

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2458/M/2023
Assessment Year: 2011-12**

Shri Pankaj Bhanwarlal Dhaddha, 171, 2 nd Floor, Baj Bldg, Back Road Khetwadi, Mumbai- 400 004 PAN: AGPPD5773L	Vs.	Income Tax Officer Ward 19(2)(5). Dr. SS Rao Marg, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat Kumar, A.R.
Revenue by : Shri Ajay Singh, Sr.AR

Date of Hearing : 11 . 10 . 2023
Date of Pronouncement : 26 . 10 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Pankaj Bhanwarlal Dhaddha (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.06.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter-alia that :-

“1. On the facts and circumstances of the case in law, The Ld. CIT (A) has erred confirming addition of Rs. 3,00,000/- on account of alleged bogus purchases which is 25% of alleged bogus.

2. The appellant craves leave to amend, alter or to raise any other ground at the time of hearing.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of investigation conducted by the investigating wing, wherein it was found that the assessee has entered into transaction with proprietary firm M/s. Shree Nakhodaji Impex for purchase to the tune of Rs.12,00,000/- who is into the business of providing accommodation entries to various beneficiaries and the assessee being one of the beneficiaries of receiving such accommodation entries assessment was reopened. Necessary notices were issued and served upon the assessee. On failure of the assessee to produce any documents to prove the purchases from the aforesaid entry providers to prove the genuineness of the transactions the Assessing Officer (AO) proceeded to make the addition of Rs.12,00,000/- on account of unexplained expenditure under section 69C of the Income Tax Act, 1961 (for short 'the Act') and added the same to the total income of the assessee. The AO accordingly framed the assessment under section 143(3) read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same by restricting the addition on the basis of bogus purchases to the tune of Rs.2,91,179/- @ 25% of the bogus purchases. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly entire addition in this case was made by the AO as well as Ld. CIT(A) on the basis of guess work and estimated merely on the basis of some alleged information received from investigation department. It is also not in dispute that the AO has not examined the books of account of the assessee nor has reached the conclusion that the alleged invoices for purchasing the goods relied upon by the assessee are bogus but simply made the addition on the basis of information received from the investigation wing. It is also not in dispute that even at the first appellate stage books of accounts have not been examined nor rejected rather addition has been restricted to 25% of the bogus purchases on estimation basis.

6. The Ld. A.R. for the assessee contended that the addition restricted by the Ld. CIT(A) to 25% of the alleged bogus purchases is not sustainable because sales have never been disputed by the Revenue Department and relied upon the decision rendered by the Hon'ble Bombay High Court in case cited as Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 and the decision rendered by the co-ordinate Bench of the Tribunal cited as M/s. Pavapuri Metals & Tubes vs. Income Tax Officer in ITA No.1148/M/2019 order dated 29.09.2020 and in the case of Ravindranathan Nair vs. Income Tax Officer in ITA No.2662/M/2018 order dated 31.12.2018.

7. However, on the other hand, the Ld. D.R. for the Revenue to repel the argument addressed by the Ld. A.R. for the assessee contended that in such cases total amount of the bogus purchases

needs to be added to the income of the assessee and relied upon the order passed by the Ld. CIT(A).

8. In the identical facts and circumstances of the case where though the purchases found to be bogus by the Revenue Authorities but sales by the assessee have been accepted as genuine as against these bogus purchases, we are of the considered view that when sales have been accepted being genuine, entire purchases cannot be treated as non genuine to make addition of the entire bogus purchases amount. Hon'ble High Court of Bombay in the case of JK Surface Coatings Pvt. Ltd. (supra) upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:

“4. Having considered the memo of Appeal and the Orders passed by AO / CIT(A) and the Order of ITAT, the only issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.

5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.”

9. The Ld. A.R. for the assessee further relied upon the order passed by the co-ordinate Bench of the Tribunal in case of Shri Omprakash Hukmaram Vishnoi vs. ITO in ITA No.1135/M/2019

order dated 18.02.2020 and contended that in the given circumstances the addition can only be made to the extent of gross profit ratio earned by the assessee during the earlier years and brought on record GP ratio for the last two preceding years and the succeeding years in a tabulated form as under:

Pankaj B Dhaddha					
G.P. and N.P. Ratio Chart					
AY	A Y 2008-09	AY 2009-10	AY 2010-11	AY 2011-12	A Y 2012-13
Turnover	17,835,928	20,964,049	24,998,521	31,958,640	42,834,000
Gross Profit	769,718	1,146,428	1,365,482	1,689,938	2,111,000
Net Profit	310,170	492,870	474,833	733,455	1,414,000
GP ratio	4.32%	5.47%	5.46%	5.29%	4.93%
NP Ratio	1.74%	2.35%	1.90%	2.30%	3.30%

10. So when we examine the gross profit earned by the assessee during the preceding years and the succeeding years including years under consideration on genuine purchases, the addition @ 5% of the gross profit shall meet the ends of justice.

11. Resultantly, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26.10.2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 26.10.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.