

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2768/Mum/2023  
(Assessment Year :2011-12)**

ITO Ward 3(2) Kalyan	Vs.	Shri Mukesh Odhavji Kamaliya Flat No.22, Building E- 2, Prem Park Masulkar Colony Near Corporation Bank Pune -411 018
<b>PAN/GIR No.AXZPK8408L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri R.R. Makwana
<b>Date of Hearing</b>	<b>19/03/2024</b>
<b>Date of Pronouncement</b>	<b>19/03/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 29/05/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s.147 for the A.Y.2011-12.

2. The grounds raised by the Revenue reads as under:-

*“On the facts and circumstances of the case, the CIT(A) erred in restricting the disallowance to 25% of purchases instead of*

*100% of purchases of Rs.6,09,116/- from non-existent vendors by not following the decision of the Hon'ble Gujarat High Court in Tax Appeal No.242 of 2023 dated 20/06/2016 in the case of N.K. Proteins Ltd V. DCIT wherein it has been held that once the purchases are bogus, additions should be made on the entire purchases and not only the profit embedded in such purchases against which the SLP filed by the assessee was dismissed by the Hon'ble Apex Court vide (2017) 292 CTR 354 (SC).*

*b. It is humbly requested that present appeal may be filed in accordance with the CBDT'S Circular No 3/2018 dated 11.07.2018 amended vide letter doted 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored."*

3. The brief facts are that assessee is an individual engaged in the business of trading in electrical goods. The return of income was filed declaring total income of Rs.2,11,372/- for A.Y.2011-12 filed on 16/09/2011. Subsequently, based on information received from the Sales Tax department, Maharashtra that certain persons were provided entries for bogus purchase bills to a large number of tax payers and assessee has also obtained purchase bills from five such parties amounting to Rs.6,01,516/- notice u/s.148 was issued for reopening the case. In the assessment order ld. AO had made addition of entire purchases of Rs.6,09,126/-.

4. The ld. CIT(A) in the *exparte* order had applied GP rate of 25% on the entire alleged bogus purchases and sustained addition of Rs.1,52,280/-. Since none appeared on behalf of the assessee and Revenue has filed the appeal for addition of approximately Rs.4,50,000/-, even though the GP rate applied is much higher on such purchases, despite the fact that assessee produced bank

book, cash book, ledger, sales register, purchase register and financial statement, the source of purchases have been duly submitted alongwith quantity of sales and purchases. Thus, the entire purchases cannot be added. Accordingly, application of GP rate by the Id. CIT (A) is upheld and appeal of the Revenue is dismissed.

**5. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 19<sup>th</sup> March, 2024.

**Sd/-**  
**(S RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 19/03/2024  
KARUNA, sr.ps

**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, Mumbai**