

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

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

**ITA No.2565/Mum/2023  
(A.Y. 2010-11)**

Income Tax Officer - 42(1)(4), Room No. 718, Kautilya Bhavan, BKC, Mumbai - 400051	Vs.	Ravindra G. Chitalia, A/604, Saileela, Above Vijaya Bank, Anand Nagar, Dahisar (East) Maharashtra - 400068
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAEPC4939Q		
Appellant	..	Respondent

Appellant by :	S. Arunkumar
Respondent by :	Debiz Bhusal

Date of Hearing	28.02.2024
Date of Pronouncement	06.03.2024

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

This e-appeal filed by the revenue is directed against the order passed by the Id. CIT(A) for A.Y. 2010-191. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in facts and in law by giving partial relief to the assessee by reducing the addition / disallowance to 5% of the impugned non-genuine / bogus purchases as against the addition / disallowance @12.5% made by the Assessing Officer by relying on.*
- 2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in facts and in law by reducing the disallowance @ 5% of the impugned bogus purchases by relying on the judgment dated 06 02 2019 of the jurisdictional ITAT in the case of the this assessee for the A.Y 2009-10 which was not accepted by the Revenue and further appeal was filed It is submitted in this regard that in the said ITAT judgment on identical facts it was held by Hon'ble Tribunal that disallowance @12.5% was at higher rate going by the nature of business of the assessee (trading in various products of iron & steel) and also for the reason that the assessee has also paid VAT element on the impugned bogus purchases without*

*appreciating the fact that one of the case laws relied upon by the A.O for 12.5% disallowance was based on the judgment of the Hon'ble Gujarat High Court in the case of Shri Simit P Seth (2013)38 Taxmann.com385(Guj) wherein the subject matter of impugned bogus purchases was also related to steel. Besides, no iota of evidence to the effect that the impugned bogus purchases made included any VAT element was brought on record as held by the Hon'ble ITAT.*

3. *On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT circular no. 17/2019 dated 08.08.2019 r.w. Circular No. 3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said circular in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities*
4. *The appellant craves to leave to amend or alter any ground or add a new ground.”*

2. Fact in brief is that assessee has filed return of income declaring total income of Rs.263,647/- on 14.10.2010. The return of income was processed u/s 143(1) of the Act. Subsequently, information was received from the sale tax department through DGIT(Inv.) Mumbai that some parties had indulged in the acceptance of bogus purchase bills from the accommodation entry providers. As per the information received the assessee was beneficiary of such bogus purchase bills and during the financial year relevant to assessment year under consideration assessee had accepted bogus bills from the following parties:

<b>TIN</b>	<b>Name of the Party</b>	<b>Amount</b>
27600648257V	Niddhish Impex Pvt Ltd	8,76,460
27350705382V	Ambika Trade Impex	17,39,923
27920665638V	Shivraj Traders	19,64,208
27750595164V	Deep Enterprises	8,45,030
27200738202V	Yash Corporation	16,58,620
27020680974V	Rohit Enterprises	8,73,298
27440688212V	Tulsiani Rading Private Limited	9,35,288
27720714054V	Kumar Enterprises	9,60,430
	<b>Total</b>	<b>98,53,257</b>

Therefore, the assessing officer reopened the case within the meaning of Sec. 147 of the Act by issuing of notice u/s 148 of the Act on 15.10.2014. In response the assessee has filed copies of purchase bills in respect of above mentioned parties along with copies of bank statement. The AO has not agreed with the submission of the assessee and stated that the aforesaid parties mentioned in this orders have accepted in their statement that they have not done any business and also not made any delivery of goods to the purchasing parties. Further AO mentioned that notices issued u/s 133(6) of the Act were return unserved. In view of the above facts the assessing officer reached to the conclusion that the assessee was a beneficiary of the accommodation bills issued by the aforesaid parties without making any delivery of goods. The assessing officer also rejected the books of account for the year under consideration by invoking provision of Sec. 145(3) of the Act. The AO further stated that assessee could not produced the party, stock register delivery challan, lorry receipt, transport detail etc. therefore, 15% of the total amount of Rs.98,53,257/- which comes to Rs.14,7,989/- was added to the total income of the assessee by treating the same as unexplained.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) after perusing the order of ITAT passed in the assessee's own case for assessment year 2009-10 on similar issue and identical fact has restricted the above @ 5% as against 15% of the alleged purchases.

4. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above we find that similar issue on identical fact in the case of the assessee has been adjudicated by the ITAT and restricted the addition after applying profit rate @ 5%. With the assistance of ld. representative we have perused the decision of ITAT as referred above. The relevant extract of the decision is reproduced as under:

*“12. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides that the CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to me is on higher side going by the nature of business of the assessee i.e. trader of various products of iron and steel. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 7.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 5% and compute the income accordingly. The appeal of the assessee is partly allowed.”*

The case of the assessee is squarely covered by the decision of ITAT on similar fact and issue for the earlier years as referred above, therefore, following the decision of ITAT we don't find any reason to interfere in the decision of Id. CIT(A). Accordingly, both ground of appeal of the revenue are dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 06.03.2024

Sd/-

(Kuldip Singh)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 06.03.2024

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.