

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

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

**ITA No.3917/Mum/2023 (A.Y 2010-11)**

Income Tax Officer- 27(3)(1) Room No. 422, 4 <sup>th</sup> Floor Tower No. 6, Vashi Rly. Stn. Commercial Complex, Vashi Navi Mumbai 400703	Vs.	Sudarshan Vithal Kote 1/7-8 Nityanand Colony Dev Shetty Compound Ghatkopar (West) Mumbai 400086
PAN/GIR No. : AOJPK1524L		
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 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated March, 2016 for A.Y. 2010-11. The Revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in restricting the addition to 10% instead of 25% of bogus purchase of Rs. 1,80,59,239/- without considering the fact that the notice issued by the AO u/s 133(6) to all the six*

*purchase parties returned un-served and assessee could not produce those parties during the assessment proceedings.*

2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in restricting the addition to 10% instead of 25% of bogus purchase made by the AO, without appreciating the fact that the purchase was not genuine and purchase parties has accepted these facts in their statement before sale tax authorities.*
3. *The appellant prays that the order of the CIT(A) on the above ground(s) be set aside and that of the Assessing Officer restored.*
4. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

2. The brief fact of the case is that the return of income declaring total income of Rs.1,81,900/- was filed on 15.10.2010. There after the case was reopened by issue of notice u/s. 148 of the Act on the basis of the information received from the DGIT (Inv), Mumbai that the assessee has obtained accommodation entries from the following parties as informed by the Sale Tax Department: -

Sr. No.	Name of the party	Amount
1	Shree Sai Trading Co.	36,45,200
2	Umiya Sales Agency Pvt. Ltd.	9,94,999
3	Deep Enterprises	45,40,640
4	Hermitage Trading Co. Pvt. Ltd.	52,10,400
5	Darshan Sales Corporation	21,60,000
6	Shyam Corporation	15,08,000
	Total	1,80,59,239

3. The assessee was engaged in the business of trading in equipment and labour job. During the course of assessment proceedings, letters u/s. 133(6) of the Act were issued to the parties for calling information but the same were returned back by the postal authorities on the ground that the parties were not available on the given address. In view of this the assessee was asked to produce the parties and explain why the aforesaid purchases

should not be disallowed. The assessee could not produce the purchase parties. However, the assessee has furnished copies of the purchase bills and bank statement displaying the payment made for the purchases of goods from the said parties. However, the AO has not agreed with the submissions of the assessee. The AO stated that the aforesaid parties have admitted before the Sales Tax Department that they have not made any genuine sale and purchase transactions. Therefore, the AO has treated the purchases made from the aforesaid parties as bogus purchases. However, the AO has also considered the submission of the assessee that there cannot be sales without purchases. Therefore, the AO stated that the assessee had purchased goods from some other suppliers without any bills at a lower price and inflated the profit. He further stated that any person indulges in such practice of purchase of goods from the grey market and obtaining bills from some other parties would do so for getting some benefit. After considering the profit element embedded in the impugned bogus purchases, the AO has estimated the profits of alleged bogus purchase of Rs.1,80,59,239/- which come to Rs.45,14,810/- and added to the total income of the assessee.

4. The assessee filed appeal before the CIT(A). The ld. CIT(A) has restricted the addition to the extent of 10% of the bogus purchase as against 25% of the bogus purchase made by the AO. The relevant part of the decisions relied on by the CIT(A) in his order is reproduced as under:-

*“I further find that Hon’ble Jurisdictional ITAT Mumbai in the case of Babulal Hajarimalji Jain vs. ITO (ITAT Mumbai) Appeal Number: ITA No. 274/M/2023, date of Order: 28/04/2023, has placed reliance on the above decision of the Hon’ble High Court of Mumbai in the case of JK Surface Coating Pvt. Ltd. (supra) and has restricted the additions made by the AO on the bogus purchases. Relevant part of the order is reproduced below for reference;*

8. *We have perused the order passed by the Ld. CIT(A) in the earlier years wherein profit percentage embedded in such purchases was restricted to 6.5% (i.e. 4% of VAT levied + 2.5% towards profit margin.*

9. *In A.Y. 2012-13 the Tribunal in assessee's own case in ITA 4677/M/2018 directed the Revenue to limit the addition to the extent of gross profit rate on such purchases at the same rate as of other genuine purchases.*

10. *The Hon'ble High Court of Bombay in case of Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:*

.....

11. *In view of what has been discussed above and following the order passed by the Hon'ble Bombay High Court (supra), we are of the considered view that in the light of the gross profit earned by the assessee in the earlier years on the basis of which profit element was fixed at 6.5% of the alleged bogus purchases, we direct the AO to charge the assessee at the gross profit rate @ 6.5% on bogus purchases of Rs. 3,70,79,423/-.*

12. *Resultantly, the appeal filed by the assessee is partly allowed."*

*In view of the discussion and considering facts of the case and respectfully following the above decisions of Hon'ble Jurisdictional High Court of Bombay and Hon'ble ITAT Mumbai, I direct the AO to compute the profit on the bogus purchases of Rs. 5,180,59,239/- by the applying a profit rate of 10%. Appeal is, thus, partly allowed."*

5. Heard the ld. D.R. and perused the material on record. The AO received information from the DGIT (Inv) that the assessee had made bogus purchases from hawala parties who were indulged in providing accommodation bills to the needy parties as informed by the Sales Tax Department. To verify the genuineness of the purchases made from the aforesaid parties, the AO issued notices u/s. 133(6) of the Act and stated that the notices were return unserved. However, the assessee has

furnished copies of the purchase bills, ledger accounts and details of payment made through account payee cheques. After taking into consideration the submission of the assessee the disallowance of bogus purchases was made to the extent of 25% of the bogus purchases which comes to Rs.45,14,810/- (25% of Rs.1,80,59,239/-. Both the AO and the ld. CIT(A) had considered this material fact that corresponding sales cannot be made without purchase and both were agreed that the assessee had purchased goods from other suppliers, may be without bills, and the assessee had made purchases at lower price and inflated its purchases by showing at higher price by taking accommodation bills from the aforesaid hawala parties. The AO has estimated the profit element embedded in the bogus purchases at 25% of the bogus purchases. We consider that the ld. CIT(A) has rightly made reasonable estimate of profit element embedded in the bogus purchases by applying a profit rate of 10% after considering various judicial pronouncements of the ITAT Mumbai and the decision of the Hon'ble Mumbai High Court as discussed in the finding of the ld. CIT(A) as reproduced supra in this order. In the light of the above facts and findings we do not find any infirmity in the decision of the ld. CIT(A). Therefore, the grounds of appeal of the Revenue stand dismissed.

6. 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.