

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2794/Mum./2023**

**(Assessment Year : 2011-12)**

ITO, Ward-2(1)  
Room No.25, B-Wing  
6<sup>th</sup> Floor, Ashar IT Park,  
Wagle Industrial Estate,  
Thane-400604.

..... Appellant

v/s

Shri Muljibhai A. Sakaria  
II Patil Bros Industrial Estate,  
Opp. Railway STN, Behind National  
Diary Bhayander (East),  
Thane-401105.  
PAN: AEGPP3633J

..... Respondent

Assessee by : None  
Revenue by : Smt. Smitha V. Nair

Date of Hearing -08/04/2024

Date of Order - 08/05/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 31/05/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In the interest of justice, the slight delay of 10 days in filing the present appeal by the Revenue is condoned.

3. When the present appeal was called for hearing neither anyone appeared for/on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceed to decide this appeal ex-parte qua the assessee, after hearing the learned Departmental Representative.

4. In this appeal, the Revenue has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in law, the CIT(A)/NFAC erred in deleting the addition of Rs. 54,97,661/- made on account of bogus purchases, without appreciating that both the assessee as well as the purported seller, Shri Ved Prakash Gupta [Prop M/s Subita Wires & Cables] failed to prove the sale transportation and delivery of the goods with documentary evidence.*

*2. On the facts and in the circumstances of the case and in law. CIT(A)/NFAC erred in deleting the above addition without appreciating that the purported seller Shri Ved Prakash Gupta could not prove the genuineness of his business place nor furnish copies of ITR, profit & loss account, Balance sheet, audited financials, sales ledger sales tax return etc. to establish the genuineness of his business.*

*3. On the facts and in the circumstances of the case and in law, CIT(A)/NFAC erred in not following the decision of the Hon'ble Gujarat High Court in Tax Appeal No.242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. Vs DCIT wherein it has been held that once the purchases are bogus/non genuine, additions should be made on the entire purchases, against which the SLP filed by the assessee was dismissed by the Hon'ble Apex Court vide [2017] 292 CTR 354 (SC).*

*4 It is requested that present appeal may be filed in accordance with the CBDT's Circular No.3/2018 dated 11.07.2018 amended vide letter dated 20.08.2018 as per para 10(e) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.*

*5. The appellant craves leave to add, amend or alter or alter any ground/grounds, which may be necessary."*

5. The only dispute raised by the Revenue is against the deletion of addition made on account of bogus purchases.

6. The brief facts of the case, as emanating from the record, are: The assessee is an individual and is engaged in the business of manufacturing cable and wire as a proprietor of M/s Krishna Cable Industries. For the year under consideration, the assessee filed its return of income on 19/08/2011 declaring a total income of Rs.4,63,445. On the basis of the information received from DGIT (Investigation), Pune that the assessee is a beneficiary of a bogus transaction of purchase bills from the entry provider, i.e. Sunita Wire and Cables, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 26/03/2018. During the assessment proceedings, the assessee was asked to provide the complete name and address of the person from whom he has made purchases. In order to verify the genuineness of the assessee's claim of purchases from Sunita Wire and Cables, notice under section 133(6) of the Act was issued to Sunita Wire and Cables requesting it to confirm the sales and provide the details of sales made to the assessee. Since there was no compliance to the aforesaid notice issued under section 133(6) of the Act, the notice was issued to the assessee requesting to produce the above party for verification of the genuineness of the transaction with him. In response thereto, the assessee produced Shri VedprakashAnandprakash Gupta, who was stated to be the proprietor of Sunita Wire and Cables and offered his voluntary statement that was recorded on oath. Since Shri VedprakashAnandprakash Gupta did not furnish the details of sales made to the assessee, mode of making payment, copy of receipts issued, or any other documentary evidence, the Assessing Officer ("AO") concluded that the very purpose of coming and offering voluntary statement remains to be unproven. Accordingly, vide order dated

21/12/2018 passed under section 143(3) read with section 147 of the Act, the AO held that the assessee has obtained bogus purchase bills to the extent of Rs.54,97,661 from Sunita Wire and Cables without actual delivery of goods as the assessee as well as the person from whom he alleged to have made purchases, both, failed to substantiate with documentary evidence, i.e. copy of the lorry receipts, nature of goods sold/purchase, original bills issued by the seller, mode of making payment and other details. The AO further noted that the entry providers have admitted before the Sales Tax authorities that they have not made any purchase or sale. The AO held that the purchases claimed to have been made by the assessee from Sunita Wire and Cables are not genuine and accordingly, made the addition of Rs.54,97,661 alleged to be purchases from Sunita Wire and Cables by treating the same as bogus purchases under section 69C of the Act.

7. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the addition made by the AO. Being aggrieved, the Revenue is in appeal before us.

8. We have considered the submissions of the learned Departmental Representative and perused the material available on record. In the present case, pursuant to the receipt of information from the DGIT(Investigation), Pune, proceedings under section 147 of the Act were initiated in the case of the assessee on the basis that the assessee is a beneficiary of bogus purchase bills amounting to Rs.54,97,661 from Sunita Wire and Cables. Accordingly, in order to verify the genuineness of the transaction, the AO sought information from the assessee regarding the complete name and address of the person

from whom the assessee has made purchases. Further, notice under section 133(6) of the Act was also issued to Sunita Wire and Cables to verify the genuineness of the assessee's claim of purchases. The AO further directed the assessee to produce the aforesaid party for verification of the genuineness of the transaction. As is evident from the record, in response thereto, the assessee produced the proprietor of Sunita Wire and Cables and his statement was recorded on oath. The proprietor of Sunita Wire and Cables admitted that he used to place the order against the sales and deliver the goods to the parties as per the orders on the same date. The proprietor further claimed that he is running a shop from the premises which is on rent. However, he failed to submit the rent agreement, as the same is kept at the factory premises of his son, which has been sealed by the Karnataka Bank. Further, the proprietor of Sunita Wire and Cables also did not furnish any transport receipt for the goods transported to the assessee, and no bills for transportation were produced. He also expressed his inability to produce the ledger as the same is also kept at the factory premises of his son, which is sealed by the Karnataka Bank. The proprietor also refused to disclose the name and address of the person from whom he has made the purchases. Since the voluntary statements made by the proprietor of Sunita Wire and Cables were not supported by any documentary evidence, the AO concluded that the statements so made are unproved and accordingly, made the impugned addition by treating the alleged purchases of Rs.54,97,661 from Sunita Wire and Cables as bogus. We find that despite the aforesaid findings, the AO has not disputed the sales made by the assessee during the year.

9. We find that the Co-ordinate Bench of the Tribunal in ITA no.5156/Mum./2018, order dated 19/09/2019, for A.Y. 2010-11, in Shri Narpat H. Mehta v/s ITO, while dealing with a similar issue of bogus purchases observed as under:-

*"4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of NikunjEximp Enterprises (in writ petition no 2860, order dt 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to government agency. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 there off) the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.*

*5. We respectfully following the aforesaid judgement of the Honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases, Needless to add the assessee should be granted adequate opportunity of being heard."*

10. Thus, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal which in turn has followed the decision of the Hon'ble Bombay High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019, we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the bogus purchases by bringing

the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. Needless to mention no order shall be passed without affording a reasonable opportunity of being heard to the assessee. Accordingly, the grounds raised in the Revenue's appeal are allowed for statistical purposes.

11. In the result, the appeal by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 08/05/2024

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08/05/2024**

*Vijay Pal Singh, (Sr. PS)*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar  
ITAT, Mumbai