

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 3857 & 3858/MUM/2018
(A.Ys: 2009-10 & 2010-11)**

Smt Suman Gupta 6 th New Harileela House Mint Road, Fort Mumbai - 400001 PAN: AHQPG0220P	v.	DCIT – CC-4(2) Room No. 1918, 19 th Floor Air India Building Nariman Point Mumbai – 400 021
(Appellant)		(Respondent)

**ITA NOs. 3797 & 3800/MUM/2018
(A.Ys: 2010-11 & 2009-10)**

DCIT – CC-4(2) Room No. 1918, 19 th Floor Air India Building Nariman Point Mumbai – 400 021	v.	Smt Suman Gupta 6 th Floor, Apeejay House 130-Mumbai Samachar Marg Fort, Mumbai - 400023 PAN: AHQPG0220P
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Bhupendra Karkhanis & Shri Vijay Bhatt
Department Represented by	:	Shri Byomakesh Pradipta Kumar Panda
Date of Hearing	:	14.12.2022
Date of Pronouncement	:	02.01.2023

ORDER**PER S. RIFAUR RAHMAN (AM)**

1. These cross appeals are filed by the assessee and revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 21.03.2018 for the A.Ys. 2009-10 and 2010-11.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeals relating to A.Y.2010-11.

ITA.No. 3858/MUM/2018 (A.Y. 2010-11) (Assessee appeal)

3. Brief facts of the case are, assessee is an individual and proprietor of M/s.Honest Trading Co. and is engaged in business of trading in steel items, bullion and dealing in MCX. Assessee filed its return of income on 30.09.2010 declaring total income at ₹.186,76,534/- and the return was processed u/s 143(1) of Income-tax Act, 1961 (in short "Act"). The assessment u/s. 143(3) was completed on 30.12.2011 assessing the total income at ₹.2,55,73,220/-. While completing the assessment Assessing

Officer has made the addition in respect of Disallowance on account of bogus purchases at ₹.67,51,584/- and income from house property ₹.1,45,100/-, was added to the income of the assessee. A Search action u/s 132 and survey action u/s 133A of Act were carried out at various premises on Ushdev Group on 11.09.2014. Consequent upon the search on Ushdev Group, the case of the assessee was centralized and notice u/s.153A dated 04.03.2015 was issued to the assessee. In pursuance of the notice u/s. 153A of the Act, the assessee e-filed its return of income for A.Y.2010-11 on 30.04.2015 declaring total income of ₹.1,88,02,540/-

4. During assessment proceedings, Assessing Officer observed that assessee is involved in inflating the expenses by booking bogus purchases from various parties. Out of these, certain parties have been declared as "Hawala Parties" by the Sales Tax Department of the Government of Maharashtra. Also purchases were made from the parties in whose cases incriminating evidences were discovered in the course of action conducted by the Investigation Wing of the Income Tax Department, such purchase parties were found to be issuing bogus bills to the assessee.

5. During the course of search proceedings conducted on 11.09.2014, Shri Prateek Gupta, key controller of Ushdev Group was confronted with

the facts relating to purchases and his statement was recorded on 12.09.2014, 18.09.2014 and 03.11.2014 in course of search operation. The relevant portion of the statement is reproduced on pages 3 to 18 of assessment order. In the above statement it has been stated by Prateek Gupta that there is one to one co-relation between these purchases and corresponding sales effected and that the payments for purchases were made through by banking channels. The assessee also stated that the sale proceeds were credited to the P & L Account and the profit was booked accordingly. The alleged bogus purchases as tabulated by Assessing Officer are as follows: -

Name of the Purchase Party	Amount of purchases booked in Rs.
SAI INTERNATIONAL IMPEX	2,70,06,338/-
Total	2,70,06,338/-

6. During the assessment proceeding, Assessing Officer had issued notice u/s. 133(6) to the above party on 12/09/2016. The said notices were returned back with the remark "Not known". Assessing Officer also deputed Inspector to verify the existence of the above parties but the parties did not exist on the given address.

7. In response, assessee had submitted the following documents/evidences to prove the genuineness of the purchases: -

- i) Ledger extracts of above parties in assessee's books*
- ii) Quantitative details of purchases made from above parties and corresponding sales alongwith sample copy of bill of respective parties*
- ii) Overall yearly quantitative details showing purchases as well as sales*
- iv) Proof of corresponding sales*
- v) Details from bank to prove that entire payments are made by account payee cheques to those parties*
- vi) Bank statement of assessee highlighting payments made to above parties.*

8. After considering the evidences and explanation of the assessee, the Assessing Officer has made the following observations: -

- i. The assessee failed to adhere to the standard operating procedure and maintain the standard KYC documents, in respect of purchases under consideration, and has also failed to offer satisfactory explanation for this deviation. Such procedures were followed in case of purchases from JSW Steel Limited and other genuine parties*
- ii. The assessee failed to establish the fact of movement and delivery of the goods and relevant details of transportation and delivery challans have not been maintained. Therefore, no scope is left for independent verification of facts in this regard Transportation of goods is one of the deciding factors.*
- iii. In view of the facts stated at & above, the assessee failed to discharge the primary onus as necessary information to prove genuineness of purchases is not furnished.*
- iv. The assessee failed to rebut the incriminating evidences, in the course of actions conducted by the Investigation wing of the Income Tax Department and Sales Tax Department of the Government of Maharashtra.*

v. *In the wake of failure to discharge the primary onus, the assessee was called upon to produce the purchase parties during the course of search proceedings for examination. The assessee failed to produce the purchase parties and made a plea that the present addresses of the parties are not known. Independent verification carried out by the Investigation Wing with reference to the addresses of the parties revealed that in no case the fact of existence of purchase party at the given address and doing of any genuine business has been established.*

vi. *Once the purchase parties are mere entry providers, the bills issued are bogus, no actual business was transacted and the fact of movement and delivery of goods is not established, the limited documents available with the assessee, based on which the books have been maintained, also cannot be genuine.*

vii. *In order to make a conclusion, all possibilities have been explored. Field enquiries done by Investigation Wing at the known addresses of the parties did not yield any evidence in support of the purchases. Bank enquiries in respect of the bank accounts showed that all the accounts have either been closed or became dormant after the relevant period of providing accommodation entries for purchases. This shows that the purchase parties are not genuine and were only fly by night operators.*

viii. *The assessee argued that the payments were made by cheque. After considering the evidences, there can be no doubt that the cheque payments were a part of the modus operandi to book bogus purchases from Hawala parties who only provided entries, did not do any business and issued bogus bills and thereby evade taxes. Cheque payments cannot prove the fact of purchases.*

ix. *During the course of assessment proceedings, the assessee was asked to explain as to why the above transactions should not be treated as non-genuine and be added to the income of the assessee. Vide its various submissions during the assessment proceedings; the assessee has merely furnished copy of ledger account, sample copies of bills, details of sales and corresponding profit booked and copy of bank statements. The assessee failed to submit the inward outward register maintained for the goods traded and failed to explain the reason for deviation from the standard operating procedure followed in respect of purchases, in general. The assessee failed to maintain standard "know you customer documents, in respect of the bogus purchases, which are otherwise maintained in respect of purchases, in general. The assessee also failed to establish the fact of movement and delivery of goods and as the relevant and verifiable details are not maintained.*

x. *During the course of assessment proceedings the notices u/s 133(8) have been issued to these purchase parties through speed post but they either returned or remained unserved. Thereafter, the assessee was asked to produce the above. suppliers for verification but the assessee failed to produce them before the AO When the expenditure (Purchase) is claimed to have been incurred, the initial burden will be on the assessee to prove that the purchases were genuine. This onus has not been discharged by the assessee*

xi. *Inspector from this charge was deputed to find the whereabouts of such various doubtful parties. On field inquiry no such party existed on the given addresses."*

9. Further, Assessing Officer issued show-cause notice dated 30.09.2016 wherein certain findings about such parties were intimated to assessee. Same is reproduced in the assessment order on Page No. 25 to 26. In response to above, the assessee filed letter dated 17.10.2016. for the sake of clarity, it is reproduced below: -

"j) The assessee has a very unique model of Metal Trading, wherein assessee does not take any position or speculates on metal prices and their module works on a complete back-to-back business wherein the risk of fluctuation in prices upward or downward is mitigated. UIL generally does not directly get involved in the logistics of materials as the same is being dispatched directly from the seller to the buyer and follows the "JUST IN TIME" concept of business.

Due to the above business model since the goods are directly delivered from supplier to customer assessee does not have copy of Lorry receipt or delivery challans in all the cases. Just because the assessee does not have copy of Lorry receipt or delivery challans the transactions cannot be termed as hawala. We have done business with these clients in good faith with proper delivery of goods and all transactions were settled through proper banking channels. We have also submitted copy of bank statement highlighting the payments to these parties.

When a party is granted a VAT Tin by a Revenue authority it is done after completing the entire process of verification mentioned in the law and collecting all KYC documents verifying the address and only after satisfying with all necessary requirements by that authority. At

the time of trading a businessman cannot know that the party will not pay VAT or will elope after few years or will become Hawala in due course. Further the business was done in A.Y. 2009-10 to 2012-13 and we were not in touch with these parties. We had totally stopped trades with these parties Hence there was no way we could reach them or produce them before you for cross examination.

We have to submit that we have already made following submission during the course of assessment proceedings for the search years

- i. Ledger extracts of the above parties from our books of accounts*
- ii. Quantitative details*
- iii. Overall yearly quantitative details showing purchases as well as sales,*
- iv. Proof of corresponding sales made for those purchase*
- v. Details from the bank to prove that entire payments are made by account payee cheques to those parties*
- vi. Sample copies of bills of respective parties.*

ii) over and above general submissions that apply to all the parties stated above, the assessee has dealt with individual parties as under-

a) M/S Sai International Impex

The transactions ended during A.Y. 2009-10 This party was known to Shri Vijay Gupta who expired in February 2009. Through bank statements we have proved that the payments were cleared in their account only. Due to lapse of time and contact of late Shri Vijay Gupta we are not able to locate them. Still, the genuineness of the transactions are proved by us.

As stated in earlier paras this party has done transactions when Shri Vijay Gupta was alive

It is further replied by the assessee that the procedure for maintaining all those records have started only after we have come to know that certain parties have defaulted for VAT payment. Moreover, in the statement recorded of Shri Prateek Gupta, he had also stated during the search that in earlier period his father Shri Vijay Gupta who was Chairman and Managing Director of Ushdev International Limited, was handling the business and he passed away on 4th of February 2009 Our purchasers have confirmed of having

received the materials and in turn they have also made payments to us. Full quantitative details not only corresponding purchases and sales of those parties listed hereinabove but also for all the years under consideration. Merely non attendance of certain parties due to even lapse of long time cannot be a ground to disbelieve the transactions As per our procedure goods are directly dispatched. We have been able to prove the movements by proving the purchases and sales, Ledger extracts and quantitative details in absence of those supporting documents we have supported, as stated above, through confirmation from our purchasers in the statements recorded Shri Prateek Gupta he has throughout the recording maintained that the purchases are genuine and has never confessed of having obtained any accommodation bills. Further transactions with JSW Steel were entered into only in the AY 2012-137 During the search no incriminating document whatsoever is found indicating that bogus bills are taken and cash is exchanged against cheques etc. We have filed various applications under Right To Information Act (RTI) against these parties to confirm whether these parties were actually Hawala parties and if yes by which department and on what grounds."

10. Before Assessing Officer assessee had filed the following documents

to prove the genuineness of the transactions: -

- i) Ledger extracts of above parties in assessee's books*
- ii) Quantitative details of purchases made from above parties and corresponding sales alongwith sample copy of bill of respective parties*
- iii) Overall yearly quantitative details showing purchases as well as sales.*
- iv) Proof of corresponding sales*
- v) Details from bank to prove that entire payments are made by account cheques to those parties*
- vi) Bank statement of assessee highlighting payments made to above parties*
- vii) Sample copies of bills of respective parties.*

11. Assessing Officer rejected the submissions of the assessee with the following observations: -

- *As per section 101, 102 and 106 of the Evidence Act, the onus lies upon the assessee to prove all the expenses including purchases to the satisfaction of the AO, which was not discharged by the assessee as if it failed to produce the parties from whom purchases were made. Since the primary facts are in the knowledge of the assessee, it is its duty to provide the correct address or contact modes of the alleged suppliers*
- *Mere filing bills in support of purchases and payment through account payee cheque cannot be conclusive in a case where genuineness of the transaction is in doubt.*
- *The undisputed fact is that the purchases claimed to have been made by the assessee from these parties remained unverified*
- *The genuineness of the transaction could be decided on the basis of primary facts on records and the revenue is not required to lead a clinching evidence to prove that the purchases are bogus.*
- *It is well-settled law that strict rules of evident do not apply to IT Act and the real test with regard to genuineness of the transaction is "Preponderance of probabilities and not "Beyond reasonable doubt"*
- *Since the information available on Maharashtra Sales Tax Department's Website leads to doubt regarding genuineness of the purchases, it is incumbent on the assessee to produce these parties alongwith their necessary documents to establish the genuineness of the transaction as these parties were not found at the given addresses It is really surprising that the party was not found on the given addresses nor was it produced by the assessee before the undersigned to get the claim if purchases verified.*

12. Assessing Officer relying on various case law held that since purchases shown by the assessee during the year remained unverifiable, there is a possibility of leakage of revenue and therefore rejected the books of accounts invoking the provisions of Section 145(3) of the Act. It

has been held by Assessing Officer in Para No. 21 of the assessment order that-

"From the facts stated above and after considering the submissions made by the assessee, there is little doubt that the purchases made from the various hawala parties by the assessee were done with the purpose and intention to inflate expenses by way of introducing these hawals bills from various parties. The detailed investigation regarding the modus operandis of such parties has shown that the payments were received by these parties against the bogus bills by cheque and the same amounts were returned in cash to the beneficiaries. In the cases of hawala purchases, there are three possibilities. The first possibility is that such purchases and expenses reduce the income in entirety as equivalent cash has been received back by the assessee from the hawala operator. The second possibility is that the sales as well as the purchases are bogus and in such cases only a percentage of such bogus turnover can be worked out as additional Income The third possibility is that the assessee has received the cash back from the hawala operator and made the purchases in cash from some different parties in the third case also, only a percentage of such purchases can probably be disallowed. However, after careful consideration of the entire facts and circumstances in this case, the conclusion is irresistible that the case of the assessee falls in the first category. The contention of the assessee that "the alleged hawala purchases are hardly 1% of the total purchases of the company in respective years" (refer to para 18 of this order), also shows that this is not a case where the purchases have been made in cash from other parties. in such cases, it will be usually seen that the percentage of bogus purchases would be substantial vis-a-vis the total purchases. In the case of assessee off the other hand, the profitability after making the entire disallowance would remain reasonable as expected in the business of the assessee. In other words, the profitability after making entire disallowance does not go beyond the believable levels. The case of the assessee does not fall in the third category also as there is no such claim by the assessee or such material on record to suggest that the sales made by the assessee were also bogus Therefore, after analysing all the possibilities in detail, I am inclined to infer that the case of the assessee is squarely covered by the first possibility mentioned above ie, this is a case of inflation of expenses and routing of cash through hawala parties. Hence, the entire amount on account of hawala purchases deserves to be disallowed and added back to the income of the assessee."

13. In view of the above observations, the Assessing Officer added ₹:6,58,72,915/- to the total income on account of alleged bogus purchases.

14. In addition to the above, Assessing Officer further observed that during the year under consideration the assessee had advanced total loan amounting to ₹.35,18,600/- to various parties as mentioned in Para No. 24 of the Assessment Order. Assessing Officer noticed that no interest was charged by the assessee on the above loans and advances. Assessee was asked during the assessment proceedings to explain as to why the proportionate interest should not be disallowed within the provision of section 36(1)(i) of the Act.

15. In response to the above, the assessee submitted vide letter dated 03.10.2016 as under: -

"As regards to the disallowance of interest paid I wish to state that during the year under consideration interest is debited to Profit & Loss A/c of Rs 1,49,631/- Out of this, interest of Rs 46,426/- is already disallowed as a part of disallowance u/s. 14 Balance interest of ₹.1,03,205 is claimed as expenditure. The said interest paid on the cash credit facility term loans which is used for business purpose. Further on perusal of the Balance Sheet it can be seen that my capital is of Rs. 10,29,50,040/- . Thus, I have sufficient own capital to make interest free advances."

16. Assessee relied on the decision in case of CIT *v.* Reliance Utilities & Power Ltd [2009] 178 TAXMAN 135 (BOM) and stated that the above decision of the Hon'ble Jurisdictional High Court is final since the Department has not filed any appeal before Hon'ble Supreme Court.

17. Assessing Officer rejected the submissions of the assessee and observed as under: -

- *It is seen from the Profit & Loss A/c that the assessee is paying huge interest of Rs. 1,49,631/- on her loan but no interest is charged on the loans given by her. When assessee is paying huge interest on loans taken by her, she should have charged interest on the loan advanced also.*
- *Further, the assessee could not substantiate the business exigency of interest free loans. If such fund would have been utilized by the assessee in her business, there would be no need of loan for the regular business of the assessee and no question of interest payment on the loan to the extent she has advanced as interest-free loan*
- *Proportionate interest expenses has to be disallowed because the assessee has diverted the interest bearing fund toward noninterest bearing fund if the minimum Interest rate on borrowed fund for the business purpose during the financial year relevant to assessment year under consideration is taken at 10% pa and interest amount @ 10% is worked out on loan advanced of Rs.35,18,98,600/-, it is worked out to Rs. 3,51,89,860. However, total interest expenditure debited to Profit & Loss A/c is Rs. 1,49,631/- out of which Rs 46,426/- has already been disallowed us 14A of the IT Act as mentioned at para 22 (supra) Balance interest is of Rs. 1,03,205/- (₹.1,49,631/- - ₹. 46,426/-) which is less than 10% of loan advanced amounting to Rs. 3,51,89,860/-. Thus disallowance of interest u/s.36(1)(iii) is ₹.1,03,205/-.*

18. Accordingly, Assessing Officer disallowed an amount of ₹.1,03,205/- u/s 36(1)(iii) of the Act, out of the interest expenses claimed by the assessee and added to the total income of the assessee.

19. Further, Assessing Officer observed that during the year under consideration, the assessee held following properties: -

Property	Amount
Flat at Brighton	4,02,40,060
Property at Lavassa 92	1,66,64,880
Property at Lavassa 94	1,66,23,880
Property at Alibaug	5,02,696
Flat at Pune	20,72,866
50% share in Sakinaka Property	2,37,027

20. Assessing Officer noticed that the assessee had owned more than two house properties. Assessee has offered income from house property from various properties of ₹. 1,80,000/- per annum. Hence, assessee was asked during the assessment proceedings to explain as to why income is not offered for other properties.

21. In response to the above, the assessee vide letter dated 03.10.2016 submitted that Flat at Brighton is considered as self-occupied property and properties at Lavassa (92 & 94) has not been offered because the possession of the above property is not yet received. Further, the rent from other properties are considered as per municipal tax basis and on

estimation basis, is much higher than municipal rateable value. The Assessing Officer considered the submission of the assessee and rejected the same by stating that in the assessee's own case, during the original assessment proceedings u/s 143 (3) of the Act for the A.Y.2010-11, the Assessing Officer has estimated the deemed rent on the property at 7% of the value of property as income from house property. The stand of the Assessing Officer is also supported by the decision of the Hon'ble Allahabad High Court in the case of M/s Radha Devi Dalmia v. CIT, [125 ITR 134 (All)]. Accordingly, Assessing Officer applied the rate of 7% to the properties and worked out income from house property at ₹.16,881/- and added under the head income from house property.

22. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions which are reproduced in Page No. 8 to 27 of the Ld.CIT(A) order. For the sake of brevity, the same are not reproduced below. Ld.CIT(A) after considering the submissions of the assessee, restricted the addition on bogus purchases at the rate of 12.5% and sustained the action of Assessing Officer in respect of addition made u/s.36(1)(iii) of the Act. With regard to return on investment on house, Ld.CIT(A) applied the rate of 7% of property and restricted the addition

to ₹.1,45,100/-. Against this order of the Ld.CIT(A), both assessee as well as revenue are in appeal before us.

23. Assessee has raised following grounds in its appeal: -

"The grounds of appeal set out below are without prejudice to each other:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Id. AO of completing the assessment u/s 143(3) r.w.s. 153A without appreciating the following facts-

a) Original assessment u/s 143(3) has already been completed and no incriminating material was found and

b) assessing officer while passing original assessment order u/s.143(3) has already made addition of alleged bogus purchase from Sai International Impex and therefore in the absence of any further incriminating material, question of making addition in respect of same alleged bogus purchase does not arise.

c) that the additions made by Ld. AO in the assessment u/s 143(3) r.w.s. 153A with respect to alleged bogus purchase was subject matter of appeal pending before appellate authority and have attained finality

and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.

2(a). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making an addition of 12.5% of alleged bogus purchase and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.

2(b). On the facts and in the circumstances of the case and in law, the Lower authorities failed to appreciate that:

(i) The appellant has made purchases from these parties, who had supplied materials as per the bills/invoices.

(ii) The payment towards these invoices was given by account payee crossed cheques only.

- (iii) *The sources of such payments are recorded /reflected and disclosed in books of accounts.*
- (iv) *The goods purchased have been sold by the appellant and reflected in the books of accounts which is not doubted by the learned Assessing Officer.*

which is wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made there under.

3. *Without prejudice to above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making an addition of 12.5% of alleged bogus purchase without appreciating the following facts--*

- (i) *that the appellant has earned GP margin of 0.15% on turnover excluding alleged hawala transaction (Purchase and Sales) and therefore presumption of earning 12.5% margin is exorbitant & not justified.*
- (ii) *Hon'ble ITAT has reduced the disallowance of alleged bogus purchase in appellant's own case in AY 2010-11 from 12.5% to 2% of the alleged bogus purchases.*

and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.

4(a) *On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in confirming disallowance u/s 36(1)(iii) of Rs.1,03,205/- i.e. difference between total interest paid of Rs.1,49,631/- and interest disallowed u/s 14A of Rs. 46,246/- without appreciating the fact that no incriminating material was found during the course of search proceedings in respect of said additions which is wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.*

4(b). *Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Id. CIT (A) failed to appreciating the fact that interest free advances to various parties were made out of own funds and interest free loans available with the appellant and no interest bearing funds were utilized for making such interest free advances, which is wrong and contrary to the facts of the case and provisions of the Income Tax Act, 1961 and the rules made thereunder.*

5. *On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in computing "Income from deemed let out*

property" at Rs. 1,45,100 with respect to property located at Pune by applying a rate of 7% of cost of property of Rs. 20,72,866/- without allowing standard deduction @ 30% on Annual value u/s. 24(a) of the Act and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Tax Act, 1961, and the Rules made there under.

6. On the facts and in the circumstances of the case and in law, the lower authority erred in rejection of books of accounts of the appellant by invoking the provisions of sections 145(3) of the Act, without appreciating the fact that assessee has submitted majority of the details asked by the Ld. AO during the course of assessment proceeding and reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of Income Act, 1961, and the Rules made there under."

24. At the time of hearing, Ld. AR has not submitted any submissions in regard to Ground Nos. 1, 4, 5 & 6, accordingly, the same are not adjudicated.

25. With regard to Ground No. 2 and 3 relating to addition of 12.5% of alleged bogus purchases, Ld. AR reiterated the submissions made before the Ld.CIT(A). Ld. Counsel for the assessee further submitted that the assessee is in the business of ferrous and non-ferrous metals and the addition made by the Ld.CIT(A) is on higher side, thus requested to reduce the same. On merits, Ld. AR brought to our notice that the Gross Profit of the assessee for the A.Y.2010-11 is at 0.15% by bringing our attention to the comparative chart of Gross Profit rates for the Assessment Years 2008-09 to 2010-11. Ld. AR further submitted that department has accepted the sales and disputing only the purchases, in this regard, he

submitted that may be reasonable percentage of disallowance may be considered. Ld. AR further submitted that in assessee's own case for A.Y.2010-11 the Tribunal has restricted the addition to 2% of the bogus purchases and requested the same percentage may be adopted for the year under consideration.

26. On the other hand, Ld.DR relying on the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd Vs. DCIT [2017] 84 taxmann.com 195 (SC) submitted that Ld.CIT(A) erred in not following the ratio of the decision of the Apex Court on the issue of bogus purchases in the case of N.K. Proteins Ltd Vs. DCIT (supra) wherein it has been held that the addition on the basis of undisclosed income could not be restricted to certain percentage when entire transaction was found bogus. Further, Ld.DR relied on the decision of the Hon'ble Delhi High Court in the case of CIT v. La Medica [2001] 117 Taxman 628 (Delhi) and supported the order of the Assessing Officer. Ld.DR prayed for set-aside of the Ld.CIT(A) order in this regard.

27. Considered the rival submissions and material placed on record, we observe that Assessing Officer treated entire bogus purchases made from Sai International Impex which appeared as hawala transactions and the

Ld.CIT(A) restricted the same to 12.5%. We observe from the comparative chart of G.P. Rates of the assessee that assessee has earned Gross Profit at 0.15% from genuine purchases. It is not in dispute that sales have been accepted as genuine made out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. We observe that in assessee's own case for the A.Y. 2010-11 in ITA.No. 4774/Mum/2014 dated 23.08.2017 the Coordinate Bench of the Tribunal restricted the addition to 2% of alleged bogus purchases, observing as under: -

"10. We have considered rival contentions and carefully gone through the orders of the authorities below. We have also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR during the course of hearing before us in the context of factual matrix of the case. From the record, we found that 25% of purchases alleged to be bogus was added by AO in assessee's income. CIT(A) has reduced same to 12.5%. Before the AO, assessee has filed year wise details of purchases, details of payment made through account payee cheque. In addition to the purchase details, assessee has also filed details of corresponding sales affected by the assessee in respect of the very same goods. The sales so affected are not in dispute and the same were accepted in total by the AO. We found that in this case AO has only alleged purchase made from Sai International.

11. In respect of the goods purchased from Sai International and sold by the assessee, the assessee had shown GP rate 0.15%, however, in respect of purchases other than from Sai International, the assessee has disclosed same GP of 0.15%. Thus, it is not the case where assessee has shown lower G.P. in respect of alleged bogus purchases. In the immediately preceding Assessment Year, the GP shown by the assessee on the entire sale was 0.14%. Thus, it is clear that GP shown by the assessee during the year under consideration is better than the GP shown in the immediately preceding Assessment year.

12. In view of the above discussion and keeping in view the totality of facts and circumstances of the case, we modify the order of lower authorities and direct the AO to upheld addition of 2% of bogus purchases. We direct accordingly."

28. The Hon'ble Bombay High Court in the case of Pr.CIT v. M/s.Mohommad Haji Adam & Co. in Income Tax Appeal No. 1004 of 2016 dated 11.02.2019 held that the Tribunal correctly restricted the addition limited to the extent of bringing the Gross Profit rate on purchases at the same rate of other genuine purchases. While holding so, the Hon'ble High Court observed as under:

"All these appeals arise out of common Judgment of the Income Tax Appellate Tribunal. The facts in all these appeals being same, we make it from ITXA No. 1004 of 2016. The revenue - appellant has raised following questions for our consideration

"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in not confirming the addition made by the Assessing Officer on account of bogus purchases shown to have been made through hawala transactions from certain parties who were only providing accommodation sale bills?

(b) Whether on the facts and in the circumstances of the case and in law, where evidently no purchases were made from these parties who were issuing only bogus accommodation bills and this finding has been accepted by the CIT(A) and the ITAT, the ITAT, without any evidence, was justified in presuming that there must have been purchases and thereupon giving huge relief to the assessee?

(c) Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is perverse as no reasonable person acting judicially and properly instructed in the relevant law could arrive at such a finding on the evidence on record?"

2 The issues relate to the Assessment Year ("A.Y." for short) concerning the respondent - assessee who is a trader of fabrics. During the survey operations in case of the entities from whom the

assessee had claimed to have made purchases, the department collected information suggesting that such purchases were not genuine. The Assessing Officer ("A.O." for short) noticed that the assessee had shown purchases of fabrics worth Rs.29.41 Lacs (rounded off) from three group concerns, namely, M/s Manoj Mills, M/s Astha Silk Industries and M/s Shri Ram Sales & Synthetics. On the basis of the statement recorded during such survey operations, the A.O. concluded that the selling parties were engaged only in supplying the bogus bills, that the goods in question were never supplied to the assessee, and therefore, the purchases were bogus. He, therefore, added the entire sum in the hands of the assessee as its additional income.

3 The assessee carried the matter in the appeal before the Commissioner of Appeals who accepted the factum of purchases being bogus. However, he compared the purchases and sales statement of the assessee and observed that the department had accepted the sale, and therefore, there was no reason to reject the purchases, because without purchases there cannot be sales. He, therefore, held that under these circumstances A.O. was not correct in adding the entire amount of purchases as the assessee's income. He, therefore, deleted the addition refreshing it to 10 % of the purchase amount. He also directed the A.O. to make addition to the extent of difference between the gross profit rate as per the books of accounts on undisputed purchases and gross profit on sales relating to the purchases made from the said three parties.

4 The assessee carried the matter before the Tribunal. The Revenue also carried the issue before the Tribunal. The Tribunal in the impugned Judgment allowed the appeal of the assessee partly and dismissed that of the Revenue. The Tribunal noted that the CIT(A) had not given any reasons for retaining 10 % of the purchases by way of ad hoc additions. The Tribunal, therefore, deleted such additions, but retained the portion of the order of the CIT(A) to that extent he permitted the A.O. to tax the assessee on the basis of difference in the GP rates.

5 Learned counsel Mr Chhotaray for the Revenue strenuously contended that the CIT(A) and the Tribunal committed serious error. In the present case when it was established that the purchases are bogus, the entire amount should have been added to the income of the assessee. There is no question of granting any relief in the facts of the case. In this context he relied on a decision of the Division Bench of Gujrat High Court in the case of N.K. Industries Ltd. Vs Dy. C.I.T. in Tax Appeal No. 240 of 2003 and connected appeals decided on 20th June, 2016. In such judgment the Court had observed as under –

"The Tribunal in the case of Vijay Proteins Ltd. Vs. CIT had observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25 % of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s Indian Woolen Carpet Factory (supra) or M/s Vijay Proteins Ltd. In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs.2,92,93,288/- and taxing only 25 % of these bogus claim goes against the principles of Sections 68 and 69C of the Income Tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs.2,92,93,288/- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs.73,23,322/"

6 Counsel pointed out that the S.L.P. against such decision was dismissed by the Supreme Court.

7 On the other hand, Ms Khan learned counsel for the assessee opposed the appeals contending that the Tribunal has given proper reasons. The assessee was a trader. Even if the purchases are found to be bogus, entire purchase amount cannot be added by way of assessee's income. 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. No order as to costs."

29. Following the decision of the Hon'ble Bombay High Court (supra), and also assessee's own case for A.Y. 2010-11, Coordinate Bench directed the Assessing Officer to restrict the addition/disallowance only to the extent of the 2% of the alleged bogus purchases. To meet the ends of justice, we direct the Assessing Officer to sustain the addition @2% of the alleged bogus purchases. Since the Assessing Officer has accepted the sales declared by the assessee and purchases are part of the same trading activities. Accordingly, Ground No. 2 & 3 are partly allowed.

30. In the result, appeal filed by the assessee is partly allowed.

ITA.No. 3797/MUM/2018 (A.Y. 2010-11) (Revenue Appeal)**31.** Revenue has raised following grounds in its appeal: -

1. *"On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in restricting the addition to the extent of 12.5% of the bogus purchases of 2,70,06,338 from M/s Sai Internationa Impex besides allowing for setting off of the GP already shown by the assessee."*

2. *"On the facts and circumstances of the case and in law, the Id CIT (A) has erred in deleting the addition of 2,70,06,338 made by the assessing officer without considering the decision of Hon'ble Apex Court in the case of CIT-vs-Durgaprasasd 82ITR 540 and in the case of N K Proteins Ltd Vs DCIT SLP CC No 769 of 2017 even when the assessee failed to prove the genuineness of transaction or produce the purchase parties."*

3. *"On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in restricting the house property income to 1,45,000 even when the assessee herself has offered such income in her return of income to the extent of 1,80,000 and also ignoring the decision of Hon'ble Allahabad High Court in the case of Radha Devi Dalmia vs. CIT, 125 ITR 134 (All)."*

4. *"On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in restricting the house property income to 1,45,000 stating that addition in absence of any seized material in respect of non-abated assessment is incorrect even when there is no such provision within the section 153A of the IT Act."*

32. Ground No. 1 and 2 are is similar to Ground No. 2 & 3 of grounds of appeal raised by the assessee for the A.Y. 2010-11 and the decision taken therein shall apply mutatis-mutandis to the appeal of the revenue. ground raised by the revenue is dismissed.

33. In respect of other grounds, no submissions were made by both the parties, accordingly, the same are not adjudicated.

34. In the result, appeal filed by the Revenue is dismissed.

ITA.No. 3857/MUM/2018 (A.Y: 2009-10) (Assessee Appeal)
ITA.No. 3800/MUM/2018(A.Y: 2009-10) (Revenue Appeal)

35. The Facts in these cross appeals are exactly similar and also grounds of appeal raised by both parties are exactly similar. Therefore, the decision reached in A.Y. 2010-11 are equally applicable to the appeals filed. Accordingly, the appeal filed by the assessee is partly allowed and revenue is dismissed.

36. To sum-up, appeals filed by the assessee are partly allowed and appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 02nd January, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 02.01.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum