

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" D " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 2798/AHD/2013

निर्धारण वर्ष/Asstt. Year: 2009-2010

Shri Dipesh Prabhudas Kothari HUF, 315, Astodia, Rangati Bazar, Ahmedabad-380002.  <b>PAN: AABHK2547P</b>	Vs.	Income Tax Officer, Ward 3(2), Ahmedabad.
-----------------------------------------------------------------------------------------------------------------------------	-----	-------------------------------------------------

(Applicant)		(Respondent)
-------------	--	--------------

Assessee by :	Shri M. K Patel, AR
Revenue by :	Shri Atul Pandey, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **20/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **10/04/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-2010.

2. The only issue raised by the assessee is that the Ld. CIT(A) erred in estimating the G.P @ 12.5% on the unrecorded purchases whereas the assessee has shown G.P @ 3.5% of the turnover.
3. In the present case, the assessee has shown purchases from the parties namely Niki Enterprise and Ambika Sales amounting to Rs. 41,45,585/- and Rs. 13,52,988/- which was held as bogus. Therefore, the AO added the sum of Rs. 54,98,573/- to the total income of the assessee.
4. Aggrieved assessee preferred an appeal to the Ld. CIT(A) who restricted the addition on such bogus purchased @ 12.5%. Thus, the Ld. CIT(A), allowed the ground of appeal of the assessee in part.
5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.
6. The Ld. AR before us filed a paper book running from pages 1 to 43 and submitted that the assessee has been showing gross profit on the sales since last more than 10 years which was below .032% and therefore GP addition on such alleged bogus expenses should not exceed more than 1% on the alleged bogus purchases.
7. On the other hand, the Ld. DR vehemently supported the order of the authorities below.
8. We have heard the rival contentions of both the parties and perused the materials available on record. The limited issue before us is to ascertain what rate of GP in case of alleged bogus purchases has to be adopted. In the present case, the Ld. CIT(A), has taken the GP @ 12.5% of the bogus purchase without considering the GP shown by the assessee in the earlier years. In our considered

view, the best way to workout profit embedded in the bogus purchases is to make an estimate in scientific manner. For this, the average profit earned by the assessee in the earlier years can be used as one of the yardsticks. Thus, we are convinced with the argument of the Ld. AR that the profit on the alleged undisclosed purchases should not exceed beyond 1% of the bogus purchase. However, since the allegation before us is that the assessee has shown bogus purchases, thus we are of the view that the profit shown by the assessee in the books of accounts cannot be adopted. As such, we are of the view that to put an end to the on-going litigation and to render justice both to the assessee and the revenue, such addition is restricted to 3% of the alleged bogus purchase. We accordingly direct the AO to work-out the amount of income on such alleged bogus purchases. Hence, the ground of appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 10/04/2024 at Ahmedabad.**

**Sd/-  
(TR SENTHIL KUMAR)  
JUDICIAL MEMBER**

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)  
10/04/2024**