

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2241/Mum/2023  
(A.Y. 2011-12)**

JMD Corporation of India Limited, Flat No. 204/205, Bldg No. B-2, Garden Enclave, Vasant Vihar, Thane (W), Maharashtra – 400610	Vs.	The Income Tax Officer, Ward 1(4), Ashar I. T. Park, 6 <sup>th</sup> Floor, B Wing, Room No. 11, Road No. 16Z, Wagle Industrial Estate, Thane (W) 400604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCCJ1370M		
Appellant	..	Respondent

Appellant by :	Ruchi Rathod
Respondent by :	Ujjawal Kumar Chavhan

Date of Hearing	27.09.2023
Date of Pronouncement	14.11.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-2, Thane, dated 03.08.2020 for A.Y. 2011-12.

The assessee has raised the following grounds before us:

- a. *The Appellant states and submits that, the Assessing Officer and the Appellate Authority erred in creating and upholding addition alleging bogus purchases solely based on the investigation of third party investigating agency (Sales Tax Department) and without making any further inquiries to substantiate such additions.*
- b. *The Appellant states and submits that, the Assessing Officer and the Appellate Authority erred in ignoring the fact that the Appellant had already paid MVAT to the Sales Tax Department on the impugned transactions and erred in not reducing the said amount from the additions.*

- c. *The Appellant states and submits that, the Assessing Officer and the Appellate Authority erred in creating and upholding addition alleging bogus purchases solely on the basis of third party statement, i.e, statement recorded by the Proprietor of M/s Akash Steel Traders.*
- d. *The Appellant states and submits that, the Assessing Officer and the Appellate Authority erred in creating and upholding addition alleging bogus purchases without providing a cross- examination opportunity and without providing a copy of such third-party statement relied upon by it leading to the violation of principles of natural justice.*
- e. *The Appellant states and submits that, the Appellate Authority erred in upholding the additions at 25% ignoring the fact that the sales of the Appellant have not been doubted and that the very goods purchased by the Appellant have been further sold to other parties.*
- f. *The Appellant states and submits that, the Appellate Authority erred in upholding the additions at 25% ignoring the judgments of Hon'ble Supreme Court of India, jurisdictional Hon'ble Bombay High Court and this Hon'ble Tribunal.*
- g. *The Appellant craves leave to add, alter, amend, vary or delete any of the aforesaid grounds.”*

2. There was a delay in filing this appeal by the assessee by 10 days. The assessee has requested condonation of delay vide letter dated 20.09.2023 due to ill health of the father of the director of the assessee company who was involved in the regular business activity. The assessee has also filed copy of medical certificate. Considering the material placed on record it appears that there is bonafide cause for marginal delay in filing the appeal, therefore, the delay in filing the appeal is condoned.

3. Fact in brief is that return of income declaring total income of Rs.8,07,850/- was filed on 30.09.2011. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 10.05.2013 on the basis of information received from the Sale Tax Department that assessee had obtained bills of bogus purchases from the following parties:

Sr. No.	Name	MVAT No.	Amount
1.	Akash Steel Traders	27230363523V	173,86,509
		Total	1,73,86,509/-

During the course of reassessment proceedings the assessing officer has issued various notices and show cause notice, however, the assessee has not made compliance, therefore, the AO has finalised assessment ex-parte u/s 144 r.w.s 147 of the Act. The assessing officer stated that assessee has not made any actual purchases from the aforesaid parties as the said party has only issued bogus bills of purchases as per the information received from the sale tax department. Therefore, the assessee was issued show cause notice dated 23.02.2015 to explain as to why the purchases made from the said party to the amount of Rs.173,86,509/- should not be disallowed and added to his income, however, no compliance was made by the assessee during the course of assessment proceedings, therefore, the AO had treated the 100% purchases as bogus and added to the total income of the assessee.

4. The assessee filed the appeal before the Id. CIT(A). During the course of appellate proceedings before the Id. CIT(A) the assessee has filed the following documents:

- Letter of Authority
- Appeal Form 35 along with grounds of appeal and order
- Purchase register for AY 2011-12
- Purchase Monthly summary
- Purchase - party wise details
- Sales register
- Ledger, purchase invoice and payment details of Akash Steel Traders
- . Stock movement of inventory purchased from Akash Steel Traders
- Sales Tax return
- GP ratio working along with supporting
- Annual accounts for AY 2011-12

The Id. CIT(A) called remand report from the assessing officer vide letter dated 18.02.2019. After taking into consideration the remand report

filed by the assessing officer and submission of the assessee the ld. CIT(A) has restricted the disallowance to the extent of 25% of the bogus purchases. Accordingly, disallowance to the extent of Rs. 43,46,627/- was confirmed and balance amount of Rs.130,39,882/- was deleted.

5. The revenue has filed appeal against the order of CIT(A) before the ITAT Pune. The ITAT Pune vide ITA No. 05/Pune/2021 for A.Y. 2011-12 dated 28.06.2022 dismissed the appeal of the revenue because of low tax effect as prescribed in the CBDT circular dated 17/2019 and 08.08.2019.

6. During the course of appellate proceedings before us the ld. Counsel filed the affidavit dated 22.09.2023 stating that the ld. CIT(A) Thane had passed the order on 03.08.2020, however, such appeal order was not served on the assessee company. The assessee company was shut down due to lockdown restriction as well as closer of business due to covid period. Thereafter on 14.03.2023 the Assistant Commissioner of Income Tax, Panvel Circle sent a notice u/s 158AB of the Act on the whatsapp number of the director of the company and at that stage he has come to know about the said order passed by the ld. CIT(A)-2 Thane. Only at this stage the director of the company came to know that revenue had already filed appeal before the ITAT Pune bench which had been dismissed by the ITAT vide order dated 28.06.2022. Further, against the order of the ITAT the revenue has sought consent u/s 158AB of the Act to file an appeal before the Hon'ble Bombay High Court. The assessee submitted that certified copy of the CIT appeal order was received by it only on 09.04.2023. The ld. Counsel further submitted that assessee has submitted relevant supporting documents before the ld. CIT(A) to substantiate the purchases made by the assessee company. He further submitted that ld. CIT(A) has called remand report from the assessing officer and the assessing officer failed to bring on

record any relevant material to demonstrate that assessee had entered into bogus transactions with the aforesaid party. The ld. Counsel also contended that AO has merely made addition on the basis of information obtained from the sale tax department without carrying out any independent inquiry to establish that assessee has made the bogus purchases. He also stated that the AO has accepted corresponding sales against the purchases and looking to the regular gross profit shown by the assessee in the past years no addition should have been made in the case of the assessee.

On the other hand, the ld. D.R submitted that assessee has failed to make any compliance before the assessing officer and he supported the lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the assessing officer has added the 100% purchases made by the assessee from aforesaid party on the basis of information received from the sale tax department. The ld. CIT(A) has restricted the addition to the extent of 25% of the bogus purchases. The revenue has filed appeal before the ITAT Pune which was dismissed because of low tax effect. The assessee submitted that it has not received any notices because of shut down of the business and also submitted that even it has not received form no. 36 filed by the department before the ITAT. The revenue has not brought any contrary evidences against the claim of the assessee that neither it had received the order of ld. CIT(A) nor the form no. 36 filed by the department in its appeal before ITAT Pune. The ld. CIT(A) has upheld the addition to the extent of 25% of the sales after following the decision of Hon'ble Gujarat High Court in the case of Vijay Protein Ltd. During the course of appellate proceedings before us the ld. Counsel submitted that ld. CIT(A) has not referred the several other judgments of the jurisdictional

Hon'ble High Court and the decision of ITAT Mumbai while adjudicating the appeal of the assessee. The ld. Counsel referred the decision of Mumbai ITAT M/s Geolife Organics & Ors Vs. ACIT 23(2), ITA No. 3699/Mum/2016 dated 05.05.2017. After perusal of the material on record we find that before the ld. CIT(A) assessee has produced copy of purchase register, sale register, ledger purchase invoices stock movement, copy of bank statement etc. to prove the genuineness of the purchases. It is also noticed that assessing officer has not doubted the corresponding sales made by the assessee. If such purchases are treated as non-genuine then the corresponding sales should also be considered as non-genuine. Therefore, we consider that in such types of transaction only the profit margin embedded in such transaction could be taxed. In such type of cases the assessee procures the material from the grey market by paying cost and as the bills are not available for such transaction, obtains bills from third party who after receipt of cheque from the assessee making him available the cash after deducting its commission. Since the sales were not doubted therefore it was proved that assessee was actually in possession of goods. The assessee has been benefitted by receiving margin of grey market. The gross profit for the F.Y. 2009-10 to 2011-12 as provided in the order of ld. CIT(A) in the case of the assessee is reproduced as under:

Ratio	FY 2009-10	FY 2010-11	FY 2011-12
Gross Profit	0.95%	1.68%	1.88%
Net Profit	0.22%	0.31%	0.34%

After taking into consideration the aforesaid facts we consider that the addition to the extent of profit element embedded in the amount of purchases made from the said party is to be added. After considering the above facts and findings we consider it fair and reasonable to restrict the disallowance in the case of the assessee to the extent of 4% of the

impugned purchases made by the assessee from the said party. Accordingly, the appeal of the assessee is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.11.2023

Sd/-

(Aby T Varkey)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 14.11.2023

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**