

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA , JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4619/MUM/2023
(Assessment Year : 2011-12)**

Mahindra Chandrakant Thakkar 502, Orchid, Vasant Park CHS, Khadakpada, Kalyan (W) 421301.	Vs.	Income Tax Officer Ward 3(2), 2 nd Floor, Rani Mansion, Murbad Road, Kalyan- 421203.
PAN/GIR No. AIAPT8439Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. S.M. Makhija a/w Ms. Manisha Ghind
Revenue by	Shri. P.D. Chougule
Date of Hearing	22/05/2024
Date of Pronouncement	29/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/10/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2011-12.

2. In the grounds of appeal assessee has challenged the addition of Rs.7,60,43,860/- on account of disallowance of 100% alleged bogus purchases.

3. The brief facts are that assessee is a wholesale trader in coal merchant, running a proprietary concern in the name and style of Jalaram Trading Company. Earlier assessee had filed return of income for A.Y.2011-12 on 30/07/2011 declaring total income from business at Rs.8,38,714/-. Later on, an information was received from Maharashtra Sales department providing the details of persons who have provided accommodation entries / bills towards bogus purchases. As per the information, assessee is also one of the beneficiary of bogus purchase bills of Rs.3,71,19,489/-. Based on this information assessee's case was reopened u/s.147 and accordingly, notice u/s.148 was issued on 28/03/2018. During the course of re-assessment proceedings, ld. AO on perusal of the purchase register submitted by the assessee noted that assessee had made purchases from following entities.

- i) M/s Astavinayak Enterprises
- ii) M/s Shri Balaji Associates
- iii) Ashtaganga Enterprises
- iv) M/s Great Town Trading Pvt. Ltd.

4. In response to the notice assessee submitted sample copies of the bills from the said parties and he noted that three of the parties were under question by the Sales Tax department and all these parties belong to Nagpur. Ld. AO sought information from

Jt. DIT (Investigation) Nagpur to send report with regard to three parties, and on inquiry it was reported that either there was incomplete address or firm was not found on those respective addresses. The assessee was summoned by the ld. AO and his statement was also recorded u/s.131 which has been incorporated in the assessment order. Thereafter, ld. AO observed that assessee has not maintained documents in respect of three parties through whom assessee has made purchases during the year which were highlighted by him in the following manner:-

- i) *“All purchases bills duly stamped delivery and payments.*
- ii) *Delivery Challan*
- iii) *Inward Register duly mentioned name of items, quantity*
- iv) *Transportation Bills duly mentioned the person and vehicles carries the goods*
- v) *Stock Register*
- vi) *Bank Books*
- vii) *Demand Register*
- viii) *Cash Book*
- ix) *Item wise sale and Purchase*
- x) *Current address of the parties as per the list enclosed from which purchases were made during the year under consideration.”*

5. Accordingly, AO added the entire purchases of Rs.7,60,43,860/-. The ld. CIT(A) too has confirmed the said addition on account of entire bogus purchases.

6. Before us ld. Counsel submitted that assessee is a wholesale trader in coal and has been doing business since last several years. Assessee used to purchase the bulk quantity of coal and

supply directly to traders. He submitted that if the entire purchase is added without disturbing the corresponding sales, then gross profit would be around 60% and net profit would come to Rs.7,70,66,452/- on total purchases debited in the profit and loss account at Rs.13,27,74,037/-. He further submitted that the average gross profit earned for four years was 3.49% and during the year it was 3.27%. He further submitted that the entire purchases had been recorded in the books of accounts and the purchases have been made through account payee cheques. Assessee has also recorded the details of stock even though regular stock register is not maintained. Once the quantity of opening stock, purchases, corresponding sales and closing stock has not been disturbed, then entire purchases cannot be added and in support of the same he relied upon the decision of various Jurisdictional High Court judgments in the case of **Principal Commissioner of Income Tax V/s Max Flex and Imaging Systems Ltd reported in 161 taxmann.com 775 and in the case of The Pr. Commissioner of Income Tax-15, Mumbai V/s JK Surface Coatings Pvt Ltd in Income Tax Appeal No 1850 of 2017.**

7. On the other hand, ld. DR strongly relied upon the order of the ld. AO and ld. CIT (A) and submitted that onus to prove the genuineness of the purchases was on the assessee which has not been discharged and secondly, ld. AO has conducted enquiry wherein he has found that these parties were not found on the address mentioned.

8. After hearing both the parties and on perusal of the impugned order, we find that ld. AO has added the entire purchases aggregating to Rs.7,60,43,860/- out of total purchases claimed in the profit and loss account amounting to Rs.13,27,74,037/-. The basis for the addition of entire purchases is that, during the investigation it was found that these parties did not exist on the address mentioned at Nagpur. Further, assessee has not maintained certain documents as highlighted by him to substantiate the purchases in light of inquiry. However, nowhere ld. AO has disturbed the trading result or disputed the corresponding quantity of sales recorded in the books of accounts. If the sources of purchase are from the books and there is no dispute regarding the quantity of stock / purchases and corresponding quantity of sales made and the closing stock, then there cannot be disallowance of entire purchases as it will lead to absurd result of gross profit rate of 60% which in case of a wholesale dealer of coal is not possible nor has it been brought on record any information that in such a trade huge GP of 60% can be earned. At the most, it can be a case that assessee might have taken accommodation purchases bill from the parties and it must have purchased some quantity of coal from the grey market only to suppress the profit. One very important fact is that under the sales tax return, the purchases have been accepted and no discrepancy has been found on the quantity of purchases. If in the earlier years on similar turn over the GP rate has been ranging from 3.27 to 4.52 with an average GP of 3.49 and sales tax on coal is 4%, then

there cannot be huge application of GP also. Accordingly, we apply GP rate of 8% on the purchases is reasonable as suppression of profit in a wholesale of coal cannot be 12% or more and since assessee has already disclosed GP rate of 3.27% accordingly, balance GP @ 4.73% on such alleged purchases is to made. The application of reasonable GP rate on such kind of bogus purchases has been upheld by the **Hon'ble Bombay High Court in the case of PCIT vs. Max Flex and Imaging Systems Ltd.**, wherein Hon'ble Bombay High Court in its judgment and order dated 03/04/2024 held that where ld. AO is not disputed the sales made by the assessee then out of purchases only profit element in alleged bogus purchases amount can be treated as income. In another judgment of **Hon'ble Bombay High Court** in the case of **PCIT vs. JK Surface Coatings Pvt. Ltd.** the same principle has been recreated. Otherwise, there is catena of similar judgments by the Hon'ble Jurisdictional High Court wherein the High Court has held that the entire purchases cannot be added if the sales have not been disputed and trading results have been accepted. Accordingly, appeal of the assessee is partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on 29th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 29/05/2024
Karuna, Sr. Ps.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai