

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

ITA No.4392/Mum/2023 (A.Y 2010-11)

Kalpesh Rameshbhai Vyas 15/A, Gr. Floor, Laheri Bldg. 4 th Khetwadi Lane Opp. Recreation Park Mumbai 400004	Vs.	Income Tax Officer – 2(1) Rom No. B-25. 6 th Floor Ashar IT Park, Road No. 16-Z Wagle Industrial Estate Thane (West) 400602
PAN/GIR No. : AAPPV4037K		
Appellant	..	Respondent

Appellant by :	Ms. Mona Makwana
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	06.05.2024
Date of Pronouncement	06.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A), NFAC, Delhi, which in turn arises from the assessment order passed by the A.O u/s 143(1) r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated 25.11.2017 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case, the id. CIT(A), hereinafter referred to as the ld. CIT(A). has erred in assessing Total Income of the Appellant at Rs. 51,45,790/- instead of Rs.*

2,33,550/- as returned by the Appellant. The returned Income of the Appellant may please be accepted

2. *On the facts and in the circumstances of the case, the ld. CIT(A), has erred in making addition of G.P of 12.5 percent of Hawala Parties of Rs.3,92,97,967/- which result in addition of Rs.49,12,246/-. The said addition may please be deleted.*
3. *On the facts and in the circumstances of the case and in law, the assessment order passed by the ld. AO is in violation of the principles of natural justice as no opportunity to cross examine the said parties was given in spite of specific request made by the Appellant. The said order may please be treated as Null and Void.*
4. *All the Grounds of Appeal are without prejudice to each other*

2. The facts in brief are that the assessee filed return of income on 27th September, 2010 declaring a total income of Rs.2,33,550/-. Subsequently information was received from the office of DGIT (Inv.), Mumbai that the assessee had obtained accommodation entries of bogus purchases without any goods. Therefore, the case of the assessee was reopened by issuing notice u/s. 148 of the Act dated 21.03.2017. During the course of assessment on the basis of the information received the Assessing Officer (AO) has noticed that the assessee has obtained accommodation entries from the following parties: -

S. No.	Name	TIN	Amount
1	Rohit Enterprises	27020680974V	2,98,816/-
2	JaiKrishna Enterprises	27140347810V	34,26,758/-
3	Mercury Enterprises	27450698246V	62,27,766/-
4	Trimurti Enterprises	27640591781V	40,53,057/-
5	Dhruv Sales Corporation	27760622173V	1,12,40/699/
6	Navjyoti Metal Industries	27800637380V	79,39,932/-
7	Paras Sales Corporation	27890672396V	61,10,859/-
		Total	3,92,97,967-

3. On query the assessee furnished copies of the ledger accounts of purchases and sales, and bills of payments made through account payee cheques, etc. The assessee has also submitted that he has shown corresponding sales of materials alleged to be purchased from Havala parties and had offered income thereon for tax. Further, the AO has not agreed with the submissions of the assessee and stated that by taking accommodation entries the assessee has made purchases in cash from gray market and taken accommodation bills from some accommodation parties for the purpose of artificially reducing gross profit. Therefore, the AO has estimated the gross profit @ 12.5% of unverifiable purchases of Rs.3,92,97,967/- and an amount of Rs.49,12,246/- was added to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us, at the outset the ld. Counsel of the assessee submitted that similar issue on identical facts in the case of the assessee for AYs 2008-09 and 2009-10 had been adjudicated by the Coordinate Bench vide ITA No. 4214/Mum/2023 dated 29.04.2024 and the addition was restricted to the extent of the difference between the gross profit of the genuine purchases and gross profit of bogus purchases, i.e. GPR @ 2.86% of bogus purchases. The ld. Counsel has also submitted a paper book comprising copies of the decisions of Coordinate Bench as referred above and details of the submissions made before the lower authorities. The ld. Counsel has also referred to the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Mohommad Haji Adam & Co. in ITA No. 1004 of 2016.

6. Heard both parties and perused the material on record. Without reiterating the facts as discussed supra in this order, the AO has made addition of Rs. 49,12,246/- being 12.5% of the bogus purchases made by the assessee from 7 parties as discussed above in this order. During the course of assessment, the assessee has also provided the details of corresponding sales made against the alleged bogus purchases made from the aforesaid parties. Therefore, the AO restricted the addition to the extent of 12.5% of profit embedded in these transactions of purchases and sales. We find that similar issue on identical facts had been adjudicated in the case of the assessee by the Coordinate Bench in ITA No. 4214/Mum/2023 dated 29.04.2024. The relevant part of the decision is extracted as under: -`

“8. We heard the rival submission and considered the documents available on the record. The assessee is a trader of ferrous and nonferrous metal. The assessment was completed under section 143(3) and the gross profit of the traders in the business lines at 5.66% is duly accepted by the Ld. Assessing Officer. In the assessment under section 143(3) / 147 was completed and the entire bogus purchases of Rs.88,17,762/- was taken and @25% was added back. The assessee submitted that the sale value of the bogus purchases amount to Rs. 90,99,865/- and purchase value amount to Rs. 88,17,762/-. So, the GP works out to Rs.2,82,103/- and the G.P. Ratio is @3.10%. The assessee submitted books of account, purchase bills, sale bills, transaction through banking channels and the sale was totally declared in MVAT returns which were filed before the ld. Assessing Officer and the ld. CIT(A). The GP of the genuine purchase is @5.66% and GP of bogus purchase is @3.10%. So, the balance @ 2.56% of bogus purchases is only to be added and is restricted for addition. In our considered view, we set aside the appeal order and the addition is restricted to gross profit @ 2.56% on the bogus purchase.”

7. In similar to the case of the assessee for AY 2009-10 during the year under consideration the assessee has shown gross profit on genuine

purchases @5.99% and gross profit on bogus purchases @2.72%. Therefore, following the decision of ITAT for the assessment year 2009-10 we restrict the addition to the extent of difference between the gross profit of the genuine purchases and gross profit of bogus purchases, i.e., @ 3.27% of bogus purchase. Therefore, the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 06.05.2024

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 06.05.2024
n.p

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.