

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

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

**ITA No.4017/Mum/2023 (A.Y 2009-10)**

Income Tax Officer- 19(2)(4) Piramal Chamber Room No. 405, Lalbaug Mumbai 400012	Vs.	Parasmal Fozhraj Sanghvi HUF 10/2 Atul Niwas, 7 <sup>th</sup> Khetwadi SVP Road, Girgaum Mumbai 400004
PAN/GIR No. : AAAHP5379M		
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 20.03.2015 for A.Y. 2009-10. The Revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and Circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to 3% as against the 12.5% or account of alleged purchases of Rs. 1,64,73.888/- by ignoring the fact that Sales Tax Department, Maharashtra has proved beyond doubt that the parties declared as Hawals traders were involved in providing accommodation*

*entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the alleged purchases ?*

- 2. Whether on the facts and circumstances of the case and in law the Ld. CIT (A) has erred in restricting addition to 3% as against the 12.5% on account of alleged purchases of Rs. 1,64,73,888/- by ignoring the fact that the action of the Assessing Officer was based on credible information received from the DGIT(Inv.) Mumbai and that the assessee during the course of Assessment Proceedings, failed to prove the genuineness of the purchase transactions?*
- 3. Whether on the facts and circumstances of the case and in law the Ld. CIT (A) has erred in ignoring the fact that Hawala parties/ concerns has admitted before the Sales Tax Department, Maharashtra that they were not doing genuine business of purchases and sales and merely indulged in providing accommodation bills and have not made any sales or purchases transactions during the year?*
- 4. Whether on the facts and Circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to 3% as against the 12.5% account of alleged purchases of Rs. 1,64,73,888/- by ignoring the fact that assessee could neither submitted the quantity tally of day to day purchases, Sales stocks and corresponding values nor could produce any delivery challans, lorry Receipts/invoices and transportation details & parties for verification in spite of opportunity provided by the Assessing Officer?*
- 5. Whether on the facts and in the Circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to 3% as against the 12.5% on account of alleged purchases of Rs. 1,64,73,888/-, without appreciating the ratio of the decision of the Hon'ble Supreme Court in the case of N.K.Protein Ltd, wherein the Hon'ble Court has held that when the purchases are from bogus suppliers, the entire purchases are liable to disallowed?*
- 6. 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-ITI(P1), Dated. 20.08.2018."*

2. The brief fact of the case is that the return of income declaring total income of Rs.2,97,510/- was filed on 30.09.2009. The assessment in this case was completed u/s. 143(3) of the Act on 08.12.2001 assessing the total income at Rs. 23,81,750/-. There after the case was reopened by issuing notice u/s. 148 of the Act on 28.03.2014. In this case the DGIT (Inv) has communicated the information received from the Sales Tax Department that the assessee has obtained accommodation entries without purchasing of goods from the following 6 parties: -

Sr. No.	Name of the party	Amount
1	D.N. Enterprises	1073173
2	Deep Metal & Tubes	2051799
3	Asian Metal Industries	2588000
4	Prime Steel Impex	3884057
5	Jai Ambe Metal	6114870
6	Satyam Metal & Alloys	761989
	Total	16473888

3. The assessee was engaged in the business of trading of material goods under name and style of M/s. Darshan Steels Impex. During the course of investigation, the Sales Tax Department has found that the aforesaid 6 concerns were not doing any genuine business and was merely indulged in providing accommodation bills without supplying any goods. The AO has stated that except the ledger accounts and details of payment made through banking channel no other documents such as delivery challan, lorry receipt, transportation details, etc. were provided during the course of assessment proceedings. The AO further stated that the assessee has provided stock statement and entries of the said purchases which only indicate that the assessee has made purchases from open market form the parties best known to the assessee. The AO further stated that any person indulges in the practice of purchasing goods from the grey market and

obtaining non genuine bills of other parties would do so for getting some benefit. Therefore, 12.5% of the total amount of Rs.16,47,388/-, which comes to Rs.2,59,236/- was treated as none genuine and added to the total income of the assessee.

4. Aggrieved, the assessee filed appeal before the CIT(A). The ld. CIT(A) after following the decision of the ITAT, Mumbai Benches in assessee's own case for AYs 2010-11 and 2012-13 vide ITA Nos. 5405 & 5406/Mum/2018 dated 15.10.2019 restricted the addition with regard to bogus purchases by bringing the GP rate of such purchases at the same rate as that of other genuine purchases. The relevant operating part of the order is reproduced as under: -

*"5. Decision*

*I have perused the grounds of appeal, statement of facts, submissions made by the Appellant, assessment order and other evidences on record.*

*5.1 Ground 1*

*Vide this ground, the Appellant has challenged the addition being made by estimating a profit element of 12.50% on the alleged non-genuine purchases. I find that this issue has been decided in favour of the Appellant by the decision of Hon'ble ITAT Bombay in Appellant's own case for A.Ys. 2010-11 and 2012-13 in ITA Nos. 5405 & 5406/Mum/2018, date of the order: 15/10/2019. Relevant part of the decision is reproduced below for reference;*

*"1. These two appeals by assessee are directed against the separate orders of ld. CIT(A)-29, Mumbai both dated 13.06.2018 for Assessment Year 2010-11 and 2012-13. In both the appeals, the assessee has raised identical grounds of appeal except variation of figure. Facts for all the Assessment Years are identical except variation of alleged bogus purchases and disallowances thereof 12.5% of such purchases. Therefore, both the appeals were clubbed, heard together and are decided by common order. For appreciation of facts, appeal for Assessment Year 2010-11 was*

*treated as lead case. In appeal for Assessment Year 2010-11, the assessee has raised the following grounds of appeal:*

*1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in*

*(a) arriving at the conclusion that purchases made of Rs. 11581947/- from parties mentioned in assessment order are not genuine and not made from them but from other sources*

*(b) estimating rate of profit at 12.50% on alleged bogus purchases over and above gross profit declared of 6.88% by the appellant on such purchases..*

*(c) confirming addition of Rs. 1447743/- made by the Assessing Officer to the total income of the appellant.*

*2 On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to appreciate that*

*(a) Proceeding initiated under section 147/148 of the Act is on the basis of reason to suspect and not on reason to believe.*

*(b) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act*

*(c) The initiation of proceeding under section 147 of the Act and issuance of notice under section 148 is bad in law and contrary to the provisions of the Act and liable to be cancelled annulled*

*3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act by the learned Assessing Officer which is illegal, bad-in-law, ultra vires and without allowing reasonable opportunity of the hearing, without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appellant and without providing cross examination of parties is liable to be annulled.*

*4. The learned assessing officer erred in charging interest under section 234A, 234B, 234C and 234D of the Act."*

5. Heard both the side and perused the material on record. The case of the assessee was reopened by the AO on the basis of information received from the DGIT (Inv), Mumbai that the assessee has obtained

accommodation bills from 6 parties as per the information received from the Sales Tax Department. During the course of assessment proceedings, the assessee has provided copies of the ledger account as evidence of payment made through banking channel for purchasing goods. However, the assessee could not submit evidences as required by the AO, i.e., delivery challan, lorry receipt, transportation details, etc. Therefore, after considering the facts and circumstances of the case the AO held that the assessee had purchased goods under consideration not from the referred parties but from some other suppliers from the gray market without bills. Therefore, the AO has not accepted the purchase price mentioned in the alleged accommodation purchase bills. Looking to the above facts and circumstances the AO concluded that the assessee had made purchases at a lower price and inflated the same by showing at high price from the alleged hawala entry providing parties. Accordingly, the AO has added extra profit embedded in the unproved purchases by 12.5% of such purchases to the total income of the assessee. We find that the ITAT Mumbai in the assessee's own case for AYs 2010-11 and 2012-13 elaborated in the findings of the Id. CIT(A) as reproduced in the order above has restricted the addition with regard to bogus purchases by bringing the GP rate of such purchases at the same rate as that of other genuine purchase after following the decision of the Hon'ble Bombay High Court in the case of PCIT vs. M. Haji Adam & Co. in ITA No. 1004 of 2016 dated 11.02.2019 wherein it is held that addition in respect of purchase is to be limited to the extent by bringing the GP rate on such purchases at the same rate as of other purchases. Since the issue involved in this year is squarely covered by the decision of the Hon'ble Bombay High Court and the ITAT in the case of the assessee as discussed supra, therefore, we do

not find any reason to interfere in the decision of the ld. CIT(A).  
Accordingly, all the grounds of the appeal of the Revenue are 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.**