

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

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. Nos. 3129 & 3130/Mum/2022
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

M/s. Nokoda Melat Industries B-14, Ground Floor, Plot No. 122B, Goragandhi Bldg, Khetwadi Backbay Road, Girgaon, Mumbai-400004.	बनाम/ Vs.	ITO-19(2)(4) Matru Mandir, 2 nd Floor, Room No. 217, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKFM0723C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mehul Thakkar
Revenue by:	Shri Anil Gupta

सुनवाई की तारीख / Date of Hearing: 01/03/2023
घोषणा की तारीख /Date of Pronouncement: 31/03/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 10.10.2022 for AY. 2010-11 & AY. 2011-12.

2. At the outset, the Ld. AR of the assessee drew our attention to the fact that the assessee is aggrieved by the impugned action of the Ld. CIT(A) to have confirmed the addition of profit margin @ 12.5% on purchases of goods from twenty six (26) parties which are alleged to have given accommodation entries to the assessee (bogus purchases to the tune of Rs. 23,76,935/-).

3. Since both sides agree that the facts are similar and similar addition has been made in the hands of the assessee for both AY 2010-11 & AY. 2011-12, I take up for adjudication the appeal of assessee



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for AY. 2010-11 as the lead case and the decision of the same will be followed for AY. 2011-12.

4. Brief facts as noted by the AO for AY 2010-11 are that the assessee had filed return of income for AY. 2010-11 on 16.09.2010 declaring total income of Rs.1,93,410/-. Later, the case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 (hereinafter “the Act”) on the basis of information from the DGIT (Inv.) Wing, Mumbai which was in turn based on information received from the Maharashtra Sales Tax Department that some of the dealers registered under MVAT, 2002 indulged in the practice of providing accommodation entries (*in the form of issuing bogus sales/purchase bills without supplying any goods but providing only accommodation entries*). According to the Sales Tax Department, the assessee is also a beneficiary and based on that information, the DGIT (Investigation) passed on the same to the AO who had issued notice u/s 148 of the Act proposing re-opening of the assessment for AY 2010-11.

5. According to the AO, the assessee had shown to have made purchases from twenty six (26) parties (*refer assessment order wherein the names of all the parties are given in the chart along with the amount of bills*) to the tune of Rs.1,90,15,487/-. So the AO gave opportunity to the assessee to rebut the allegation of Sales Department vide order-sheet entry dated 14.01.2016 and directed the assessee to produce the 26 parties before him. Pursuant thereto, the assessee produced the following documents to substantiate the genuineness of the purchases (i) copies of ledger accounts along with copies of



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purchase invoices of the specified parties. (ii) Copies of bank statements evidencing payment made through proper banking channels by issuing account payee cheques (highlighted in the relevant bank statement) (iii) Chart showing the details of purchases from the alleged parties and (iv) the corresponding sales made by assessee of the purported accommodation purchases(goods). However, the AO did not accept the genuineness of the purchase of goods, since the sales department had already conducted inquiries about the twenty six (26) alleged parties and the assessee failed to produce the non-genuine dealers before him and did not produce other evidence like delivery challan, transfer receipt etc. Thus, AO was of the opinion that the assessee failed to prove the genuineness of the purchase of goods from the twenty six (26) parties named by the Sales Tax Department and so held that the purchases shown by the assessee to the extent made from twenty six (26) parties are un-verifiable and therefore the results shown by the assessee cannot be verified. Therefore, he rejected the books and made an estimation of 12.5% of the non-genuineness purchase of Rs.1,90,15,487/- which is Rs.23,76,935/- (likewise for AY 2011-12 AO made an addition of 12.5% of the total bogus purchase of Rs.3,05,39,480/- i.e. Rs.42,26,970/-). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC who was pleased to confirm the same by passing the impugned order. Aggrieved, the assessee is before the Tribunal.



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6. I have heard both the parties and perused the records. Based on information from Maharashtra Sales Tax Department that certain unscrupulous dealers were indulging in providing accommodation entries in the form of bogus bills (purchase or sales) and taking note that the assessee had shown to have made purchase from twenty six (26) parties for AY. 2010-11 to the tune of Rs.1,90,15,487/-, the AO reopened the assessment and since the assessee was not able to produce the parties, the suppressed income from such purchases was estimated as 12.5% of the bogus purchases. The Ld. AR of the assessee brought to my notice that in similar /identical cases this Tribunal has consistently estimated profit imbedded in business transaction are as 3% of such purchases and drew our attention to several orders of the Co-ordinate Bench decision especially in the case of Shri Nimesh Jabarmal Chandan Vs. ITO in ITA. No.7914/Mum/2019 for AY. 2010-11 dated 28.02.2020 wherein the AO had made additions based on the information from Maharashtra Sales Tax Department and the AO reopened the assessment of the assessee and estimated 12.5% of the bogus purchases which was enhanced at 100% by the Ld. CIT(A); and the Tribunal was pleased to restrict the addition at 3% by holding as under: -

“6. After hearing both the parties and perusing the material on record, we observe that in this case the assessee has undisputedly made purchases from 9 parties aggregating to Rs.84,30,492/- which was alleged to be bogus and accordingly the AO during the course of assessment proceedings made an addition of 12.5% of the said bogus purchases as the AO did



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not doubt genuineness of the corresponding sales. Ld. CIT(A), in the appellate proceedings, directed the AO to add 100% of the bogus purchases thereby enhancing the assessment. In our view, when the corresponding sales which were made out of the alleged bogus purchases is not doubted and is accepted by the AO during the assessment proceedings, the order passed by Ld CIT(A) appears to be wrong and can not be sustained. Therefore, we do not find any reason for 100% addition of the bogus purchases as that would lead to unrealistic and hypothetical profits of the assessee which is not possible and practicable as the assessee is a small time iron trader. Under these circumstances, we are not in agreement with the conclusion drawn by Ld. CIT(A) on this issue that a 100% addition of bogus purchases is required to be made to the income of the assessee. In the present scenario, the only presumption that could be made is that the assessee might have purchased the goods from the grey market thereby making savings on account of non payment of VAT and other incidental levies. Therefore the addition can only be made in order to assess the profit element in bogus purchase based upon the saving which the assessee might have made by purchasing the goods from the grey market. Accordingly, in the present circumstances and facts, we are of the view that a reasonable addition based upon profits should be made. Since the assessee is a dealer in ferrous and non ferrous item, in our opinion, it would be reasonable and fair if an addition of 3% is made to assess the profit of the assessee embedded in the bogus purchases of the assessee which would be over and above the profits declared by the assessee. Accordingly, we set aside the



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order of Ld. CIT(A) and direct the AO to apply 3% of the bogus purchases.”

7. In the light of the aforesaid decision of the Co-ordinate bench of this Tribunal in similar cases and other cases which was brought to my notice and taking into consideration the G.P. of the assessee and similar comparable cases, I am inclined to restrict the addition at 3% of the total bogus purchases in both assessment years.

8. The other grounds raised by the assessee including the legal ground are left open.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 31/03/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/03/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai