

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 435/MUM/2023  
(Assessment Year: 2009-10)**

**ITO -22(2)(1), Mumbai,**  
Room No. 508, 5<sup>th</sup> Floor,  
Piramal Chamber, Lalbaug,  
Mumbai - 400012

..... **Appellant**

**Nilesh Chandrakant Vora,**  
202, Vivek Co op Hsg Soc Besent Road,  
Santacruz (W), Mumbai - 400054  
[PAN: AACPV8100C]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Sridhar Govind Menon  
For the Respondent/Assessee : None

**Date** : 16.05.2023  
Conclusion of hearing : 18.05.2023  
Pronouncement of order

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 16/12/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 27/03/2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised the following grounds of appeal:

- "1 *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made on account of bogus purchase to 12.5% of total bogus purchases ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase.*
  2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer.*
  3. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was correct in restricting the addition made by the Assessing Officer to 12.5% of the bogus purchase value without appreciating the judgment in the case of M/s. Vijay Proteins Limited (1996) reported in 25 ITD 428 (Ahd. Tribunal).*
  4. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in appreciating the fact that the mere payment through banking channels will not be sacrosanct since neither notices were served on the parties and also the assessee failed to produce the parties for verification".*
  5. *This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No.3 of 2018 dated 11.07.2018 as amended vide F.No. 279/Misc.142/2007-ITJ(Pt) dated 20.08.2018.*
  6. *The appellant prays that the order of the National Faceless Appeal Centre (NFAC), Delhi on the above grounds be reversed and that of the Assessing Officer be restored."*
3. Brief facts of the case are that the Assessee, an individual engaged in the business of trading in electrical goods, filed its return of income on 25/09/2009 for the Assessment Year 2009-10 declaring total income of INR 2,99,067/-. Information received from Sales Tax Authorities through Director General of Income Tax (Investigation), Mumbai, that the Assessee had made purchases

aggregating to INR 10,19,101/- from the following hawala parties:

<b>Sr. No.</b>	<b>TIN/PAN</b>	<b>Name of the Bogus Supplier &amp; PAN</b>	<b>Amount of Bogus Purchases (INR)</b>
1.	27940631968V	Varah Laxmi Sales Agency AEPPT8680N	63,693
2.	27630606579V	Pawan Enterprises AEPPT8679H	130,188
3.	27330629636V	Padmavati Trading Co ATYPK4207E	66,875
4.	27210620875V	Kalash Trading Co AUPPK0439A	352,032
5.	27030119581V	Viraj Enterprises ALZPK6806A	406,313
<b>Total</b>			<b>10,19,101</b>

4. On the basis of the above information, reassessment proceedings were initiated. During the assessment proceedings, the Assessing Officer issued notices to some of creditors. In case of the following creditors either the notices were returned as un-served or reply was received not received:

<b>Sr. No.</b>	<b>Name of the party</b>	<b>Status of notice sent</b>	<b>Amount involved (INR)</b>
1	Mahesh Electricals	Returned	6,45,126
2	Armaan Metal Works	Returned	10,59,891
3	Navbharat Trading Co.	Reply not received	3,37,201
4	Airfig Sales	Reply not received	12,97,946
<b>Total</b>			<b>33,40,164</b>

5. The Assessee was asked to show cause why purchases made from the abovesaid parties should not be treated as bogus purchases. Vide replies filed by the Assessee vide letter, dated 18/08/2014,

26/08/2014 and 12/09/2014, the Assessee furnished:

- a) Party-wise details of Purchases
  - b) Purchase Bills, Ledger Account of alleged bogus parties.
  - c) Purchase Register & Sales Register
  - d) Ledger extract of the suppliers accounts along with bank statement highlighting the payment made to these parties through cheques
  - e) Statement showing bill wise quantitative details of the purchases
  - f) A statement showing details of purchases made from the alleged bogus parties and the corresponding sales of the material purchased to other parties
6. On the basis of the above, the Assessee contended that the purchases were genuine and the goods were sold during the normal course of business. Without prejudice, to buy piece and to avoid litigation, the Assessee contended that only the profit element forming part of the alleged bogus purchases could be brought to tax.
7. However, the Assessing Officer was not convinced and therefore, vide Assessment Order, dated 27.03.2015, passed under Section 143(3) read with Section 147 of the Act the Assessing Officer made an addition of INR 13,12,280/- on account of bogus purchases holding that 25% of the bogus purchases should be disallowed by placing reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Vijay Proteins Ltd. vs. Assistant

Commissioner of Income Tax: 58 ITD 428 (Ahd).

8. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). The Assessee challenged the above ad-hoc disallowance of 25% of alleged bogus purchase contending as under:
- (a) The purchases made by the Assessee were genuine.
  - (b) During the assessment proceedings the Assessee has filed detailed submissions clearly showing that the Assessee has established one to one identification of purchases made from five parties aggregating to INR 10,19,101/- (incorrectly taken by the Assessing Officer as INR 19,08,957/-) with the corresponding sales with supporting documents. Further, the payments to these purchases were made through the account payee cheques as reflected in bank statement of the Assessee
  - (c) The ad-hoc disallowance of INR 8,35,041/- being 25% addition of the alleged bogus purchases aggregating to INR 33,40,164/- is liable to be set aside for the reason that the four parties from which alleged bogus purchases were made were not reported as hawala dealers. The disallowance was made by the Assessing Officer merely on the ground that they were not found at the given address, or did not respond to the notices u/s 133(6), which is totally unjustified.
  - (d) The decision in the case of Vijay Proteins Ltd. (supra) was not applicable to the facts of the present case as the Assessee was able to identify the alleged bogus purchases with the corresponding sales

9. The CIT(A), vide order, dated 16/12/2022, rejected the contention of the Assessee that the purchases were genuine. However, the CIT(A) granted relief to the Assessee by restricting the disallowance on account of bogus purchases to INR 5,44,908/- being 12.5% of aggregate bogus purchases of INR 43,59,265/- (INR 10,19,101/- + INR 33,40,164/-).
10. Being aggrieved, the Revenue is in appeal before us.
11. We have perused the record and considered the submissions advanced by the Ld. Departmental Representative. We find that the Assessing Officer had not doubted the sales. The CIT(A) took note of the aforesaid fact and relying upon the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth : 356 ITR 451 (Gujarat)[16-01-2013] and decisions of the Mumbai Bench of the Tribunal including in the case of ITO vs. Bakshish M Malhotra, [ITA No. 2126/Mum/2016, Assessment Year 2009-10, dated 26/05/2017], restricted the addition/disallowance to 12.5% of the alleged bogus purchases. We have perused the judicial precedents on which reliance was placed by the CIT(A) and find that the decision of the CIT(A) is in line with the aforesaid judicial precedents wherein it has been held that where sales are accepted, the corresponding purchases must also be accepted, albeit from parties different from those stated in the books of accounts, and therefore, addition/disallowance should be restricted to 12.5% of such unproved purchases being the profit element embedded therein. Accordingly, we do not find any reason to interfere in the order passed by the CIT(A). Therefore, the Ground No. 1 to 4 raised by the Revenue are dismissed, while Ground No. 5 and 6 are

disposed off as being infructuous.

12. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 18.05.2023.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 18.05.2023  
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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