

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI S RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 483, 484 & 485/Mum/2023
(Assessment Years: 2010-11, 2008-09 & 2011-12)

Ashok Kumar G Arnaiya 32/34 Keshav Bhavan, 1 st Carpenter Street, C. P. Tank, Mumbai-400 004	Vs.	ITO-Ward 19(1)(2) Mumbai
PAN/GIR No. ADFPA 0906 R		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Shashank Mehta
Revenue by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	04.10.2023
Date of Pronouncement	:	26.10.2023

ORDER

Per Bench :

The captioned appeals have 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) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2008-09, 2010-11 and 2011-12.

2. The assessee has filed the present appeal with a delay of 6 days and had filed an Affidavit for condoning the said delay. On perusal of the said Affidavit, we deem it fit to condone the delay of 6 days in filing the present appeal for the reason that there is a sufficient cause for the said delay. Delay condoned.

3. As the facts are identical in all these appeals, we hereby pass a consolidated order by taking ITA No. 484/Mum/2023 as the lead case.

ITA No. 484/Mum/2023

4. The assessee has challenged the order of the Id. CIT(A) in confirming the action of the Id. Assessing Officer ('A.O.' for short) in completing the reassessment proceedings without furnishing the copy of the reasons recorded for reopening and not giving the assessee an opportunity of cross examination of witnesses relied upon by the Id. A.O. The assessee has also challenged the addition of 12.5% on the alleged bogus purchases.

5. The brief facts are that the assessee is an individual engaged in the business of ferrous and non ferrous metal goods, being the sole proprietor of M/s. Kalpataru Metal and Steel Corporation. The assessee had filed his return of income dated 29.09.2008, declaring total income at Rs.5,76,713/- and the same was processed u/s. 143(1) of the Act. The assessee's case was reopened based on the information from the Sales Tax Department and the DGIT (Investigation), Mumbai that the assessee was one of the beneficiaries of bogus purchase bills. The assessee was furnished with notice u/s. 148 of the Act dated 19.03.2015. The assessee submitted that his return of income shall be treated as return in response to notice u/s. 148 of the Act. The Id. A.O. passed the assessment order u/s. 143(3) r.w.s. 147 of the Act dated 28.01.2016 and determined the total income at Rs.27,64,145/- by making an addition of Rs.21,87,432/- being 12.5% of the alleged bogus purchase amounting to Rs.1,74,99,452/-.

6. The assessee was in appeal before the ld. CIT(A), challenging the impugned addition made by the ld. A.O.

7. The ld. CIT(A) dismissed the appeal filed by the assessee and upheld the addition made by the ld. A.O. on the alleged bogus purchase.

8. The assessee is in appeal before us, challenging the impugned addition.

10. The learned Authorised Representative ('ld. AR' for short) for the assessee stated that the legal ground raised by the assessee stating that the reasons recorded for reopening was not furnished to the assessee and opportunity to cross examination of witnesses were not given to the assessee were not pressed by the assessee. The ld. AR further stated that on the merits of the case the Tribunal in the case of sister concern has restricted the addition on bogus purchase to 2.5% of the alleged purchase where the assessee has declared a gross profit ratio to 5.63%. The ld. AR relied on the decision of the Tribunal in the case of *Shri Ramesh R. Jain vs. ITO* (in ITA No. 8016/Mum/2019 vide order dated 14.09.2021) and *Shri Ketan Jaysukhlal Shah vs. ITO* (in ITA No. 1657/Mum/2023 vide order dated 31.08.2023), where the tribunal has upheld the addition on bogus purchase to 5%.

11. The learned Departmental Representative ('ld.DR' for short) on the other hand, controverted the said facts and stated that the ITAT in assessee's case for A.Y. 2007-08 has not reversed the finding of the lower authorities at determining the bogus purchase @ 12.5% and that the Tribunal has merely remanded the matter back for adjudicating the

legal ground raised by the assessee. The ld. DR relied on the orders of the lower authorities.

12. We have heard the rival submissions and perused the materials available on record. It is observed that the ld. A.O. has reopened the case of the assessee based on the information that the assessee was one of the beneficiary of accommodation entries amounting to Rs.1,74,99,458/- from the below mentioned parties during the year under consideration:

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Amount (Rs.)</i>
1	Harshil Ferromet Pvt. Ltd.	10,99,384/-
2	Manav Impex	21,12,441/-
3	Ratandeep Tubes	9,71,256/-
4	Veer Industries	11,60,640/-
5	Rajdeep Metals & Tubes	12,71,920/-
6	Prakash Steel India	15,92,240/-
7	Hans Enterprises	8,27,944/-
8	Dimple Metal Industries	29,54,536/-
9	Asian Metal Industries	6,92,277/-
10	Krishana Steel Industries	36,53,149/-
11	Mahaveer Metal Corporation	9,00,009/-
12	Rajendra Impex	8,04,024/-
13	Rajeshwari Metal Industries	14,89,117/-
14	Dinesh Steel (India)	56,02,553/-
15	Shree Gururaj Metal Corp	62,57,741/-
	<i>Total</i>	<i>3,13,89,231/-</i>

13. The assessee has contended that these purchases were duly recorded in the books of accounts and the item-wise sales of the goods purchased were furnished to the ld. A.O. and that the payments have been made by the account payee cheques. Further, the assessee was asked to produce the above mentioned parties for verification along with their books of accounts to the ld. A.O. The assessee was unable to produce the parties for verification. The ld. A.O. made an addition on the impugned bogus purchases @ 12.5% for the reason that the assessee has failed to discharge the initial onus casted upon him by

proving the genuineness of the said purchases. The ld. CIT(A) by relying on the decision of the Hon'ble Apex Court in the case of *CIT v. Durga Prasad More* [1971] 82 ITR 540 (SC) and *Sumati Dayal v. CIT* (1995) 214 ITR 801 (SC) held that the assessee has failed to prove the nexus of the purchase made by him from the alleged accommodation entry providers and further relied on the decision of Hon'ble High Court of Gujarat in the case of *CIT vs. Simit P. Sheth* 356 ITR 451 (Guj) wherein it was held that when the sales are not disputed, then only the profit element embedded in such purchase could be added to the total income of the assessee. The ld. CIT(A) further held that the rate on which addition to be made will depend upon the nature of the business. The ld. CIT(A) relied on the various decisions where the addition was made @ 12.5% on the bogus purchase. The ld. CIT(A) upheld the order of the ld. A.O. on this ground.

14. From the above factual matrix, it is observed that the assessee has involved in receiving accommodation entries by way of bogus purchase bills from various hawala dealers without any actual delivery of goods. The ld. A.O. has not doubted the sales made by the assessee and has only alleged that the purchases made from these 23 parties are alleged to be bogus. The ld. AR placed his reliance on the decision of the Tribunal where on identical facts and circumstances and similar nature of business the Tribunal has made an addition @ 5% on the alleged bogus purchases. By taking a consistent view, we deem it fit to restrict the addition to 5% on the alleged bogus purchases made by the assessee. We, therefore, direct the ld. A.O. to restrict the addition @ 5% on the alleged bogus purchases made by the assessee during the year under consideration. Therefore, we partly allow ground no. 3 raised by the assessee.

15. Ground nos. 1 & 2 are dismissed as not pressed and ground no. 4 being general in nature requires no separate adjudication.

ITA Nos. 483 & 485Mum/2023

16. As the facts are identical in these appeals, the finding in ITA No. 484/Mum/2023 appeal applies *mutatis mutandis* to these appeals also.

17. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 26.10.2023.

Sd/-

Sd/-

(S Rifaur Rahman)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 26.10.2023

Roshani, Sr. PS

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

Sr. No.	Details	Date	Initials	Designation
1	Order dictated on (Dictation sheet is attached)	25.10.23		Sr.PS/PS
2	Draft Placed before author	26.10.23		Sr.PS/PS
3	Draft proposed & placed before the Second Member			Sr.PS/PS
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			JM/AM
6	Order pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			Sr.PS/PS
9	Date on which file goes to the AR			
10	Date of Dispatch of order			