

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER
AND**

**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No.3202/MUM/2023**

Assessment Year: 2011-12

Income Tax Officer, Ward-20(2)(1), Mumbai.	Vs.	Mukhtar Ahmed Khan 4, Kopargaon Estate, Love Lane, Mazgaon, Mumbai – 400 010 (PAN : AACPK8056E)
(Appellant)		(Respondent)

&

**C.O. No. 24/MUM/2024
In ITA No.3202/MUM/2023
Assessment Year: 2011-12**

Mukhtar Ahmed Khan 4, Kopargaon Estate, Love Lane, Mazgaon, Mumbai – 400 010 (PAN : AACPK8056E)	Vs.	Income Tax Officer, Ward- 20(2)(1), Mumbai.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Samir Dalal, Advocate
Respondent by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 30.04.2024
Date of Pronouncement : 30.04.2024

ORDER

PER BENCH:

The appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A), National Faceless Assessment Centre, New Delhi, dated 20.07.2023 passed against the assessment order of Ld. ITO-20(2)(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 15.12.2018 for AY 2011-12.

2. Grounds taken by the Revenue are reproduced as under:

"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made on account of bogus purchase to 12.50% of total bogus purchases ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchases.

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer.

3. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made by the Assessing Officer to 12.50 % of the bogus purchase value without appreciating the judgment in the case of M / s Vijay Proteins Limited (1996) reported in 25 ITD 428 (Ahd. Tribunal).

4. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition made by the Assessing Officer without appreciating the facts that during the assessment proceedings assessee has failed to substantiate the sales corresponding to bogus purchases whereas the Ld.CIT(A) has relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. and also relied on the cases CIT Vs. Simit P Seth ITA. No.553 of 2012 dated 16.01.2013 and CIT Vs. Bholanath Poly Fab (P) Ltd. ITA. No. 63 of 2012 dated 23.10.2012 while restricting the addition to 12.50% of bogus purchase value. The issue is dissimilar and not related with this case.

5. This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No. 3 of 2018 dated 11.07.2018 as amended vide F.No. 279/Misc.142/2007-IT)(Pt) dated 20.08.2018.

6. The appellant prays that the order of the National Faceless Appeal Centre (NFAC), Delhi on the above grounds be reversed and that of the AO be restored."

3. Grounds taken by the assessee in its cross objection are as under:

"1.1. The National Faceless Appeal Center, Delhi ["the NFAC"], erred in estimating additional income of the assessee cross objector being. gross profit earned at the rate of 12.5% of total alleged non- genuine purchases made by the assessee - cross objector.

1.2. The NFAC failed to appreciate that:

(a) the purchases were made in regular / normal course of his business;

(b) the purchase consideration was paid to the purchasers through account payee cheques through proper banking channel;

(c) proper bills / challans, stock details and other necessary records were maintained by the assessee - cross - objector with respect to the above purchases.

1.3. It is submitted that in the facts and the circumstances of the case, and in law, the estimation of income made by the NFAC was on a very higher side, hence, such estimation was totally uncalled for.

2. Without prejudice to the above, assuming but not admitting that the NFAC was justified in estimating of gross profit on alleged bogus purchase at the rate of 12.5% it ought to have given credit of gross profit declared by the assessee - cross objector.”

4. Brief facts of the case are that the assessee is an individual and proprietor of heavy industrial tubes carrying business of trading in pipes and tubes. Return of income was filed on 20.09.2011 reporting total income at Rs.12,47,510/-. Upon receipt of information from DGIT(INB.), Mumbai, case of the assessee was re-opened u/s. 147 r.w.s. 148. As per the information, assessee had indulged in making bogus purchases amounting to Rs.89,39,268/- from four different parties during the year. Ld. AO had alleged these as bogus purchases based on information available in the public domain on the website of Sales Tax Authorities of the Maharashtra State. According to the ld. AO, assessee could not corroborate with documentary evidence the genuineness of the aforesaid purchases and thus held that assessee had taken accommodation entry of purchases from the said parties, thereby making an addition u/s. 69C as unexplained expenditure of Rs.89,39,268/-.

4.1. Aggrieved, the assessee went into appeal before the CIT(A). Before the ld. CIT(A), submissions were made and it was claimed that purchases have been made through account payee cheques. After taking into consideration the submissions, the ld. CIT(A) observed that the basic issue of additions u/s.69C, relates to sales tax bogus entry matters affected by the information from Sales Tax Department of the Maharashtra State. After referring to plethora of recent decisions of

the coordinate bench of ITAT, Mumbai, whereby Gross Profit(GP) estimation has been done in the hands of the purchasers on account of such bogus purchases at the rate of 12.5%. Ld. CIT(A) also referred to the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT Vs. Nikunj Exim Enterprises Pvt. Ltd. And CIT Vs. Simit Sheth in ITA No.553 of 2012 dt. 16.01.2013 as well as CIT vs. Bholanath Poly Fab(P) Ltd. in ITA no. 63 of 2012 dt. 23.10.2012, based on which the addition on account of alleged bogus purchase was restricted to the extent of 12.5%. Appeal of the assessee was thus partly allowed. Aggrieved, Revenue is in appeal for the relief granted by the CIT(A) and the assessee is in cross objection for the GP addition made in this respect.

5. Before us Ld. Counsel submitted that in the audited financial statements, assessee had declared the gross profit at the rate of 11.5% which is undisputed. However, Ld. CIT(A) has made an addition of 12.5% of the alleged bogus purchases. According to him, purchases were made in regular course of business for which payments were made through account payee cheques and proper bills/challans, stock details and other records were maintained.

6. Ld. Sr. DR placed reliance on the order of the Assessing Officer.

7. We have heard the rival contentions and perused the material on records. We note that the issue before us is no longer *res integra* as it has been dealt with by the Coordinate bench of ITAT, Mumbai in plethora of cases and also by the Hon'ble Jurisdictional High Court of Bombay in decisions noted above. Before us, Ld. Counsel for the assessee fairly accepted for the marginal difference of 1% between the GP rate of 12.5% adopted by the Ld. CIT(A) of estimating income on the

alleged bogus purchases as compared to the GP rate of 11.5% reported by the assessee. He thus accepted the estimation done by CIT(A) at the rate of 12.5% which was arrived at after taking into consideration plethora of judicial precedents of the coordinate bench of ITAT, Mumbai as well as Hon'ble Jurisdiction High of Bombay (supra).

7.1. On confrontation of this acceptance on the part of the assessee to the ld. Sr. DR, nothing objectionable was put forth. Accordingly, on the addition at the rate of 12.5% of the income of the alleged bogus purchases arrived at by the CIT(A) being accepted, the grounds of appeal taken by the Revenue and the grounds of cross objection by the assessee are both, dismissed.

8. In the result, appeal of the Revenue and the cross objection by the assessee are dismissed.

Order is pronounced in the open court on 30 April, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 April, 2024

Mini, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai