

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI  
BEFORE SHRI B R BAKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 239/Mum/2023  
(Assessment Year: 2011-12)

M/s. Ameya Industries A-141, MIDC Plot TTC Area, Khairne, Navi Mumbai-400 709	Vs.	ITO-28(1)(1) Mumbai
PAN/GIR No. AADFA 1720 C		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Shashank Mehta
<b>Revenue by</b>	:	Shri Vaibhav Jain
<b>Date of Hearing</b>	:	27.03.2023
<b>Date of Pronouncement</b>	:	23.06.2023

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2011-12

2. The solitary issue involved in this appeal is the addition of Rs.4,69,064 being 25% of the alleged bogus purchase amounting to Rs.18,36,254/-.

3. The brief facts are that the assessee is engaged in the business of manufacturing of printing and publishing and had filed its return of income declaring total income at Rs.3,34,512/- and the same was processed u/s.143(1)of the Act. The assessee's case was reopened vide notice dated 20/04/2016 u/s. 148 of the Act based on the information from

the Investigation Wing that the assessee was a beneficiary of accommodation bills through various parties declared as hawala operators as per the Maharashtra Sales Tax Department. The assessee failed to file the return of income in response to notice u/s. 148 of the Act and the Ld. AO passed the assessment order dated 29/08/2016 u/s.143(3) of the Act r.w. section 147 of the Act making addition of Rs.4,59,064/- being 25% of the non-genuine purchases amounting to Rs.18,36,254/- made from around 5 parties alleged to be accommodation entry providers.

4. The assessee was in appeal before the Id. CIT (A) who confirmed the addition made by the AO for the reason that the assessee has failed to substantiate its claim.

5. The assessee is in appeal before us challenging the impugned order.

6. The learned Authorised Representative (Id. AR for short) for the assessee contended that the tribunal in the case of AY 2010-11 had restricted the disallowance to 12.5% on bogus purchases. The Id. AR further contended that on no change in facts and circumstances of the case, the addition on alleged bogus purchases to be restricted to 12.5% instead of 25% as confirmed by the Id CIT(A).

7. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said facts and submitted that the Ld.CIT(A) has rightly confirmed 25% on the bogus purchases which is said to be made from hawala parties. The Id. DR relied on the orders of the lower authorities.

8. We have heard the rival submissions and perused the material available on record. It is evident that the assessee has made purchases to the tune of Rs.18,36,254/- from the following parties:

Sr. No.	Name of the party	Amount
1	Ashtavinayak Agency	6,54,380
2	Real Traders	44,01,415
3	Nisha Enterprises	3,59,783
4	Saradgi Syndicate	2,57,880
5	Amar Enterprises	1,62,801
	Total	18,36,254

9. As per the information available on the official website of Sales Tax Department, Government of Maharashtra, these parties are said to be accommodation entry providers issuing bogus bills without actual delivery of goods. The ld. AO had issued notice u/s.133(6) of the Act to the above mentioned parties which has been returned unserved as “left”. The assessee was unable to produce the parties before the learned AO nor was it able to prove the genuineness of the transaction. The assessee’s contention that the payment was made through banking channels does not establish the genuineness of a transaction and the learned AO by placing reliance on the decision of the Hon’ble Apex court in the case of *M/s. Kachwala Gems vs JCIT* [2007] 288 ITR 10 (SC) held that the transaction by account payee cheque *per se* does not constitute it to be a genuine transaction. Further the assessee contended that the corresponding sales have been effected on these purchases and had also filed copies of purchase bills and payment details before the ld. AO. The ld. AO had not disputed the sales made by the assessee and proceeded to add only the profit element embedded in the bogus purchases instead of the entire sales by placing reliance on the decision of the Hon’ble Gujarat High Court in the case of *CIT vs. Bhola Nath Poly Fab (P.) Ltd.* [2013] 355 ITR 290 (Guj) and also the

decision of Hon'ble Gujarat High Court in the case of *Vijay Proteins Ltd. vs. CIT* [2015] 58 Taxmann.com 44 (Guj). The first appellate authority confirmed the said addition by way of an *ex parte* order dated 15/12/2022. On perusal of the decision cited by the Id.AR for AY 2010-11 in ITA No. 675/Mum/2019, the tribunal considering the nature of the business of the assessee has restricted the percentage of disallowance to 12.5%. We find no reason to deviate from the view taken by the tribunal in assessee's case. Hence, we remand this issue back to the file of the Id. CIT(A) as the assessee remained *ex parte* before the Id. CIT(A) and the Id. CIT(A) is directed to pass the order in accordance with the decision of the tribunal in the case of the assessee for A.Y. 2010-11.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 23.06.2023*

Sd/-

(B R Baskaran)  
Accountant Member

Mumbai; Dated : 23.06.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai