

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 823/Mum/2023
(Assessment Year: 2011-12)**

ITO-20(1)(1), 110,1 st Floor, Piramal Chamber, Lalbaug,Parel, Mumbai-400012.	बनाम/ Vs.	M/s. Crystal Corporation, 4A/4B, Ground Floor, Opp. Annex Building, Old Anjirwadi, Mazgaon, Mumbai-400010.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFC7226Q		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri.Anil Gupta.DR
प्रत्यर्थी की ओर से/Respondent by :	None.

सुनवाई की तारीख / Date of Hearing	22/05/2023
घोषणा की तारीख /Date of Pronouncement	24/05/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The Revenue has filed an appeal against the order of Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”] passed under section 250 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year (“AY”) 2011-12. The Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made on account of bogus purchase to 6% 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 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 circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made by the Assessing Officer to 6% 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 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 AO be restored.*
7. *The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary."*

2. The brief facts of the case are that, the assessee is a partnership firm and is engaged in manufacturing and trading of non-ferrous metal. The assessee has filed return of income for AY 2011-12 on 29.09.2011 disclosing a total income of Rs.72,205/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the Assessing Officer ("AO") has received information from DGIT (Investigation) that based on inquiries conducted by Sales Tax Department of Maharashtra. The assessee has obtained bogus purchases entries which are in the nature of non-genuine purchases from the dealers. The A.O has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance, Ld.AR of the assessee appeared from time to time and submitted the details and also a letter dated 19.04.2017 was filed to treat the return of income filed originally on 29.09.2011 as due compliance to notice. The assessee was

provided with the reasons for re-opening of the assessment and notice u/s 143(2) and U/sec142(1) of the Act was issued.

3. The assessee has submitted the available information in respect of purchases. The AO found that the assessee has obtained bogus purchase bills from two parties aggregating to Rs. 18,15,639/- and to test check the genuineness of the transactions, the AO has issued notice u/s 133(6) of the Act to the parties and there was no response. Hence the AO has issued a letter dated 29.10.2018 referred at page 9 of the assessment order to submit the requisite details. Whereas the AO has received some information and the assessee has failed to produce the parties. Finally, the AO was not satisfied with the explanations of the assessee and observed that the genuineness of the transactions could not be established and made disallowance of alleged bogus purchases of Rs.18,15,639/- and assessed the total income of Rs.18,87,840/- and passed the order u/s 143(3)r.w.s147 of the Act dated 28.11.2018.

4. Aggrieved by the order of AO, the assessee has filed appeal before the Ld.CIT(A). The Ld.CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO, and sustained the validity of the assessment and in respect of the addition made by the AO, CIT(A) has relied on the facts, gross profit rate, decisions of Honble High Court and Co-ordinate Bench decisions of the Honble Tribunal and restricted the addition to the extent of @6% of purchases and

partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the Revenue has filed an appeal before Hon'ble Tribunal.

5. At the time of hearing, Ld.Sr.DR submitted that Ld.CIT(A) has erred in restricting the addition to 6% irrespective of the facts that no proper information was filed in the assessment proceedings. None appeared on behalf of the assessee.

6. We heard the Ld.DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.DR that the CIT(A) has restricted the addition to the extent of 6% of the bogus purchases considering profit element embedded. We found that the CIT(A) has dealt on the facts and the Hon'ble High Court decisions and took a view referred at Para 4 to 7 of the order. We find the Jurisdictional Honble High Court in the case of Pooja Paper Trading Co. Vs. ITO, (104 taxmann.com 95) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451) has considered the profit element and the income was estimated. We find the Ld.CIT(A) took a reasonable view that the only profit percentage has to be added and estimated @ 6% of bogus purchases. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent evidence and material to take a different view. We are of the opinion that the CIT(A) dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales. The Ld.CIT(A) has relied on the decision of Hon'ble High Court and Honble Tribunal and passed a reasoned order. Accordingly, we do not find any

infirmary in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue

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

Order pronounced in the open court on 24.05.2023.

Sd/-

**(PADMAVATHY S)
ACCOUNTANT MEMBER**

Mumbai, Dated 24/05/2023
Amit Kumar, Sr. PS

Sd/-

**(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

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

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

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

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