

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

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

**ITA No.2836/Mum/2023  
(Assessment Year :2011-12)**

Income Tax Officer- 26(2)(1) Mumbai	Vs.	Shankaraiah Ashanna Ayyori 194/23, Ground Floor Grant Building Arthur Bunder Road Colaba Mumbai-400 005
<b>PAN/GIR No.AAAPA6928K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Fenil Bhatt
Revenue by	Shri R.R. Makawana
<b>Date of Hearing</b>	<b>20/03/2024</b>
<b>Date of Pronouncement</b>	<b>20/03/2024</b>

**आदेश / O R D E R**

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

The aforesaid appeal has been filed by the Revenue against the order dated 13/06/2023 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. In the grounds of appeal, the Revenue has challenged the deletion of Rs.24,83,719/- made by the ld. AO on account of bogus purchases.

3. The brief facts are that assessee is an individual and is an approved Government civil contractor executing work for Government departments like CPWD, Military Executive Engineer and other Government undertakings in his proprietary concern, M/s. Satnarayan Construction. Assessee has filed his return of income on 29/09/2011 declaring total income of Rs.18,87,470/-. The said return was duly accepted in the intimation u/s. 143(1). Subsequently, the case was reopened u/s. 147 on the basis of information received from Sales Tax Department through DGIT (Investigation) that assessee is one of the beneficiary of bogus purchase bills from two parties aggregating to Rs. 24,83,719/- on account of bogus purchase. Based on this, ld. AO issued a show-cause notice as to why the purchases from the above parties should not be disallowed. In response assessee submitted copy of ledger account from these parties, tax invoices and bank statements showing the payment made through account payee cheques. The ld. AO noted that notice u/s. 133(6) was issued and out of that one party was not on address and another party, he has not replied back. Further, assessee has not made applicable the material purported to have purchased from the aforesaid parties. Accordingly, the total taxable income of the assessee was assessed at Rs.43,71,190/-.

4. The ld. CIT(A) deleted the entire additions on the ground that assessee has recorded the purchases in the books duly supported by authenticated supporting bills and vouchers, with payments made through banking channels. Further, sales against these purchases have not been doubted. If ld. AO has considered the purchases as 'bogus' solely based on Sales Tax department, it would imply that all payments made by four government departments are also bogus, and that the contracted works were never executed. The ld. CIT (A) after observing certain decisions of the Tribunal, has deleted the said addition.

5. After hearing both the parties and on perusal of the impugned order, we find that under the facts the addition of entire purchases made by the ld. AO is only unjustified, because once the source of purchases have been debited in the books of accounts and corresponding quantity of material purchased had been recorded in the books and corresponding quantity of material has been utilized for construction activity, then without disturbing the trading result entire quantity of purchases cannot be disallowed holding that purchases are outside books. So the entire purchases cannot be added.

6. At the most, it could be the case of purchases made from hawala dealers for inflating the cost and suppressing GP rate on that purchase. If parties have not confirmed the purchase transaction then in such a case, some Gross Profit rate can be applied. The principle laid down by the Hon'ble Bombay High Court in the case of **PCIT vs. Vishwashakti Construction 15 &**

**20 ITXA 1016 & 1026 of 2018** wherein GP rate of 12.5% has been held to be reasonable in such cases, can be applied in the present case also. Accordingly, the addition on account of GP rate of 12.5% is upheld on the purchase amount of Rs.24,83,719/-.

**7. In the result, appeal of the Revenue is partly allowed.**

Order pronounced on 20<sup>th</sup> March, 2024.

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

Mumbai; Dated 20/03/2024  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL 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, Mumbai**