

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1991/MUM/2023
(Assessment Year: 2012-13)**

**Deputy Commissioner of Income Tax
19(1), Mumbai,**

Room No. 506, Piramal Chambers,
Parel, Dr. SS Rao Marg,
Mumbai - 400012

Overseas Exports,

2302-A, Panchratna, Opera House,
Mumbai - 400004
[PAN: AAAFO0307N]

..... **Assessee**

Vs

..... **Respondent**

**CO No. 99/MUM/2023
(Arising out of ITA No. 1991/Mum/2023)
(Assessment Year: 2012-13)**

Overseas Exports,

2302-A, Panchratna, Opera House,
Mumbai - 400004
[PAN: AAAFO0307N]

..... **Assessee**

**Deputy Commissioner of Income Tax
19(1), Mumbai,**

Room No. 506, Piramal Chambers,
Parel, Dr. SS Rao Marg,
Mumbai - 400012

Vs

..... **Respondent**

Appearance

For the Assessee/Assessee : Shri Rajesh Shah

For the Respondent/Department : Shri H.M. Bhatt

:

Date

Conclusion of hearing : 25.10.2023

Pronouncement of order : 29.11.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal filed by the Revenue and Cross-Objection filed by the Assessee pertaining to the Assessment Year 2012-13 arise from the order, dated 29/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals)-, National Faceless Appeal Centre (NFAC) [hereinafter referred to as 'the CIT(A)'], whereby the CIT(A) had partly allowed appeal of the Assessee against the Assessment Order, dated 14/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal:
 1. *" Whether on the facts and circumstances of the case and law the Ld. CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases without appreciating the fact that the AO has rightly disallowed the bogus purchases and made 100% addition in assessment order.?"*

 2. *Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases value without appreciating the judgment of Apex Court in the case of N. K. Proteins Ltd vs. DCIT in Tax Appeal no 240-242 of 2003 dated 20.06.2016 that once a finding of fact has been given that entire purchases shown on the basis of fictitious invoices and debited in the P&L A/c are established as bogus, restricting the addition to a certain percentage goes against the principles of sections 68 and 69C of the IT Act. ?*

 3. *Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases where CIT(A) acknowledge that the assessee failed to establish the genuine purchase from 3 parties i.e. M/s. Laxmi Trading Co., Maru Diamonds & Rare Diamonds Pvt. Ltd.?"*

4. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases where during the search action carried out in the case of Mr. Bhavarlal Jain and its group concerns and during the search actions Mr. Bhanwarlal Jain in the statement recorded admitted to have provided the accommodation entries via 3 entries namely M/s. Laxmi Trading Co. Maru Diamonds & Rare Diamonds Pvt. Ltd with whom the assessee has claimed to have purchased the diamonds.?*
5. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases where the finding of the AO are based on merits and proved analysis of facts & circumstances evidences which was also acknowledged by CIT(A) himself?*
6. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has erred in restricting the addition to the extent of GP of the appellant on correct verified amount of the bogus purchases during the assessment proceedings where the assessee has failed to discharge the onus of proving that the transaction were not bogus. However the DGIT(Inv.) reported that Bhanwarlal Jain group is involved in providing accommodation entries without supplying of goods.?*
7. *The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored.*

2.1. The Assessee has raised following grounds of cross objection:

- "1. *The Ld. CIT(A) has error in not considering the facts that the Ld. AO has not provided any material evidence and cross examination and only relied on statement.*
- 2 *The Ld. AO has not passed the order to give tax effect on the basis of order passed by the Ld. CIT(A).*
3. *The Ld. CIT(A) has error in not considering the fact that the assessee has made 100% export against alleged purchases."*

3. The relevant facts in brief are that the Assessee filed original return

of income for the Assessment Year 2012-13 on 27/09/2012 declaring total income of INR 1,45,42,609/- which was processed under section 143(1) of the Act. Subsequently, information was received from Director General of Income Tax (Investigation), Mumbai to the effect that the Assessee/Appellant had obtained the accommodation entries of bogus purchases aggregating to INR 2,75,05,230/- from the following three parties:

1. Luxury Trading Co.	INR 67,56,480/-
2. Maru Diamonds	INR 72,37,080/-
3. Rare Diamonds Private Limited	INR 1,35,11,670/-

4. On the basis of the aforesaid above information, reassessment proceedings under Section 147 of the Act were initiated which culminated into Assessment Order, dated 14/12/2019, passed under section 143(3) read with section 147 of the Act whereby the income of the Assessee was assessed at INR 4,20,47,840/- after making disallowance of INR 2,75,05,230/- under Section 69C of the Act in relation to above bogus purchases.
5. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). Vide order, dated 29/03/2023, the CIT(A) partly allowed the aforesaid appeal preferred by the Assessee. The CIT(A) upheld the initiation of reassessment proceedings under Section 147 of the Act. However, the CIT(A) granted relief to the Assessee by restricting the addition on account of bogus purchases to the amount of profit element embedded therein and directed the Assessing Officer to restrict the addition to the extent of gross profit of the Assessee on correct verified amount of bogus purchases.

6. Being aggrieved by the order passed by CIT(A), the Revenue has preferred the present appeal contending that the disallowance on account of bogus purchases should be restored to 100% of bogus purchases. On the other hand, not being satisfied by the relief granted by the CIT(A), the Assessee has also filed cross objections raising grounds reproduced in paragraph 2.1 above.

7. We have heard the rival contention and perused the material on record. While the Ld. Departmental Representative had vehemently contended that 100% of purchases should be disallowed as bogus by placing reliance upon the judgment of N.K. Protein Limited Vs. DCIT : 389 ITR 541, we are not inclined to accept the same. In the cases of Pr. CIT vs. Mohommad Haji Adam & Co. [2019] 103 taxmann.com 459 (Bom.), the Hon'ble Bombay High Court has held that in case the factum of sales has been accepted by the Revenue, then even if it is established that there were bogus purchases, it is not necessary that entire amount of such bogus purchases should be added to the income of the Assessee as there cannot be a sale without purchase. We note that in the present case the Assessing Officer had accepted the sales even while concluding that the aggregate purchases of INR 2,75,05,230/- made from the three parties were bogus. The submissions advanced on behalf of the Assessee that 100% of the sales by the Assessee were export sales has also not been controverted by the Revenue during the appellate proceedings before us. Thus, we do not find any infirmity in the order passed by the CIT(A) restricting the disallowance on account of bogus purchases to profit element embedded therein. In view of the aforesaid Ground No. 1 to 7 raised by the Revenue are dismissed.

8. In relation to the ground raised by the Assessee in the cross-objection, it was contended on behalf of the Assessee during the appellate proceedings before us that the gross profit rate in relation to the alleged bogus purchase transaction was 8.98% whereas the gross profit rate in the case of purchase transaction accepted by the Revenue was only 7.69%. Therefore, no addition was warranted in the hands of the Assessee. In this regard, the Ld. Authorised Representative for the Assessee referred to the submissions made before CIT(A) has reproduced in paragraph 5.1 of the order impugned. In Ground No. 2 raised in Cross-Objection filed by the Assessee, it has been contended that the Assessing Officer has not passed order giving effect to the order passed by the CIT(A) and had sought direction in relation to the same in view of the judgment of the Hon'ble Bombay High Court in the case of Mohommad Haji Adam & Co. (supra). Accordingly, keeping in view the facts and circumstances of the present case we direct the Assessing Officer to verify the above submission made by the Assessee and in case, on verification, the gross profit rates in case of the bogus purchase transactions is found to be more than the gross profit rate in the case of purchase transactions accepted by the Revenue, we direct the Assessing Officer to accept the same as amount of profit element embedded in the alleged bogus purchases already offered to tax by the Assessee and not to make any further addition in the hands of the Assessee on account of bogus purchases in terms of the judgment of the Hon'ble Bombay High Court in the case of Mohommad Haji Adam & Co. (supra). In terms of the aforesaid, Ground No. 2 raised by the Assessee in the Cross Objection is allowed while Ground No. 1 and 3 are dismissed as being infructuous.

9. In result, appeal preferred by the Revenue is dismissed while Cross Objection preferred by the Assessee is partly allowed.

Order pronounced on 29.11.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.11.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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