

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

ITA No.3901/Mum/2023
(Assessment Year: 2013-13)

DCIT
Circle 19(1)
Room No.506, 5th Floor,
Piramal Chamber,
Lalbaug, Parel,
Mumbai-400 012

Vs.

Concorde International
EC-B2, 8010,
Bharat Diamond House,
Bandra Kurla Complex,
Bandra (E), Mumbai-400 051

(Appellant)

(Respondent)

PAN No. AABFC9865G

Assessee by : Shri Sunil Hirawat, AR

Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 25.04.2024

Date of pronouncement : 13.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Deputy Commissioner of Income Tax Circle 19 (1), Mumbai (the learned AO) against the appellate order passed by the National Faceless Appeal Centre (the learned CIT – A) dated 29/8/2023 for assessment year 2012 – 13.
02. The learned assessing officer has raised following grounds of appeal:
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“Ground 1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in

reducing gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, by ignoring the fact that the DGIT (Inv.), had proved beyond doubt that Shri Bhanwarlal Jain group concerns were involved in providing accommodation entry of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary accepting accommodation entries for the purchases of goods?

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, by ignoring the fact that the action of the Assessing officer was based on credible information received from the DGIT (Inv.) and that the assessee during the course of assessment proceedings failed to prove the genuineness of the purchase transaction?"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, without appreciating the fact that the purchases from bogus parties are debited in P & L Account for which the assessed had not submitted any evidences, and the same was not allowable.*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing*

gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, ignoring the fact that the assessee has tried to substantiate its claim as to genuineness of the alleged purchases with the help of book entries and documents prepared by itself, which were only unilateral acts of the assessee and especially when contrary evidences were on records in the form of findings of investigation wing, Mumbai showing the sellers as bogus entities?

5." Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, 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.

6. "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in reducing gross profit @ 7.89% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 3,42,65,843/-, 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 Hon'ble Gujarat High Court and also Hon'ble Supreme Court."

7. "The appellant prays that the order of the CIT(A) on the above grounds to be set aside and that of the Assessing Officer be restored."

8 "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."

03. Brief facts of the case shows that assessee is engaged in the business of trading and manufacturing in diamonds. Search and survey action was conducted on 3/10/2023 on Bhawarlal Jain and group by DCIT (investigation), Mumbai. Based on this, the learned assessing officer received information that accommodation entries have been provided by various dealers operated by the accommodation entry provider to the assessee and assessee is also one of the beneficiaries from those dealers. Thus, the assessment was reopened by issue of notice under section 148 of the income tax act to bring to tax the escapement of income on account of bogus purchases. During the course of assessment proceedings the assessee was asked to prove the genuineness of the purchases made from various dealers. The assessee submitted details on 28/11/2019 stating that purchases are genuine.
04. The learned assessing officer was not convinced with the submission of the assessee and held that these are the bogus purchases from non genuine parties to cover-up the purchases from grey market. The assessing officer treated the above purchases of ₹ 342,65,843/- as bogus purchases and made addition under section 69C of the Act by passing an assessment order.



05. The assessee aggrieved and preferred the appeal before the learned CIT – A. The learned CIT – A followed the decision of the coordinate bench in assessee's own case for assessment year 2007 – 08 and directed the assessing officer to restrict the addition to the gross profit rate of 7.89% while working out the profit element embedded in the non genuine purchases of ₹ 342,65,843/-. Both the parties are aggrieved by that order.
06. The assessee preferred an appeal in ITA No. 3682/Mum/2023 which was disposed off by the coordinate bench on 13/3/2024 wherein following the decision of the honourable Bombay High Court decision of the coordinate bench in assessee's own case for assessment year 2007-08 and after taking into consideration the facts and circumstances of the case sustained the addition to the extent of difference of gross profit declared in a regular trading and non genuine trading. The coordinate Bench noted that assessee has declared gross profit of 7.89% and in non genuine credit was declared at 7.64% and therefore, the difference of 0.25% of the bogus purchases was confirmed.
07. At the time of disposal of the appeal filed by Assessee, it has not been brought to the notice of the Bench that assessing officer has also filed an appeal in ITA No. 3901/Mum/2023 on 1/11/2023. Had it been shown to the coordinate Bench, perhaps the appeal of the assessee as well as of the learned AO would have been decided together. Neither the assessee, nor the AO or the registry brought it to the notice of the Bench. Thus appeal of assessee got disposed of.
08. However, while deciding the appeal of the assessee, coordinate bench has relied upon the decision of the honourable Bombay High Court in case of principal Commissioner of Income Tax versus



Monmouth Haji Adam and company in ITA No. 1004 of 2016 dated 11/2/2019, the order of the coordinate Bench in assessee's own case for assessment year 2007 – 08 in ITA No. 4235/Mum/2018 dated 11/6/2019 and thereafter, determined that only the balance profit which was disclosed by the assessee in genuine trade and non genuine trade could be added to the total income of the assessee. The coordinate Bench in the appellate order found that gross profit of non genuine purchases 7.64% whereas the gross profit of the assessee from other purchases is 7.89%, and therefore, the difference of 0.25% was added to the total income of the assessee. Therefore, the issue has been decided on the merits of the case in the appeal of the assessee arising out of the same appellate order.

09. The learned Departmental Representative also could not show us any reason that why the order of the coordinate Bench following the decision of the honourable Bombay High Court and in assessee's own case for earlier year should not be followed. As the coordinate Bench has taken the element of profit based on the decision of the honourable Bombay High Court, we do not find any merit in the appeal of the learned AO.

010. Accordingly, appeal filed by the AO is dismissed.

Order pronounced in the open court on 13.05. 2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.05.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai