

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 5718/MUM/2019**  
**Assessment Year: 2009-10**

ITO-6(1)(1),  
Aayakar Bhavan,  
Room No. 503, 5<sup>th</sup> floor, M.K.  
Road, New Marine Lines,  
Mumbai-400020.

**Appellant**

M/s A.J. Coal Pvt. Ltd.,  
24A, Coal Depot, Sewree (E),  
Mumbai-400015.

**Vs.**

**PAN NO. AABCA 0386 M**  
**Respondent**

**ITA No. 7289/MUM/2019**  
**Assessment Year: 2009-10**

M/s A.J. Coal Pvt. Ltd.,  
C/o M/s Jayesh Sanghrajka and  
Co. LLP, 405, Hind Rajasthan  
Centre, DS Phalke Road, Dadar  
(East), Mumbai-400014.

**PAN NO. AABCA 0386 M**  
**Appellant**

ITO-6(1)(1),  
Aayakar Bhavan, Room No. 503,  
5<sup>th</sup> floor, M.K. Road, New Marine  
Lines, Mumbai-400020.

**Vs.**

**Respondent**

**Assessee by** : Mr. Shubham Shah, AR  
**Revenue by** : Ms. Indira Adakil, DR

Date of Hearing : 04/07/2023  
Date of pronouncement : 10/07/2023



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross appeals by the assessee and the Revenue are directed against order dated 08/05/2019 passed by the Ld. Commissioner of Income-tax(Appeals)-12, Mumbai, [in short 'the Ld. CIT(A)'] for assessment year 2009-10. Both these appeals were heard and pronounced by the Tribunal earlier, however, in view of the orders being *ex-parte* qua the assessee, same have been recalled by the Tribunal vide MA No. 212/Mum/2022 dated 16/12/2022 and 71/Mum/2023 No. dated 26/05/2023, thus, these appeals are before us.

2. The grounds raised by the assessee reproduced as under:

1. *On the facts and circumstances of the case and judicial proposition, Hon. CIT Appeals erred in confirming notice issued w/s 148 by Ld. AO, which was without having reasons to believe for making the reassessment u/s 148 and hence such assessment made was bad in law and liable to be quashed.*
2. *On the facts and circumstances of the case and judicial proposition, Hon. CIT Appeals erred in confirming the CIT (A) order of Ld. AO, which was passed without obtaining valid approval u/s 151, and such assessment order in pursuance of such approval is erroneous in facts and bad in law and liable to be quashed.*
3. *On the facts and circumstances of the case and judicial proposition, Hon. CIT (Appeals) erred in estimating the profit to the extent of 12.5% of CIT(A) - purchases made from M/s. Sthapna Trade Impex, such addition is bad in law and liable to be deleted.*



4. *Without prejudice to above, on the facts and circumstances of the case and judicial proposition, Hon. CIT (Appeals) erred in estimating the profit on account of purchases made from M/s. Sthapna trade Impex and such addition is excessive and bad in law and liable to be reduced.*

## 2.1 The grounds raised by the Revenue are reproduced as under:

1. *"On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in directing the Assessing Officer to disallow 12.5% at Rs.6,24,809/- of the bogus purchases of Rs. 49,98,475/- rather than an amount of Rs. 17,28,507/- computed in the assessment order dated 28/11/2016 passed u/s. 143(3) r.w.s. 147».*

2. *"On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred' in directing the Assessing Officer to disallow 12.5% of the bogus purchases rather than the whole of such purchases Without appreciating that such allowance of 87.5% of expenditure imply allowance of purchases made in cash from the 'grey market, thereby rendering the provisions of section 40(A/3) of the Income Tax Act, 1961 totally redundant which could not have been the intention of the statute."*

3. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in failing to abide by the landmark decision of Hon'ble Supreme Court in the case of I. K.Proteins Ltd Ltd 16/01/2017 wherein the Hon'ble Supreme Court has confirmed the addition of 100% of the bogus purchases".*

4. *"On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in deleting the quantum addition to the extent of Rs. 11,03,698/- made by the O on account of bogus bill purchases from one party by not appreciating that the assessee had Failed to produce the party/ furnish the evidence of transportation of material or evidence for receipts of goods with the purchase party."*

5. *"On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in restricting the quantum addition ignoring that the information on account of bogus purchases is*



*received from the external agency that the assessee had received accommodation entry from such party."*

*6. Though the tax effect in this case is Rs.3,41,042/-, however this appeal has been filed because it is covered by exception mentioned in para 10(e) of the CBDT Circular No. 3/2018 dt 11-7-2018 as subsequently clarified by Board letter dtd 20/08/2018 vide no. 279/misc./ 142/2007-ITJ (Pt.) which is effective as on date.*

3. Briefly stated facts of the case are that the assessee was engaged in the business of trading in coke and coal and for the year under consideration, the assessee filed return of income on 29/09/2009 declaring total income at ₹21,10,400/-, which was processed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act') on 01/03/2011. Subsequently, on receipt of information that assessee had entered into various purchase transactions with M/s Sthapna Trade Impex P Ltd aggregating to Rs.49,98,475/-, who had been declared as hawala dealers by the Maharashtra sales tax department, the Assessing Officer after analyzing the information and verification of the records, recorded the reasons to believe that income escaped assessment and issued notice under section 148 of the Act on 29/03/2016. In response the assessee's representative submitted that return of income filed on 30/03/2016, might be treated as return filed in response to notice under section 148 dated 29/03/2016. A copy of the reasons recorded was provided to the assessee vide letter dated 30/05/2016 of the Assessing Officer. The Assessing Officer also rejected the



objection of the assessee against the reopening of the assessment vide letter dated 27/06/2016.

3.1 During the course of the re-assessment proceedings, the assessee filed ledger account of the said purchase party in its books of accounts, bank statement of assessee and invoices issued by the said party. The Assessing Officer asked the assessee to produce the party for examination, however the assessee expressed his inability in producing the said party. The Assessing Officer further noted that the assessee failed to establish that material was actually supplied by the said party and same was received by the assessee. The learned Assessing Officer observed that payment by account payee cheque was not conclusive evidence to prove the genuineness of the transaction. In support, he relied on the decision of the coordinate bench of the Tribunal in the case of **Kachwala Gems Vs JCIT (ITA No. 134/JP/2002)** affirmed by the Hon'ble Supreme Court as reported in **Kachwala Gems Vs JCIT (2006) 206 CTR 585(SC)**. The Ld. Assessing Officer finally concluded that assessee failed to discharge its onus of establishing the purchases and disallowed peak amount of unexplained money of Rs. 17,28,507/- utilised for purchase of such stocks observing as under:

*“The assessee has failed (i) to prove the genuineness of the aforesaid Purchases, (ji) to produce the suppliers, (iii) to produce the transportation details or evidence for receipts of goods, (iv) to furnish any brokers or third party evidence.*



10. *The onus lies on the assessee to establish any claim for deduction for expenditure which is claimed, as deduction in computing its taxable income. Reliance is placed on judgment of Hon'ble Gujarat High Court reported in CIT vs. Chandra Vilas Hotel (1987) 164 IT 102 (Guj), CIT vs. Navasari Cotton 8 Silk Mills Ltd. (1982) 135 IT 546 (Guj) and Karan Co-operative Cotton Sales Ginning & Pressing Society vs. CIT (1993) 109 IT 17 (Gui). Therefore, the onus in the present case squarely lies on the assessee to prove the genuineness of Purchases, said to have been made from the above mentioned party, who have denied to have undertaken any actual sales before Sales Tax Authorities. The assessee did not produce the party during the course of assessment proceedings, but just tried to shift the burden on the Revenue. Such submissions have been made in complete disregard of the fact that the burden clearly lies on the assessee to prove the genuineness of the transaction. It was incumbent on the assessee to prove that the suppliers were genuine and they really supplied such material to the assessee. Such a burden has to be discharged by the assessee with very strong and clinching evidence in view of a blatant denial by the party.*

11. *In view of the facts discussed above and also considering the facts that the assessee is a trader and the purchases have resulted in its disposal of sales, the aforesaid transactions i.e. purchases from the alleged party is a case of accommodation entry. The assessee in fact, makes Purchases from undisclosed party in cash and records Purchases in its account in the name of bogus supplier. Therefore, the peak of credits in the accounts of bogus supplier would represent the amount of undisclosed cash utilized by the assessee for making payments to undisclosed real supplier.*

12. *How to deal with taxability of the income from sale of goods accounted as purchased from established bogus parties have been dealt by the Hon'ble judicial bodies based on facts of each case. In one of the land mark cases of M/s Vijay Proteins Ltd. vs. Assistant Commissioner of Income 58 ITD 428, the learned ITAT, Ahd. upheld computation of the peak amount of unexplained money utilized for purchase of stock (wrongly shown in the books of accounts as having*



*been purchased from the bogus suppliers). The addition in respect of unexplained investment made in stock Purchased form undisclosed party or undisclosed sources but wrongly shown in the books of accounts as having been Purchased from bogus suppliers was, held as correctly added as assessee's income.*

*13. The Hon'ble High Court Of Gujarat in the case of Sanjay Oilcake Industries Versus CIT 316 ITR 274 (Gui) held that income used for inflated Purchase price and arising therefrom where the apparent sellers who had issued sale bills were not traceable and that goods were received from the parties other than the persons who had issued bills for such goods, disallowance of 25% Purchase from bogus parties is justified. In the case CIT v/s Bholanath Poly Fab Pvt Ltd. 355 IT 290 which was a case of Purchases from bogus parties, sale being not bogus and the entire quantity of opening stock, Purchases and the quantity manufactured during the year under consideration sold by the assessee and that the finished goods were Purchased by the assessee, may be not from the parties shown in the accounts, but from other sources and the HC approved Tribunal decision which was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax and it was held that, not the entire Purchase price but only profit element embedded in such Purchases can be added to the income of the assessee. The Tribunal had also made reference to the Tribunal's decision in the case of Vijay Proteins. The peak credit method though not directly applied in this case was approved by HC by reference to ITAT decision in the case of M/s Vijay Protiens Ltd.*

*14. Thus, in all cases of sales being accepted, the income from sale of goods have been charged to tax on estimate basis and the most scientific method adopted was of the peak credit method for calculation of undisclosed income used for acquisition of stock, and undisclosed profit therefrom as decided in the case of Vijay Proteins Ltd v/s ACIT by ITAT, Ahmadabad, which was approved in all other cases, though not directly applied in all cases.*



15. As per the ledger accounts filed, the peak credits in respects of the above parties are worked out as under:-

**Peak credit working**

Date	Particulars	Debit	Credit	Peak Credit
28.04.2008	Purchase		87339	87339
12.05.2008	Purchase		302302	389641
01.06.2008	Purchase		110695	500336
26.06.2008	Payment	110695		389641
	Payment	87339		302302
	Payment	302302		0
17.07.2008	Purchase		374166	374166
21.07.2008	Purchase		52714	426880
23.07.2008	Purchase		370198	797078
04.08.2008	Purchase		147329	944407
06.08.2008	Payment	550000		394407
06.08.2008	Purchase		877344	1271751
08.08.2008	Payment	474673		797078
21.08.2008	Purchase		76050	873128
29.08.2008	Purchase		79271	952399
12.09.2008	Payment	52714		899685
13.09.2008	Purchase		87011	986696
13.09.2008	Purchase		393120	1379816
28.09.2008	Purchase		348691	1728507
29.09.2008	Payment	836337		892170
02.11.2008	Purchase		405215	1297385
05.11.2008	Payment	300000		997385
17.11.2008	Payment	444364		553021
20.11.2008	Purchase		431122	984143
27.11.2008	Payment	435452		548691
28.11.2008	Purchase		385174	933865
02.12.2008	Purchase		385174	1319039
11.12.2008	Payment	400000		1004599
15.12.2008	Payment	1004599		0

16. As per decisions of Hon. Supreme Court's in CIT v/s Calcutta Agency Ltd. 19 ITR 19, and that in CIT v/s SmtIndiramaniJatia 35 IT 298, burden of proof regarding the deduction or allowance is always on assessee. Also, expenses cannot be necessarily be allowable as deduction based on payments. As per Hon. Supreme Court in Lachminaravan Madan Lal v/s CIT 86 IT 439, it is always open to the IT to consider relevant factors and determine for himself that such expenditure is properly deductible under the Act. Where an assessee seeks to deduct from his or its business profits certain items of expenditure, the onus of



*proving that such deductions are permissible is on the assessee especially since the claims are based on facts which are exclusively within the knowledge of the assessee.*

*17. The statements recorded by Sales Tax Department are hard evidence in public domain and assessee has not denied fact of such statements. Such statements have not been rebutted by the assessee by proper documentary evidence or producing those parties to prove that the Purchase shown by them were made from that party in reality. In any case onus is on the assessee to prove that Purchases are genuine. This has not been discharged by the assessee to the full satisfaction of the undersigned. Accordingly, pure and simple conclusion is to be drawn that the assessee has made the Purchases in respect of so called tainted Purchases from the open market by putting his own unaccounted cash.*

*18. Considering the fact that the payment for goods Purchased from unknown parties in open market has been made in cash, by calculating the peak after merging the accounts of all the bogus parties from whom Purchases made during the year where assessee has shown profit from sale of these goods shown as Purchased from hawala parties, no addition is made on profit element.*

*19. In view of the above stated facts, the sum of Rs 17,28,507/- being peak an-of credits is treated as undisclosed cash utilized by the assessee for making come Taro payments to undisclosed real suppliers and the amount of Rs 17,28,507/- is therefore added U/s 69C of IT Act 1961 as deemed income in the hands of the assessee.”*

4. On further appeal, the assessee challenged validity of the reassessment as well as addition on merit. The Ld. CIT(A) though upheld the validity of the reassessment, however on merit restricted the disallowance to 12.5% of the purchases from said party, which was worked out to ₹ 6,24,809/-. Aggrieved with the finding of the Ld. CIT(A), both the assessee and the Revenue are before us, by way of raising grounds as reproduced above.



5. Before us, the Ld. Counsel of the assessee filed a paperbook containing pages 1 to 113.

6. In ground No. 1 of the appeal, the assessee has challenged validity of reassessment proceeding on the ground that no reasons to believe for making reassessment were provided to the assessee.

7. We find that the Ld. CIT(A) rejected the contention of the assessee challenging validity of the reassessment on the ground that information received was from an authentic and reliable source, which was from a government department and any prudent person would not ignore such information and would come to conclusion that there was a escapement of income. The Ld. CIT(A) accordingly held that reopening could not be said to have been without reasons to believe. The Ld. CIT(A) further observed that the Assessing Officer was not required to carry out any investigation before reopening. The Ld. CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of **Raymond woolen Mills Ltd Vs ITO 236 ITR 34(SC)**, wherein it is held that for examining validity of the reassessment proceeding, it has only to be seen whether there was prima-facie some material on the basis of which the Department could reopen the case and sufficiency or correctness of the material is not a thing to be considered at the stage of reopening. Further the Ld. CIT(A) rejected the contention of the assessee of violation of the principle of natural justice and non-



supply of material received from sales tax department observing as under:

“4. Ground Nos. 4 & 9 raised by the assessee relate to completing the reassessment without providing any material received from Sales Tax Department to the assessee and also without giving reasonable opportunity to the assessee in violation of principles of natural justice. The case was reopened after recording the reasons and following due procedure as the income for the year under consideration had escaped assessment. It is seen from the assessment order that the notice u/s 148 was issued on 29.03.2016. Assessee asked for reasons recorded which were supplied to the assessee on 30.05.2016. The objections raised by the assessee on the reopening were disposed of on 27.06.2016. Notice u/s 143(2) was issued on 30.05.2016 and notice us 142(1) was issued on 20.06.2016. In response to the notices the authorised representative of the assessee attended from time to time and filed replies as recorded by the AO in paragraphs 2, 3 and 6 of the assessment order. Therefore there is no violation of principles of natural justice and ground number 9 is dismissed. Assessee contended that the material received from the Sales tax department was not provided. The A.. received an information from the Sales Tax Department of Maharashtra, that M/s. A. J. Coal Pvt. Ltd., had taken accommodation entries of Rs.49,98,475 from Sthapna Trade Impex Pvt. Ltd. by way of taking bogus bills of purchase during the year under consideration. The information was also available in the public domain i.e. the website of the Sales Tax Department along with TIN numbers of parties. The information was that Sthapna Trade Impex Pvt. Ltd issued the bills without actual delivery of goods and purchases shown by the assessee from the above party were non-genuine. As the information was also available in public domain, there was no need for supplying the same separately. Further, the information received was also part of the reasons recorded wherein PAN, TIN, Financial year and the amount of such bogus purchases was also mentioned which was supplied to the assessee. Therefore, the argument that material was not supplied is not correct and the ground number 4 is dismissed. In view of the above, reopening of



*assessment and the reassessment order passed is found to be in order and upheld. Accordingly, these grounds of appeal 1, 3, 4 and 9 are dismissed.”*

7.1 Before us Ld. counsel of the assessee referred to page No. 16 of the paperbook, which is a copy of order dated 19/06/2023 passed by the Central Public information Officer (CPIO) under right to information (RTI) Act, 2005, wherein he provided copy of notices, their response filed by the assessee, material / information relied upon for initiating reassessment etc. in the case of the assessee, sought by the director of the assessee company. The learned counsel referred to the information supplied by the CPIO and submitted that no material relied for initiating reassessment proceeding was provided to the assessee. Accordingly, the learned counsel of the assessee submitted that in absence of any material, the learned Assessing Officer was not justified in initiating reassessment proceeding.

7.2 The Ld. Departmental Representative (DR) on the other hand submitted that whatever material or the information, which was in the possession of the Assessing Officer, has already been supplied in response to application filed by the director of the assessee invoking RTI Act, 2005. He further submitted that in the grounds raised the assessee has only challenged validity of the reassessment on the ground of without reasons to believe, whereas reasons to believe were duly provided to the assessee and against which assessee also objected before the Ld CIT(A) and the Assessing



Officer has duly disposed off objections of the assessee also. Accordingly, he submitted that there was no substance in the arguments of the assessee that no material or information for initiating reassessment proceeding was supplied to the assessee.

7.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that Ld. CIT(A) has duly rejected the contention of the assessee that no material or information for initiating reassessment proceeding was provided to the assessee. Relevant finding of the Ld. CIT(A) has been reproduced above. Further, we find that whatever information from the Sales Tax Department received in relation to the assessee has been duly referred in the reasons recorded and same as has been already supplied to the assessee under right to information Act,2005, therefore, we do not find any substance in the arguments of the assessee challenging validity of the reassessment on this ground. Accordingly, the ground No. 1 of the appeal of the assessee is dismissed.

8. In ground No. 2, the assessee has challenged validity of the reassessment on the ground that no valid approval under section 151 of the Act was obtained for initiating reassessment proceeding.

8.1 We find that objection of the assessee of no valid approval under section 151 of the Act has been disposed off by the Ld. CIT(A), observing as under:



"5.1 I have perused the assessment order and the submissions of the assessee on the issue. Appellant contended that the reassessment order was passed without obtaining valid approval of the Pr. Commissioner of Income tax us 151 of the Act. It is seen from the record that the assessee filed RTI Application for copy of approval granted by CIT u/s 151 of the Act and the copy of approval granted by Pr. CIT-6 was supplied by the AO. From the approval it can be seen that, Pr. CIT written in his hand writing that 'Yes, I Am Satisfied' and signed. This approval, the

assessee contends that is no approval as such. It is seen that section 151(1) only requires the satisfaction of the Pr. Commissioner of Income tax on the reasons recorded by the assessing officer, that it is a fit case for the issue of notice, which is extracted here under.

151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

5.2 As can be seen from the wording of the very section which specifies the requirement of approval states that 'Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. As can be seen from the assessment order and copy of the approval issued by the Pr. Commissioner of Income tax, the AO has recorded reasons for reopening and sought approval of the Pr. Commissioner of Income tax in the proforma. The Pr. Commissioner of Income tax, based on the reasons recorded, has recorded that he is

11	Whether Pr.CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of Notice u/s 148 of the Act 1961	Yes, I am satisfied  Sd  (.....)  Pr. Commissioner of Income
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		Tax-6 Mumbai
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*5.3 The column is very clear whether Pr.CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of Notice of Notice u/s. 148 of the Act 1961. Against which the Pr.CIT has recorded in his own hand writing that he is satisfied. Therefore, I do not think anything more is required to be written by the Pr. Commissioner of Income tax to record his satisfaction. If the aim is only hair splitting, to the extent of expecting the Pr. Commissioner of Income tax to write the words the assessee deems is sufficient to his satisfaction, then there is no end and it is not possible for the authority to write the words to the satisfaction of each and every assessee. With due respect to the decisions relied by the assessee, I have no hesitation in holding that the approval given by the Pr. Commissioner of Income tax-6 is as per the provisions of the section 151 of the Act and there is no violation of any condition laid down in the Act before reopening. Therefore the ground of appeal 2 of the assessee that the reopening is not proper is baseless and dismissed.”*

8.2 Before us the Ld. counsel of the assessee referred to the case of **CIT Vs Goyanka Lime and Chemicals Ltd (2023) 453 ITR 242 (SC)** and submitted that the Commissioner has mechanically approved the reasons recorded without application of mind, therefore the reassessment proceeding need to be quashed. The Ld. DR on the other hand relied on the finding of the Ld. CIT(A) and submitted that facts of the case relied upon by the Ld. counsel of the assessee are different from the facts of the instant case and the Ld. CIT(A) has approved the reasons recorded after verification of the information along with the records of the assessee and due application of mind, therefore, the reassessment has been validly initiated in the case of the assessee.



8.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. CIT(A) has reproduced all the facts in relation to issue in dispute. In the instant case there is no dispute that information received from the sales tax department as well as records of the assessee were available before the appropriate authority while sanctioning/approving the reasons recorded for reopening of the reassessment. In the case relied upon by the assessee, the Hon'ble Supreme Court has held that Commissioner acted mechanically as he performed in less than 24-hours of the time for granting sanction for issue of notice under section 148 of the Act. In the present case, there are no such allegations. Even looking to the No. of pages of the information received from the Sales Tax Department, time taken of less than 24-hours might be reasonable in the case of the assessee. The decision relied upon by the learned consul of the assessee is distinguishable on facts. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the ground No. 2 of the appeal of the assessee.

9. The ground No. 3 and 4 of the appeal of the assessee relates to disallowance sustained at the rate of 12.5% of the purchase amount, whereas the Revenue in its ground is aggrieved with reducing the disallowance from peak credit to 12.5% of the purchase amount.



10. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that assessee has undertaken large Nos. of purchase transactions with the said party. The assessee filed ledger account of the party in its books of accounts alongwith invoices issued by the said party and stock register but no evidence in support of transport of goods i.e. coal were filed by the assessee. The Assessing Officer treated the transactions as made in cash and accordingly drawn peak of the cash credit amounting to ₹17,28,507/- as amount liable to be disallowed out of the total purchases. The Ld. CIT(A) though rejected the observation of the Assessing Officer of payments made by the assessee in cash while purchases but held that said supplier party might not be actual supplier but might have provided the bills for the material purchase locally. The Ld. CIT(A) is of the opinion that assessee might have obtained benefit on account of VAT and other incidental charges and therefore, he restricted the disallowance to the extent of such benefit, which was estimated to 12.5% of the total purchase of ₹49,98,475/-and this disallowance was worked out to ₹6,24,809/-. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“6.4 In this case, the appellant produced invoices, ledger accounts, Purchase and Sales Register and copy of bank statement indicating the payment made to the seller to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could*



*not have made the sales. Merely relying upon the information from the Sales Tax Department the Assessing Officer could not have treated the purchases as bogus or made in cash particularly when the appellant has brought documentary evidences on record to prove genuineness of purchases, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and there is no evidence before the AO that the amounts were routed back to the appellant, the addition of bogus purchases or peak amount of assumed cash payments is not sustainable in law and facts. Only corollary that follows in such situation is that the entity may not be the actual supplier but may have provided the bills for the material purchased locally. This is not case in which the signed blank cheque books etc. found with the buyer to say that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. Therefore the saving on account of VAT and other incidental charges made by the appellant on the said disputed purchases can be brought to tax as additional profit. Keeping in view the totality of facts and circumstances of the case, the disallowance made by the A is restricted to 12.5% of such purchases. Therefore the AO is directed add 12.5% of Rs.49,98,475 working out to Rs.6,24,809 and modify the addition accordingly. Appellant gets part relief. These grounds are partly allowed.”*

10.1 Before us the Ld. counsel of the assessee relied on the decision of Hon’ble Bombay High Court in the case of **PCIT Vs Sanjay Dhakod (2023) 150taxmann.com 362 (Bombay)**, wherein the Hon’ble High Court had as under:

*“The revenue challenged the order of the Commissioner (Appeals) before the Tribunal, which on reconsideration of the material on record, has concluded that the assessee had shown gross profit and net profit, which were accepted by the Assessing Officer and in the absence of rejection of the books and account such additions were not tenable at law.*



*The Tribunal has further noted that the assessee has disclosed the addresses of all the parties, who were suppliers and has furnished details of payments through bank accounts into the bank accounts of such suppliers. It has further found that after having received details of the payments made by the respondent through cheques to such suppliers, it was incumbent upon the Assessing Officer to verify the transactions which had been done. The Tribunal has held that the evidence given by the assessee, which is in the documentary form, has nowhere been discussed and discredited by the Assessing Officer and in that light, merely because the names of such parties were found on the official website of the Sales Tax department would by itself not be sufficient to prove that the transactions were bogus. The Tribunal has held that the respondent had sufficiently discharged the burden of proving the transactions.”*

10.2 In our opinion, facts of the case relied upon by the assessee is distinguishable. In the instant case assessee has failed to substantiate transport of material from the supplier to the place of the assessee, and therefore Assessing Officer has not merely relied on the information received from the Sales Tax Department but taken into consideration other facts and circumstances of the case. In the case purchases from the said party are bogus in view of no evidence of supply of material by the said party, but in the stock register said material is shown to be have entered and corresponding sale has not been doubted by the Assessing Officer, therefore, we concur with the finding of the Ld. CIT(A) that only possibility is that assessee might have made purchase from grey market in cash and obtained benefit of non-payment of sales tax or value-added tax (VAT) and cash discount et cetera, which the Ld. CIT(A) has estimated to 12.5% of the bogus purchases. In our



opinion, the estimation by the Ld. CIT(A) is justified. In identical circumstances Hon'ble Bombay High Court in the case of **PCIT Vs Mohommad Haji Adam & Co.in ITA 1004 of 2016** held as under:

*In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under- "So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is*



*answered partially in favour of the assessee and partially in favour of the revenue.” 9 In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs.*

10.3 In view of the finding of the Hon’ble Bombay High Court (supra), wherein the decision in the case of NK Proteins Ltd. (supra) has been distinguished, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute. Accordingly, the grounds raised by the assessee as well as the Revenue on merit are dismissed.

11. In the result, both the appeals of the assessee and the Revenue are dismissed.

**Order pronounced in the open Court on 10/07/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 10/07/2023  
Dragon Legal/Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
  
(Assistant Registrar)  
**ITAT, Mumbai**