

3. Ground No.10 raised by the assessee, reads as under :

“10. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in upholding the disallowances of purchases of Rs.43,47,750/- by treating the same as ‘Bogus purchases’.

4. The facts concerning this issue are that the Assessing Officer received information from the Sales Tax Department through DGIT (Inv.), Pune containing list of parties which were declared by Sales Tax Department as Hawala operators, who provided only accommodation entries without supplying materials. On verification of such list, it was found that the assessee had taken accommodation entries from six parties totaling to Rs.43,47,750/- during the year under consideration. The assessee was called upon to furnish the details of items purchased from these parties along with supporting vouchers, gate passes and lorry receipts etc. so as to prove the genuineness of the transactions. In the absence of the assessee furnishing requisite details, the AO opined that the aforesaid amount of Rs.43,47,750/- was liable to be added as non-business expenditure. The assessee’s contention that it had non-business expenditure offered during the course of search amounting to Rs.2.00 crore and the unutilized part of the same should be

adjusted against the instant disallowance, came to be accepted by the AO, who eventually made disallowance at Rs.6,60,106/-, thereby adjusting unutilized amount of surrender at Rs. Rs.36,83,644/-. The ld. CIT(A) echoed the assessment order on this point. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

5. Having heard the rival submissions and perused the relevant material on record, it is seen as an admitted position that the assessee could not substantiate the genuineness of transactions representing purchase recorded from six parties totaling to Rs.43,47,750/- in respect of which information was received from Sales Tax Department about the assessee having obtained accommodation entries. In that view of the matter, the genuineness of the purchase transactions does not get established. At the same time, it is an admitted position that the assessee maintained proper stock records and the said purchases were duly recorded in the books of account. When purchases are bogus and recorded in the books of account, addition can be made only to the extent of difference between the gross profit rate on genuine purchases and gross profit rate on bogus purchases and not the full amount of purchases. The Hon'ble Bombay High Court in

Pr.CIT Vs. M/s. Mohammad Haji Adam and Company (2019) 104 CCH 0391 Mum-HC has held to this extent. The Hon'ble Bombay High Court in *Pr.CIT Vs. Batilboi Environmental Engineering Ltd. (2022) 446 ITR 238 (Bom.)* held that only the profit element in the bogus purchases should be added, which in that case was 12.5%. Still in another case, the Hon'ble Bombay High Court in *Pr.CIT Vs. Jakharia Fabric Pvt. Ltd. (2020) 429 ITR 332 (Bom.)* upheld the order of the Tribunal making addition towards the additional profit @17.5% of bogus purchases. In view of the above discussion and the *ratio* laid down in the aforementioned judgments, it is clear that only the profit element can be added and not the gross amount of bogus purchases.

6. Adverting to the facts of the instant case, it is seen that the assessee made bogus purchases of Rs.43,47,750/-. As against the amount of such bogus purchases, unutilized surrender of Rs.36,83,644/- was adjusted by the AO towards the addition, meaning thereby that the addition to that extent got confirmed and adjusted against the amount already surrendered by the assessee, leaving the net amount of disallowance at Rs.6,60,106/-. The amount of set off of Rs.36,87,644/- represents 85% of the amount of bogus purchases. The ld. AR submitted that the assessee had

profit margin of 22.83%. Addition confirmed and adjusted at 85% of the bogus purchases is far in excess of the gross profit margin on such accommodation entries. This proves that the amount of addition sustained at Rs.6,60,106/- is not called for. The same is directed to be deleted. This ground is allowed.

7. In the result, the appeal of the assessee is partly allowed in totality.

Order pronounced in the Open Court on 20th June, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 20th June, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT (Central), Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-06-2023	Sr.PS
2.	Draft placed before author	20-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
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