

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

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

ITA No.4010/Mum/2023 (A.Y 2011-12)

Income Tax Officer- 19(3)(1) Piramal Chamber Room No. 405, Lalbaug Mumbai 400012	Vs.	Suresh Kumar Harakchand Bhansali 62/64, 2 nd Kumbharwada S.S. Maharaj Marg Kumbharwada, Mumbai 400004
PAN/GIR No. : AAGPB8743H		
Appellant	..	Respondent

Appellant by :	Shri Krishna Kumar, JCIT
Respondent by :	----- None -----

Date of Hearing	07.05.2024
Date of Pronouncement	09.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the Revenue 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 144 r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated 23.02.2016 for A.Y. 2011-12. The Revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and in the circumstances of the case and in law, the LA. CIT(A) has erred in restricting the addition @48% as against 100% addition made by the Assessing Officer u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases*

of Rs 42,50,202/, by ignoring the fact that the Sales Tax Department, Govt. of Maharashtra has proved beyond doubt that alleged four parties were declared as Hawala traders, who were involved in providing only accommodation entry of purchases/sales transactions and the assessee was found to be one of the beneficiary of accepting accommodation entry for the purchases. ?"

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income Tax Act, 1961, on account of bogus purchases of Rs. 42,50,202/-, by ignoring the fact that action of the Assessing Officer was based on credible information received from the DGIT (Investigation) and that the assessee during course of proceedings failed to produce any concrete evidence to establish the genuineness and creditworthiness of purchase transactions and of alleged parties/Hawala Traders?"*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income Tax Act, 1961, on account of bogus purchases of Rs 42,50,202/-, by ignoring the fact that assessee could neither the quantity tally of day to day purchases, Sales, stocks and corresponding values nor could produce the parties for verification in spite of opportunity provided by the Assessing Officer?*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases of Rs. 42,50,202/, without appreciating the fact that the Assessing Officer has given detailed reasoning for quantifying the additions and Ld. CIT(A) Has erred in not providing the adequate reasons for pegged to restrict the addition @ 48% as against 100% of bogus purchases?*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CTT(A) has erred in restricting the addition @ 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases of Rs.*

42,50,202/, by ignoring the fact that when an expenditure related to purchases, is claimed and debited to the Trading/ profit and loss account, the onus is on the assessee to substantiate and prove the genuineness of the claim and commercial expediency of incurring such expenditure, which the assessee has failed to prove the during the assessment proceedings?

6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases of Rs.42,50,202/, without appreciating the ratio in the decision of the Hon'ble Supreme Court in the case of N.K Proteins Ltd, wherein the court has held that when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed?"*
7. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 48% as against 100% addition made by the Assessing Officer u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases of Rs. 42,50,202/-, without appreciating the fact that in the case of Swetamber Steels Ltd. (supra), the Hon'ble ITAT, Ahmadabad had confirmed the disallowance of the bogus purchase in entirety stating that the purchases shown from respective parties were found non-genuine and the decision of the ITAT was upheld by the Hon'ble Gujarat High Court and also Hon'ble Supreme Court.*
8. *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-ITJ(Pt) dated 20.08.2018."*

2. The brief facts of the case is that the return of income declaring total income of Rs.3,43,984/- was filed by the assessee on 26th September, 2011. The said return of income was processed u/s. 143(1) of the Act. There after information has been received from the DGIT (Inv), Mumbai that the Sales Tax Department of Maharashtra has made a detailed investigation in respect of parties who were providing accommodation entries without supplying of any goods. On the basis of the information

received the Assessing Officer (AO) stated that the assessee has obtained accommodation entries for the year under consideration from the following parties: -

Sr. No.	Name of the hawala parties	Bill Amount (in Rs.)
1	Sunidhi Metal	4,98,316
2	Sunshine Enterprises	10,17,329
3	Veer Industries	10,71,692
4	Ratandeeep Tubes	16,62,865
	Total	42,50,202

The AO stated that the assessee has failed to file the documents such as delivery challans, transport receipts, Octroi receipt for payment octroi duty, receipt of weighbridge for weighing of goods, excise gate pass, goods inward register maintained at the godown, etc. to establish the genuineness of the purchases made by the assessee. The AO further stated that the Sales Tax Department has certified that the supplies of goods were not genuine parties. Therefore, the AO concluded that the purchases claimed to have been made from the above mentioned parties were not genuine purchases and the same were merely accommodation entries taken in order to inflate the purchases. Therefore, the same was disallowed and added to the total income of the assessee.

3. The assessee filed appeal before the CIT(A). The ld. CIT(A) has restricted the addition to the extent of 48% of the bogus purchases.

4. Heard the ld. D.R. and perused the material on record. Without reiterating the facts as elaborated above, the AO reopened the assessment on the basis of the information received from the DGIT (Inv), Mumbai that the assessee had obtained accommodation bills from the parties who were indulged in providing bogus bills of purchases without supplying any

material. The AO asked the assessee to furnish the relevant information as discussed above in this order. During the course of appellate proceedings before the ld. CIT(A), the ld. CIT(A) stated in his order that the assessee had neither responded to any of the notices issued during the course of appellate proceedings nor furnished any submission before the ld. CIT(A). After considering the material available on record the ld. CIT(A) concluded that the assessee has failed to establish the genuineness of the purchases made from the aforesaid parties who were allegedly involved in providing accommodation entries without supplying of any goods. Therefore, instead of disallowing the whole purchases the ld. CIT(A) has restricted the disallowance to the extent of 48% of the bogus purchase. We do not find any infirmity in the decision of the ld. CIT(A) as the AO has not brought any material on record to disprove the corresponding sales made against the alleged bogus purchase. Accordingly, the ld. CIT(A) has not restricted the disallowance at the lower side. Therefore, we do not find any merit in the grounds of appeal of the Revenue. Therefore, the grounds of appeal of the Revenue are dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.05.2024.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 09.05.2024
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.