

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

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2648/MUM/2023 (A.Y. 2011-12)

INCOME TAX OFFICER-27(1)(1) R.No. 406, 4 th floor, Tower No. 6 Vashi Railway Station Complex Vashi, Navi Mumbai - 400703	v.	BHARAT CHANDRAKANT JASAN A 402, Sai Darshan, Garden Lane Sanghani Estate, Ghatkopar (E) Mumbai - 400086 PAN: AFCPJ7029K
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Shashank Mehta
Department Represented by		Shri Ashok Kumar Ambastha
Date of Conclusion of Hearing	:	27.02.2024
Date of Pronouncement	:	29.02.2024

ORDER

PER S. RIFAUR RAHMAN (A.M)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 08.05.2023 for the A.Y. 2011-12.

2. Brief facts of the case are, assessee an individual filed return of income on 29.09.2011 for the A.Y.2011-12 declaring income of ₹.15,95,470/- and the return was processed u/s.143(1) of the Income-tax Act, 1961 (in short "Act"). Subsequently, Assessing Officer received information from the DGIT (Investigation), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from DGIT (Investigation), Mumbai, that the assessee has availed accommodation entries from various dealers who are said to be providing accommodation entries without there being transportation of any goods.

3. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from the parties as referred in Assessment Order. In response, Assessee has not filed any submissions. Assessing Officer proceeded to complete the assessment and he treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. Assessing Officer observed that the notices issued u/s. 133(6) of the Act to the parties are returned unserved with a

remark "Left" and the assessee has not produced the parties before the Assessing Officer. Therefore, Assessing Officer treated entire purchases of ₹.2,32,61,423/- made from the alleged parties as non-genuine.

4. Aggrieved with the above order, assessee preferred appeal before the Ld. CIT(A) and filed detailed submissions. After considering the detailed submissions and various evidences furnished by the assessee, Ld.CIT(A) restricted the disallowance to an extent of 12.50% of the non-genuine purchases.

5. Aggrieved, revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case. Ld.CIT(A) (NFAC) erred in deleting the addition of Rs 2,32,61,423/- on account of bogus purchases without appreciating the facts that the assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidence in support of the claim.

2. Whether on the facts and circumstances of the case, the Ld.CIT(A) (NFAC) erred in deleting the addition of Rs. 2,32,61,423 as the assessee shown GP rate more than 12.5% of such bogus purchases without appreciating that the assessee evaded the taxes on whole of such bogus purchases and by restricting the disallowance to only 12.5% the assessee continues to evade the taxes on the balance bogus purchases, in view of the judgement of Hon'ble Gujarat High Court in NK Proteins Ltd. vs. DGIT and Vijay proteins Ltd. vs CIT, both of which were upheld by the Supreme Court.

3. *Whether on facts and circumstances of the case, Ld. CIT(A) (NFAC) erred in deleting the entire addition of Rs. 2,32.61,423/-, by holding that there is no need to raise the disallowance @12.5% as the assessee had already declared GP @ 13.22%, without appreciating the facts that the onus of producing the purchase parties, delivery challans, transportation bills etc. were not fulfilled by the assessee.*

4. *Whether on facts and circumstances of the case, Ld. CIT(A) erred in not appreciating the facts that the details were not furnished before the Assessing Officer and the Ld. CIT(A) admitted the evidences without giving an opportunity to the Assessing Officer to confront all these evidences, without calling for remand report regarding verification of genuineness of the transaction. Dated: 26.07.2023*

5. *The appellant prays that the order of the Ld.CIT(A) (NFAC) on the above ground(s) be set aside and that of the Assessing Officer restored.*

6. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

6. At the time of hearing, Ld. DR brought to our notice relevant facts of the case and heavily relied on the order of the Assessing Officer. He prayed that the order of the Ld. CIT(A) may be set-aside.

7. On the other hand, Ld.AR of the assessee reiterated the submissions made before the Ld. CIT(A). Ld. Counsel for the assessee further submits that in assessee's own case for the A.Y.2009-10 the Tribunal in ITA.No. 800/Mum/2019 dated 13.12.2021 restricted the disallowance of non-genuine purchases to 12.50% of such purchases. Ld. AR submitted that Ld. CIT(A) has followed the order of the Tribunal in assessee's own case

and restricted the disallowance to 12.50% of non-genuine purchases. Therefore, he prayed that the order of the Ld. CIT(A) may be sustained.

8. Considered the rival submissions and material placed on record and perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following decision of the Tribunal in assessee's own case for the A.Y. 2009-10 restricted the addition to 12.50% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

"4.1 Ground No. 2: The appellant had filed the Return of Income, on 29.09.2011 declaring income of Rs. 1595470/-. There was information received by AO from DGIT (Inv.), Mumbai that the appellant had taken accommodation entries from certain parties to inflate its purchases. This information about accommodation entry suspicious dealers was available official website of sales tax department Govt. of Maharashtra. In view of these facts, the proceedings u/s 147 were initiated and notices u/s 148 was issued to the appellant on 15.03.2016. During the course of assessment proceedings, the AO observed that the appellant had taken accommodation entries of Rs. 23261423/- from seven such accommodation entry parties. The AO issued notices u/s 133(6) to these parties which were returned unserved by the postal authorities with remarks "left". The appellant was asked to produce these parties by the AO, which was not complied by the appellant. Accordingly, the AO made addition of Rs. 23261423/- on account of non-genuine purchases made by the appellant.

4.2 During the course of appellate proceedings, the appellant had filed the submissions in this issue and had submitted the orders of ITAT in his own case for AY 2009-10 & 2010-11 wherein, there were additions made by the AO on the same issue. It is observed from the orders of ITAT in the case of appellant that there was similar information with the AO for AY 2009-10 & 2010-11 even some parties of AY 2010-11 are common to AY 2011-12. From the orders of the ITAT it is observed that the appellant is engaged in the business of trader in ball-bearings and sleeves. In AY 2009-10 & 2010-11, on similar facts of the case as in AY 2011-12, the AO had made addition of additional GP @12.5% of such bogus purchases in these years. However, in the year under consideration the AO had added the whole amount of bogus purchases without assigning any specific reason for the same. In case of trading of goods, there is one-to-one relation between the quantity of sales & purchases, therefore, there cannot be sales without purchases, leading to the conclusion that actual purchases might have been made from some other sources in the grey market than the accommodation entry operators from whom generally bills are procured without material. Further, the books of the appellant are audited and no discrepancy in the stock had been brought on the record by the AO. Therefore, in my opinion, in such cases only additional GP on such purchases made from grey market but regularized through the purchase bills taken from accommodation entry operators. can be added to the income of the appellant as extra profit earned on transactions. Therefore, in consistency with the earlier years, the GP rate of 12.5% on these bogus purchases could have been added by the AO as additional profit earned by the appellant. It is further observed that in ITA No. 800/MUM/2019 for AY 2009-10 the ITAT Mumbai, in the order dated 13.12.2021, in the case of the appellant had followed its earlier order in ITA No. 4716/MUM/2018 for AY 2010-11 in the case of the appellant, the relevant portion of which is reproduced as under:

"6. I have heard both the parties and perused the record. I note that ITAT in assessee's own case in ITA No. 4716/M/2018 for AY 2010-11 vide order dated 30.08.2019 has considered the identical issue as under:

"We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Upon careful consideration we find that assessee has provided the

documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. We find that in this case the sales have not been doubted. It is settled law that when sales are not doubted then hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble jurisdictional High Court decision in the case of Nikunj eximp enterprises (in writ petition no 2860, order dt 18.6.2014. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation we are of the considered opinion on the facts and circumstances of the case that the 12.5% disallowance out of the bogus purchases meets the end of justice. However, ITA No. 4716/M/2018 A.Y.2010-11 4 in this regard learned counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

Up on careful consideration, we find considerable cogency in the submission of the learned counsel of the assessee, as otherwise it will be double jeopardy to the assessee. Accordingly, we modify the order of learned CIT-A and direct that the disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. The assessee in the present case has already declared the G.P. @ 18.34% which

is more than the 12.5%, therefore, there is no need to raise the disallowance. Accordingly, we delete the addition and allowed the appeal of the assessee.

7. *Ld. Counsel of the assessee pointed out that facts are similar in this year as assessee has shown a gross profit of 13.17% which is much more than the disallowance sustained by Ld.CIT(A) @12.5%.*

8. *Since, the aforesaid order has been rendered in assessee's own case and the order of this year has also been recalled for being at variance with the same, respectfully following the precedence, I hold that this year also since gross profit declared is more than 12.5%, no disallowance is required. I order accordingly."*

It is observed that in AY 2009-10 & 2010-11 on similar facts of the case, the AO had made addition on account of additional profit @12.5% of such bogus purchases which was confirmed by the CIT(A). However, the ITAT had modified the order of CIT(A) that disallowance in this case to be restricted to 12.5% of bogus purchases as reduced by gross profit rate already declared by the appellant on these transactions. As the appellant had shown GP rate more than 12.5% in those two assessment years, the addition made by the AO was deleted. The facts of the present case exactly match with that of AY 2009-10 & 2010-11. On the basis of these facts, only additional GP @12.5% on these bogus purchases could have been added as the additional profit instead of full amount of purchases added by the AO. However, the order of the ITAT, Mumbai in AY 2009-10 & 2010-11 in the case of the appellant on similar facts is binding on lower authorities. Therefore, the addition on account of these bogus accommodation entries is restricted to 12.5% of bogus purchases as reduced by gross profit rate already declared by the appellant on these transactions. During the year under consideration the appellant had shown GP @13.22% (Rs. 7707470/Rs. 58329084) including the transactions of bogus purchases. Respectfully following the decision of the ITAT, Mumbai in the case of the appellant for AY 2009- 10 & 2010-11, it is held that no disallowance is warranted on account of additional GP on these bogus purchases as the appellant had already shown GP rate more than 12.5% considered on bogus

purchases in earlier years. Accordingly, the addition of Rs.23261423/- is hereby deleted and this ground of appeal is "allowed".

9. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A) who has followed the order of Coordinate Bench decision in assessee's own case in restricting the addition/disallowance to the extent of 12.50% of the purchases. Accordingly, Grounds raised by the revenue are dismissed.

10. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 29.02.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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

(Asstt. Registrar)
ITAT, Mum