

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.333/SRT/2022

Assessment Year: (2014-15)

(Physical Hearing)

The ITO, Ward-1(1)(3), Surat.	Vs.	M/s. Khazana Bazar Pvt. Ltd., C-104, Radha Raman Textile market, Saroli, Surat- 395010.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFCK0726P		
(Assessee)		(Respondent)

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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFCK0726P		
(Assessee)		(Respondent)

Assessee by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Suresh K. Kabra, CA
Date of Hearing	11/05/2023
Date of Pronouncement	26/06/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Revenue and Assessee, pertaining to Assessment Years (AY) 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, in Appeal No. ITBA/NFAC/250/2022-23/1045773743(1), dated 21.09.2022, which in turn arise out of common assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 27.12.2016.

2. Since, the issues involved in these cross appeals are common and identical, therefore, these cross appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts and grounds of appeal raised by the Revenue in ITA No.333/SRT/2022, for AY.2014-15 have been taken into consideration for deciding these appeals *en masse*.

3. Grounds of appeal raised by the Revenue, in the lead case (in ITA No. 333/SRT/2022), are as follows:

“(i) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in restricting the addition at 12.5% of bogus purchases as against disallowance made by the AO at the rate of 100% of such purchases amounting to Rs.2,26,10,841/- ignoring the facts that these purchases are non-genuine transactions as the assessee failed to substantiate his claim of genuine purchase during assessment proceedings as well as during appeal proceedings by furnishing documentary evidences.

(ii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the purchases of the assessee amounting to Rs.2,26,10,841/-was found to be non-genuine as proved from verification made by AO during assessment proceedings.

(iii) On the basis of the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have upheld the order of the Assessing Officer.

(iv) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

(v) The assessee craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

4. Grounds of appeals raised by the assessee in ITA No.334/SRT/22, are as follows:

“1. The Ld. CIT(A) has erred and was not justified on the facts of the case and in law in confirming the addition @ 12.50% of the unverifiable purchases.

2. PRAYER

2.1 The addition @ 12.50% of unverifiable purchases confirmed by CIT(A) may be kindly deleted.

2.2 Personal hearing may be granted.

2.3 Any other relief that your honours may deem fit may be granted.

3. *The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing.*”

5. Brief facts *qua* the issue are that during the course of assessment proceedings, it was noticed by the AO that the assessee had claimed purchases of amounting to Rs.6,38,22,505/-. The assessee was requested by the AO to furnish complete details and evidences with respect to purchases and sales so made during the year under consideration. The AO also issued notices u/s 133(6) of the IT Act to verify the genuineness of the purchases made by the assessee. However, most of the notices issued returned unserved by the postal authorities with remark “left”, “moved”, “insufficient address” etc. The AO has reproduced the complete chart wherein notices u/s 133(6) of the IT Act were issued by the AO and the status of the notices issued. In those cases where notices were served, no response was received from any of the party, however, the majority of the notices remained unserved. Thus, the claim of the assessee regarding purchases made from the concerned parties remained unverified. The assessee was show caused vide notice dated 02.12.2016 as to why the claim of the purchases be not treated as non-genuine and added to the total income of the assessee. The assessee was also requested to produce all the concerned parties along with all their books of accounts bills and vouchers for the year under consideration. However, the assessee intimated to the AO that no quantitative and qualitative details of stock were maintained by the assessee company and hence, the AO held that the books of account of the assessee could not treated as complete and correct in terms of provisions of section 145 of the IT Act. The AR of the assessee was specifically asked to produce the books of account and bills and vouchers, however, the assessee failed to do so as observed by the AO in the assessment order. Further, on perusal of the copy of bills with regard to purchases in respect of each party, it was noticed by the AO that the bills were related to grey purchases wherein in the ledger of the parties concern

in the books of assessee, the same was shown in the category of the finished purchases and in the details of purchases party-wise the same had been shown in the category of the finished purchases. Also the AO observed that the bills were merely computer printout as the same were not having complete address of the purchase party or the contact no. of the purchase party and TIN no. etc. The bills were in the range of Rs.15,000/- to Rs.19,500/-. The AO was show caused as to why the book results of the assessee for the period under consideration be not rejected by invoking the provision of section 145 of the IT Act. The assessee filed its response, which was considered by the AO. The AO again granted the opportunity to the assessee- company to produce the relevant parties before him on 21.12.2016 and 22.12.2016. The assessee again filed its response which was found to untenable by the AO. The assessee itself admitted that it had not maintained quantitative details and therefore, in view of the facts and observation, the AO also analysed the bills and vouchers and same were found to be fabricated and were mere computer print outs. The AO in his order has reproduced the bills as produced by the assessee during the assessment proceedings. The AO noticed that the bills produced by the assessee were not having any contract address, PAN, TAN, contact number and other relevant details which were generally written on the bills. The copy of the bills submitted by the assessee also did not have any date of payment along with the mode of payment. The AO also incorporated the findings with respect to the said bills of respective parties in his assessment order. The AO clearly mentioned in the assessment order that the inquires conducted by issuing notices u/s 133(6) of the IT Act established that the purchases made by the assessee were not genuine. The assessee failed to discharge its onus to establish that the purchases were genuine. The AO clearly noticed that the purchases bills had been raised and the payment made ranging from Rs.15000 to Rs.20,000/-. On perusal of the list of all the purchases, it was noted by the AO that in

respect of some of the purchases, copies of bills had not been provided and the payment in respect of these purchases had been made in similar manner with the amounts ranging from Rs.15000 to Rs.20,000/-. Hence, the AO held that the assessee had failed to substantiate its claim that the bills were genuine and accordingly, the purchase bills furnished by the assessee were rejected. Further, the cash purchases amounting to Rs.25,56,197/- had been included as no details had been furnished by the assessee in respect of these purchase. The assessee was specifically asked to furnish copies of each bill with respect to the claim made by it. However, the assessee could not produce the same. Accordingly, the cash purchases were also not substantiated by the assessee. Hence, an amount of Rs.2,26,10,841/- (Rs.2,00,54,644/- through cheques and Rs.25,56,197/- through cash) was added to the total income of the assessee.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly allowed the appeal of the assessee. The ld CIT(A) restricted the addition @ 12.5% of bogus purchases observing as follows:

“4 Reliance placed on the decision of Hon'ble ITAT Mumbai Bench 'SMC' in the case of Navin Shantilal Mehta vs ITO, Ward-32(4), Mumbai reported in (2018) 90 taxmann.com 16 (Mum-Trib.) wherein it was held thus:

I. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment years 2010-11 and 2011-12 - Pursuant to survey action under section 133A, it was found that assessee had made purchases from various parties out of which some were notified hawala operators on official website of Sales Tax Department of State Government - Thus, Assessing Officer made additions to income of assessee under section 69C – It was noted that Sales Tax department conducted independent enquiries in each of hawala parties and it was found that these parties were engaged in providing accommodation entries without actual delivery of goods - Notices issued under section 133(6) upon those sellers were returned unserved with remark 'not known' and "no such parties exist at given address" - Whether, on facts, Commissioner (Appeals) was justified in upholding additions, at rate of 12.5 per cent to income of assesses - Held, yes [Para 2.13][In favour of revenue]

4.5 Reliance is also placed on the decision of Hon'ble High Court of Gujarat in the case of *C/T vs Bholanath Poly Fab P Ltd. reported in (2013) 40 taxmann.com 494 (Gujarat)* wherein it was held thus:-

IT: Where assessee did purchase cloth and sell finished goods, but purchasers were not traceable, profit element embedded in purchases would be subjected to tax and not entire amount

4.6 Further, It would be relevant here also to rely upon the judgment of various courts on the identical issue some of are cited below:

1. *M/s. Ashok Industrial Corporation vs. ITO 19(2)(1), Mumbai (ITA No. 647/MUM/2017, ITAT "SMC" Bench, Mumbai,, AY.2009-10 Order dated 12.05.2017)*

2. *Kamlesh Manohar Kanungo vs. DCIT, Circle-1 (4), Mumbai (ITA No. 3242, 3243 & 3244/Mum/2016, ITA "G" Bench, Mumbai AY.2008-09, 2010-11 & 2011-12, Order dated 28.02.2017)*

3. *Vinod Sanghvi vs. ACIT, Mumbai (ITA No. 125 to 127/Mum/2016, ITAT "F" Bench, Mumbai A.Y. 2009-10 to 2011-12) ACIT, Mumbai vs. Vinod Sanghvi (ITA No. 121 to 123/Mum/2016, ITAT "F" Bench, Mumbai A.Y. 2009-10 to 2011-12)*

4. *CIT-1 Vs Simit P. Sheth, ITA No. 553 of 2012, order dated 16.01.2013.*

In my humble opinion, the fair addition to the extent of 12.5% of the total purchases made by the assessee would be justified. Therefore, in view of the detailed discussion and also relying upon various judgments relied above, the AO is directed to restrict the addition to 12.5% of the total addition made. Hence, this ground is partly allowed."

7. Aggrieved by the order of the Ld. CIT(A), the Revenue as well as assessee are in appeal before us.

8. The Ld. Departmental Representative (Ld. DR) for the Revenue argued that the decision of the Ld. CIT(A) is not acceptable for the reason that Ld. CIT(A) has estimated disallowance @12.5% without proper base and without considering the facts that during the assessment proceedings, the assessee had failed to substantiate its claim that the purchase bills were genuine. The ld DR also submitted that assessee is adopting a colourable device to inflate the purchases in the books of accounts by debiting bogus purchases to trading account to suppress true profits. Hence, disallowance

of entire purchase of Rs.2,26,10,841/- made by AO is required to be sustained.

9. On the other hand, Ld. Counsel for the assessee submitted that assessee has submitted books of accounts, bills and vouchers and payment was made through account payee cheque, therefore no addition should be made. The Ld. Counsel submitted that just because third party did not respond to the Assessing Officer, does not mean that 12.5% addition should be done in the hands of assessee. The ld Counsel submitted that after the transaction is over, the supplier party may not co-operate with the assessee in responding notices u/s 133(6) of the Act. Besides, the assessee's sales were not doubted by Assessing Officer therefore purchases should be accepted genuine, and no addition should be made in the hands of assessee.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that Bhanwarlal Jain Group, Rajendra Jain group, Gautam Jain, and Dermichnad Jain ground cases were reopened on the basis of information received from DGIT (Investigation) Mumbai. In the information received from Investigation Wing, Mumbai it was informed that a search and seizure action was carried out by Investigation wing-Mumbai on Bhanwarlal Jain Group, which resulted in collection of evidence that Bhanwarlal Jain and his sons Rajesh and Manish were operating certain benami concerns in the name of their employees and staff for providing bogus accommodation entries of unsecured loans, sale and purchase of different kinds of material. It was unearthed that said Bhanwarlal Jain Group, Rajendra Jain group, Gautam Jain, and

Dermichnad Jain etc. cases, wherein they provided accommodation entries. The statement of Bhanwarlal Jain was recorded under section 132(4) of the Act, wherein he had admitted that his family members are managing various entities which are providing accommodation entries. During the course of search, blank cheque book signed by dummy partners / directors / proprietor of entities were found and seized. It was informed that assessee is one of the beneficiaries of bogus purchase form entities managed by Bhanwarlal Jain Group, Rajendra Jain group, Gautam Jain, and Dermichnad Jain, therefore, this Tribunal sustained the addition @ 6% of bogus purchases, vide order of this Tribunal in the case of Pankaj K. Chaudhary, in ITA No.1152/AHD/2017 (AY.2007-08), order dated 27.09.2021.

11. However, the assessee's case under consideration is not covered by these parties. Besides, the assessee's case is not subject matter of DGIT (Investigation) Mumbai. Apart from this in the assessee's case no any statement was recorded under section 132(4) of the Act. Therefore, the assessee's case under consideration is distinguishable on facts. The assessee's case relates to normal purchases, and some of the purchases, which were made by the assessee through account payee cheques were disallowed, merely because parties from whom the assessee made purchases did not respond the notices under section 133(6) of the Act. The assessee is not a part of scam. Moreover, the assessee under consideration is not beneficiary of Bhanwarlal Jain Group, Rajendra Jain group, Gautam Jain, and Dermichnad Jain etc. Therefore, we note that decision of this Tribunal in the case of Pankaj K. Chaudhary, in ITA No.1152/AHD/2016, dated 21.09.2021, wherein 6% addition on account of unverifiable bogus purchases were sustained, does not apply to the assessee under consideration. In the assessment year 2014-15, under consideration, the assessee has shown gross profit @ 13.71%, which is more than 12.50%

addition sustained by Id CIT(A), hence as per Id Counsel no addition should be made. We note that the assessee's case under consideration, relates to normal purchase and sale transaction and does not belong to search and seized. However, there may be some bogus purchase as alleged by the Assessing Officer that does not mean that assessee is a part of big scam like Bhanwarlal Jain, Rajendra Jain, Gautam Jain and Dermichand Jain, in their cases, the investigation was conducted by the Investigation wing and statements were recorded under section 132(4) of the Act which were found by the Department true and corroborate with the other evidences, which is not case of the assessee under consideration. Therefore, assessee's case is distinguishable on facts and therefore does not apply the findings of Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra). We note that assessee's case, the disallowance made by the Assessing Officer is solely on the reason that some of the parties from whom the assessee has purchased, did not respond the notice under section 133(6) of the Act. It may be possible that when the transaction over then parties from whom the assessee purchased the goods may not be cooperate with assessee. However, the assessee submitted name, address and other necessary details and moreover the transactions were through banking channels. Therefore, genuineness of this transaction cannot be doubted.

12. We also note that Ld. CIT(A) sustained the addition @ 12.50% of bogus purchases, relying on the decision of Co-ordinate Bench of ITAT Mumbai in the case of Navin Shantilal Mehta (supra), wherein Sales Tax Department of State Government notified the assessee as Hawala operator. However, assessee under consideration is not a Hawala operator. Moreover in assessee's case the gross profit declared by him in more than 12.5%. However to plug the leak of the Revenue and on account of small misgivings, we are of the view that there should be disallowance at the

rate of 4.5% of the total purchases to the tune of Rs.2,26,10,841/-. Therefore, we direct the Assessing Officer to make disallowance @ 4.5% of total purchase of assessee of Rs.2,26,10,841/-.

14. In the result, the appeal filed by the assessee is partly allowed to the extent indicated above.

15. In the combined results, appeal filed by the Revenue (in ITA No. 333/SRT/2022 for AY.2014-15) is dismissed, whereas the appeal filed by the Assessee (in ITA No. 334/SRT/2022 for AY.2014-15) is partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 26/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 26/06/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat