Max grow Trade Solutions P Ltd and copy of their ledger account in our books reflecting the details of payments received for sales made.

9. Again Ld. AO issued a detail questionnaire which has been incorporated at page no. 8-9 of the assessment order and in response, assessee has filed all the details of purchases including the current transaction, etc. which has been incorporated at page no. 10-12 of the assessment order. The AO noted that during the

year, the assessee has made the following purchases from these parties:-

<i>AY</i>	<i>Name of the party from whom purchases were made</i>	<i>Name of the party to whom sales were made</i>	<i>Total value of Purchases</i>
2014-15	<i>Ramka Silk House P Ltd</i>	<i>Dolertake and Rochlon Enterprises</i>	<i>6,65,00,000/-</i>
2014-15	<i>Risa International Ltd</i>	<i>Jetspeed Tradecom PLtd</i>	<i>15,08,75,120/-</i>
2014-15	<i>Ronak Overseas</i>	<i>RROils</i>	<i>27,10,00,000/-</i>
2014-15	<i>Navaratn Oil Industries</i>	<i>Max Grow Trade Solutions P Ltd</i>	<i>10,05,20,000/-</i>
	<i>Total Purchases made</i>		<i>58,88,95,120/-</i>

10. Ld. AO after considering the submission and material on record, issued summon in case of Ramka Silk House P. Ltd. u/s 131, however, the said party did not appear. Similarly with regard to Risa International Ltd., Ronak Overseas, Navaratna Oil Industries, he has again reiterated the report of Investigation Wing and has made observation stating that Risa International was a penny stock company and assessee could not produce the necessary evidence which were acquire to file nor could produce ITR, Balance Sheet, Bank statement of this party, etc. He also referred to the statement of Shri Manohar Balkrishna Pai, Executive

Vice President in the statement recorded under oath u/s. 132(4) who has given the details of Standard operating procedure followed by the Company. According to the AO, this SOP was not filed for the purchase made from these parties. Accordingly, he added the entire purchase made from the above parties amounting to Rs. 58,88,95,120/-.

11. Ld. CIT (A) after incorporating the submission of the assessee as well as observation and finding of the AO disagreed with the contention raised by the assessee. One very important fact which was placed before the Ld. CIT(A) was that, here in this case, all the details of purchases, quantitative wise, quality wise and value wise was give with exact corresponding sales of the same quantity with regard to purchases made from all these parties. All the payments have been paid through banking channels and also the sales have been accepted by the AO. Party-wise purchases and corresponding sales by parties and bill wise have been incorporated in the appellate order from pages 58-62. After incorporating these details, Ld. CIT (A) has given the following findings, which are very relevant and vital to the issue involved are as under:-

6.27 From the above tables it may be deduced that entire quantitative details have been submitted by the assessee alongwith party wise and invoice wise sales and purchases. Further the assessee has made some profits ranging from 1.2% to 1.8% in respect of these transactions and no loss as such has been incurred. (Besides, it has been noted that the assessee has first received sales consideration from which it has paid amount for purchases and there is direct co relation between sales and purchases. It also appears that the assessee has not blocked its own capital in the process and it is only a link in the entire transactions of sales and purchases and in most of the cases the goods have been directly despatched to the sales parties from purchase parties without it going through assessee's godowns. The details of payments received for sales and payments made for purchases are in close proximity and mostly on the same dates, details of which in respect of one party Risa International are tabulated as under:

Date/Year	Purchase	Value	Bank	Date/Year	Sales	Value	Bank
03 Jul 14	Risa International Ltd.	35,00,000	Citi Bank HO	03 Jul 14	Jetspeed Tradecom Pvt. Ltd.	35,46,250	Citibank HO
03 Jul 14	Risa International Ltd.	46,00,000	Citi Bank HO	03 Jul 14	Jetspeed Tradecom Pvt. Ltd.	31,55,010	Citibank HO
03 Jul 14	Risa International Ltd.	19,00,000	Citi Bank HO	03 Jul 14	Jetspeed Tradecom Pvt. Ltd.	32,98,740	Citibank HO
03 Jul 14	Risa International Ltd.	33,00,500	Citi Bank HO	03 Jul 14	Jetspeed Tradecom Pvt. Ltd.	64,98,450	Citibank HO
03 Jul 14	Risa International Ltd.	31,50,200	Citi Bank HO	03 Jul 14	Jetspeed Tradecom Pvt. Ltd.	35,01,550	Citibank HO

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03 Jul 14	Risa International Ltd.	35,49,300	Citi Bank HO	04 Jul 14	Jetspeed Tradecom Pvt. Ltd.	95,95,800	Citibank HO
03 Jul 14	Risa International Ltd.	36,64,275	Citi Bank HO	05 Jul 14	Jetspeed Tradecom Pvt. Ltd.	44,12,839	Citibank HO
04 Jul 14	Risa International Ltd.	38,29,910	Citi Bank HO	05 Jul 14	Jetspeed Tradecom Pvt. Ltd.	65,48,704	Citibank HO
04 Jul 14	Risa International Ltd.	38,83,930	Citi Bank HO				
04 Jul 14	Risa International Ltd.	39,82,180	Citi Bank HO				
04 Jul 14	Risa International Ltd.	30,95,200	Citi Bank HO				
04 Jul 14	Risa International Ltd.	25,18,420	Citi Bank HO				

The details of payments made for purchases and payments received for sales in respect of all the parties are enclosed as annexure to this order, which clearly conveys that payments for sales and purchases are happening in close proximity and mostly on the same dates. There after what remains with the assessee is its margin, which is about 1.8% and has been offered to tax in the accounts.

6.28 *We have also analysed the bank statement of the assessee and one of the purchase parties, namely **Risa International**. It is found that there are no cash withdrawals in the bank account of Risa International. Further there are also no cash deposits in the bank account of the assessee either except some small amounts which are verifiable from its cash book. From the bank account of **Risa International**, it has been further noticed that before making*

sales to the assessee, it has made purchases from two parties namely **Tanya Enterprises and VEMB Lifestyle P. Ltd.** Assessments in the cases of both these companies were made u/s 143(3) Of the Act, in which certain additions were made in respect of bogus purchases/unproved purchases @ 12.50 %. The Hon'ble ITAT Mumbai vide order dated 03.12.2020, confirmed addition @ 12.50% in both the cases. Copies of these orders are placed on record.

6.29 In fact there is another aspect of this case. In respect of purchases made from one of the parties namely Maxgro Commodities P. Ltd, it is found that the assessee has received only its margin of profits of Rs. 30 lakhs on total purchases of Rs. 21,23,65,923/- and payments for purchases has been directly made by the end party Nav Prakruti Commodities P. Ltd to Maxgrow and thus the assessee has only acted as an agent and thus got its margin of profits of Rs. 30 lakhs.

6.30 From the discussions made in foregoing paras, it is quite clear that the assessee had submitted relevant details to the AO at the assessment stage in respect of purchases made from the parties both quantitative and qualitative. The assessee also produced copies of bills/invoices, ITRs, bank statement, ROC,

Master data and confirmation of these parties. Further, the assessee had also provided details of party wise purchases and its corresponding sales made by them before the AO as well before me. Therefore various contentions made by the AO in this regard

stands clarified by the assessee. Since quantitative details of purchase and sales are available, the transaction may not be simply rejected in a summary manner. Further, if the purchases were questionable then sales also become doubtful. One cannot accept one and reject the other.

6.31 However, since the AO has not rejected the sales, 100% disallowance/addition of purchase does not look fair and reasonable. It is seen that Hon'ble High Courts and various Benches of Hon'ble ITAT have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance of the parties before the AO, one cannot conclude that the purchases were not made by the assessee (**Nikunj Eximp Enterprises (P.) Ltd. (Bom) (2015) 372 ITR 0619 (Bom)**).

12. After discussing various judgments, LD. CIT(A) held that it would be reasonable to apply GP rate on such purchases after following the judgment of Hon'ble Bombay High Court in the case of **PCIT Vs M/s. Mohommad Haji Adam & Co.** and applied estimation on profit @ 10% after observing as under:-

6.39 In the case of *PCIT Vs M/s. Mohommad Haji Adam & Co. (Bombay High Court)* the facts were that 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 relevant excerpts of the judgment dated 11.02.2019 of the Hon'ble Bombay High Court are reproduced hereunder:-

"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 CJT(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. No order as to costs."

*6.40 In view of the foregoing judicial pronouncements, it is held that only the profit element embedded in the bogus purchases needs to be taxed, in the cases, where sales are not doubted and the quantitative tally of purchases and sales are available. Therefore keeping in view the totality of facts and circumstances of the case, I am inclined to agree with the appellant's stand that the addition is excessive. The A.O. has disallowed the amount of Rs. 58,88,95,120/- **being** 100% on account of bogus purchases. I am of the view that estimation of profit at 10% would meet the ends of justice.*

6.41 In view of the discussions made as above and respectfully following the decisions of Hon'ble Courts and ITAT, the addition made by AO is restricted to 10% of the suspected purchases, being savings made on account of VAT, Octroi etc., in these purchases of Rs.58,88,95,120/-, which comes to Rs.5,88,89,512/-. The AO is directed to modify the addition accordingly.

13. We have heard the rival submissions, perused the relevant finding given in the impugned orders as discussed above and the material referred to before us. Before us Ld. Counsel for the assessee submitted that, one of the strong reasons given by the AO is the statement of Shri Manohar Balkrishna Pai, Executive Vice

President of the assessee. However, from the perusal of the said statement it can be seen that, nowhere he has stated in his statement that purchases are bogus. He has mentioned only about the SOP followed for purchases. Before us, Ld. Counsel has submitted that nothing incriminating has been found during the course of search which show that these purchases are bogus. AO has mainly relied on outside information and which cannot be treated as incriminating material found during the course of search and AY 2014-15 being the non-abated year. He further submitted that here in this case there is one to one nexus between the purchase and sale of goods. The copy of which has also been placed before us vide covering letter dated 13th September 2022, where assessee has given bill wise, date wise purchases which shows the exact quantity and amount and also corresponding sales of the same quantity and same amount which are duly recorded in the books of account. This fact has also been noted by Ld. CIT (A) also. This detail has been filed in response to query raised by us during the course of hearing by us to furnish the date wise detail of trading account showing the gross profit percentage in respect of alleged bogus purchases and other purchases and apart from that, details

of bill wise sales against such alleged bogus purchases for the above captioned assessment years.

14. From the perusal of the same, we find that there is one to one co-relation of exact quantity of purchases as well as sales and also the corresponding GP on such sales. Apart from that, details of purchase order, invoice, delivery challan, material receipt stamp, confirmation, ledger accounts of the bank statements have been submitted before us which has also been filed before the lower authorities and which fact we find that, Ld. CIT (A) has also noted and in the assessment order also which are mentioned from pages 6-8 of the assessment order. Ld. Counsel before us filed item wise registers showing purchases and sales of goods which have also placed in the paper book. Once the source of purchases are from the books of accounts and the payment have been made through banking channel and there is a corresponding sales which matches with the quantitative bill and purchases recorded in the books of account, then it cannot be said that purchases have been made outside books which could lead to any inference that all purchases have been made outside the books or are bogus.

15. With regard to inference drawn in respect of one party, i.e., Ramka Silk House, Ld. Counsel submitted that assessee has provided new address of the party and AO has issued summon u/s 131 on ITBA portal on 16.12.2019 and the assessment order has been passed on 18.12.2019. Thus, the time given was only 2 days and no adverse inference could be drawn that party could not be produced. There is no information from any outside agency that this party is non-genuine or engaged in any accommodation entries. Thus, we agree with the prima facie observation of Ld. CIT(A) that the purchases cannot be held to be bogus.

16. Ld. DR submitted before us that Ld. AO has analyzed each and every party based on conclusion drawn by Investigation Wing during the course of search in the case of Nickunj Group. The details which were filed by the assessee have been found lacking which facts have been brought on record by the AO. Thus, it cannot be held that purchases were genuine.

17. The contention of Ld. DR cannot be accepted in the light of the evidences which itself have been noted by Ld. CIT (A). In support of purchases, we have discussed in the foregoing paragraphs. One of

the most vital and important factor going in favour of the assessee that there is one to one co-relation of purchases and sales not only quantity wise but also bill wise details. All these purchases and sales are duly recorded in the books of account and AO has not distributed the sales at all. Once the sale of the same quantity has been accepted, then it cannot be said that the entire purchases are bogus. Accordingly, we are of the opinion that the entire purchases cannot be added.

18. With regard to assessee's appeal that Ld. CIT(A) has not justified in importing gross profit of 10% on such alleged bogus purchases. Before us, Ld. Counsel has demonstrated that the assessee before placing the purchase order had buyers and based on the demand of buyer assessee use to place the order. Thus, after getting the sales order, assessee has made the purchases on credit and immediately after the purchases received, assessee makes the corresponding sales on the same day or next day, which fact has been noted by Ld. CIT(A) and has also been demonstrated and filed before us. Thus, there was no working capital or investment which has been blocked for alleged bogus purchases. From the details furnished before us and also before Ld. CIT(A), it is seen that

assessee has received sale consideration and immediately from such sale assessee had made purchases and this fact has been noted by Ld. CIT(A) in para 6.27 as noted above. In any case assessee is trading in fabrics which items are exempt from VAT, Octroi etc, therefore, it cannot be presume that assessee has taken accommodation entries of purchases to save VAT of 10% or 12%. Assessee has filed justification for GP rate on these items which is ranging 1.36% to 2.34% and looking into the fact that there is minimum movement of the stock right from the moment purchase to sales and it is in consistent with its gross profit margins showed by the assessee in the earlier and in subsequent years, therefore it cannot be held that assessee's GP rate on these items are low. It is brought on record that overall assessee's GP in trading of all items are ranging between 26.14% to 36.14% and overall GP shown in the trading account is far higher and therefore, no adverse inference should be drawn. Thus, we do not have any justification of such adhoc estimation of GP of 10% for each and every purchases made from these parties and estimate corresponding GP, when overall GP and the trading account has been accepted. Accordingly, the addition sustained by Ld. CIT(A) by applying adhoc GP rate 10% is

also deleted. Resultantly, the appeal of the assessee is allowed on merits.

19. In the cross appeals for AY 2015-16 and 2016-17 exactly the similar grounds have been raised, therefore our findings in the cross appeals for AY 2014-15 is apply mutatis mutandis in the said appeals.

20. In the result, all the appeals filed by the revenue are **dismissed** and all the appeals filed by the assessee are **allowed**.

Orders pronounced in the open court on 31st October, 2022.

Sd/-
(S. Rifaur Rhman)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Date: 31.10.2022
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai