

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 430/MUM/2024  
(Assessment Year: 2012-13)**

**Income Tax Officer-19(3)(1), Mumbai,**

Piramal Chamber, Room No. 405,

Lalbaug, Mumbai – 400012

.....

**Appellant**

**SP International,**

Ew-2160, Bharat Diamod Bourse,

Bandra Kurla Complex, Bandra (East),

Mumbai - 400051

[PAN: AARFS8162N]

Vs

.....

**Respondent**

**Appearance**

For the Appellant/Department

: Shri H.M. Bhatt

For the Respondent/Assessee

: None

**Date**

Conclusion of hearing

: 14.05.2024

Pronouncement of order

: 27.05.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 01/12/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 19/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised the following grounds of appeal:

- "1. *Whether on the facts and in the circumstances of the Rs. case and in law, the Id. CIT(A) has erred in restricting the addition @ 3% 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.3,19,29,587/-, 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 @ 3% 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.3,19,29,587, 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 produced any concrete evidence to establish the genuineness and creditworthiness of purchase transactions and of alleged parties/Hawala Traders?*
3. *Whether on the farts and in the circumstances of the case and in law, the Ld. CITIA) has erred in restricting the addition @ 3% us against 100% addition made by the Assessing Officer u/s 69C of the income Tax Act, 1961 on account of bogus purchases of Rs.3,19,29,587/-, 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 @ 3% 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.3,19,29,587/- 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 @ 39% as against 100% of bogus purchases?*

5. *Whether on the facts and in the circumstances of the case and in law, the Id. CITYA) has erred in restricting the addition @ 3% 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. 3,19,29,5877, 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 during the assessment proceedings?*
  - 6 *Whether on the facts and in the circumstances of the case and in law, the id. CIT(A) has erred in restricting the addition @3% 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.3,19,29,587/ 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 table 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 @ 3% 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.3,19,29,587/ 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."*
3. When the appeal was taken up for hearing, none was present for the Respondent/Assessee. On perusal of grounds raised in the present appeal, we proceeded to hear the Learned Departmental

Representative for adjudicating the appeal on merits.

4. We have considered the submissions advanced by the Learned Departmental Representative and perused the material on record.
5. The Assessee is a partnership firm engaged, inter alia, in the business of trading in diamonds. Assessment under Section 147 read with Section 143(3) of the Act was framed on the Assessee vide order, dated 19/12/2019, reassessing the taxable income of the Assessee at INR 3,20,96,267/-, as against income of INR 1,66,680/- assessed under Section 143(3) of the Act. The Assessing Officer has made addition of INR 3,19,29,587/- holding that the purchases made from the following four parties were bogus:

SNo.	Lenders	PAN	Amount (INR)
1	Aadi	AHOPJ3837B	41,46,320/-
2	Kalash	AFRPJ9962J	1,08,95,072/-
3	Mayank	AAQHS5732	1,26,36,738/-
4	Sparsh	AAKCS0761R	42,51,457/-
	Total		3,19,29,587/-

6. Being aggrieved by the assessment order, dated 19/12/2019, passed under Section 143(3) read with Section 147 of the Act, the Assessee preferred appeal before CIT(A) challenging the validity of the reassessment proceedings as well the addition of INR 3,19,29,587/- made by the Assessing Officer on account of alleged bogus purchases. While the CIT(A) upheld the validity of the reassessment proceedings, substantial relief was granted to the Assessee as the CIT(A) restricted the disallowance to INR 9,57,888/-, being 3% of the alleged bogus purchases of INR 3,19,29,587/-, and deleted the balance disallowance of INR 3,09,71,699/-. Being aggrieved by the above relief granted by the CIT(A), the Revenue has preferred the present appeal before

the Tribunal.

7. We find that the CIT(A) has granted relief to the Assessee observing as under:

*"8.1 The AO found that the assessee had made purchases amounting to Rs. 3,19,29,587/- from four parties which were concerns belonging to the Rajendra Jain group. Since it was established that the concerns belonging to the Rajendra Jain group were only providing accommodation entries of unsecured loans and purchases, the AO concluded that the assessee had only obtained bills from these parties without actually getting any material. These bills were thus held to be nothing but accommodation entries and the AO added the entire amount of such bogus purchases amounting to Rs. 3,19,29,587/- to the total income of the assessee.*

*8.2 The appellant on the other hand has argued that the impugned purchases were genuine and payments were made through banking channels. The appellant, besides relying on certain other case laws, has also relied on the order dated 31.01.2017 of my Ld predecessor CIT(A) for AY 2007-08 wherein on similar facts of alleged bogus purchases, the AO had added the entire amount of bogus purchases from the same group to the total income of the assessee but the Ld CIT(A) had restricted the addition to 3% of the bogus purchases, being the profit element embedded in such bogus purchases.*

*8.3 The appellant has also relied on the order dated 15.03.2016 of the Assessing Officer i.e. ITO-19(3)(2) Mumbai for AY 2008-09 wherein on similar facts of bogus purchases, the AO has added 3% of the bogus purchases from the same group to the total income of the assessee.*

*8.4 The appellant has also relied on the latest order dated 23.05.2023 of the Assessing Officer, the National Faceless Assessment Centre for AY 2013-14 wherein on similar facts of bogus purchases, the AO has added 3% of the bogus purchases from the same group to the total income of the assessee, being the profit element embedded in such purchases.*

*8.5 The settled position of the law is that the onus lies on the appellant to prove the genuineness of the purchase transactions*

*claimed as genuine. However, as seen from the records, this onus has not been discharged. The Courts have time and again held that if the investigation done by the department leads to a doubt in respect of the genuineness of the transactions/purchases, it is incumbent on the assessee to produce the parties along with the necessary documents to establish the genuineness. In the instant case, there is uncontroverted evidence regarding the bogus nature of the purchases from an impeccable source i.e the Investigation Wing of the Income Tax Department and the evidences include admission from the so called sellers that they have been issuing bogus bills. It is also seen that not only my predecessor CIT(A) but also the AO in other assessment years made an addition of only the profit element embedded in the bogus purchases @3% of such bogus purchases. Since the facts are identical, I have no reason to deviate from the stand taken by my Ld Predecessor and also the AO for the other years. Therefore, the addition on account of the non-genuine purchases is restricted to the profit element embedded in such non-genuine purchases which is 3% of Rs. 3,19,29,587/- which amounts to Rs. 9,57,888/-. The remaining addition of Rs. 3,09,71,699/- [Rs. 3,19,29,587/- minus Rs. 9,57,888/-] is accordingly deleted. These grounds of appeal are, therefore, partly allowed.*

8. On perusal of above, it emerges that the CIT(A) restricted the amount of disallowance to 3% of the alleged bogus purchases after taking into consideration the fact for the Assessment Year 2008-09, vide order dated 15/03/2016, the Assessing Officer had made addition of 3% of the bogus purchases made from the same group. Similarly, for the Assessment Year 2013-14, vide assessment order dated 23/05/2023, the disallowance, computed at the rate of 3% of the bogus purchases, was made by the Assessing Officer. Further, for Assessment Year 2007-08, the predecessor of the CIT(A) had, vide order dated 31/01/2017, restricted the addition to 3% of the bogus purchases. Therefore, as a result of the aforesaid assessment and appellate proceedings before the CIT(A), only the profit element embedded in bogus purchases (*and not the entire*

*amount of bogus purchases*) were brought to tax in the hands of the Assessee. There is no change in the fact and circumstances in the previous year relevant to the assessment year before us. On perusal of assessment order, we find that the addition has been made under Section 69C of the Act. We note that in paragraph 12 of the Assessment Order, the Assessing Officer has noted that the Assessee has produced books of accounts, sale/purchase registered along with sale and purchase/sale transactions and had submitted that the aforesaid transactions were undertaken through banking channel. Further, while recording the submissions of the Assessee in relation to Ground No. 2 and 3 raised in appeal before CIT(A) (*starting from page 10 of 32 of the order impugned*), the CIT(A) has listed the documents which were furnished by the Assessee to support the transactions. The aforesaid documents included bank statements of the Assessee reflecting payments made to various suppliers. We find that the sales reflected in the books of accounts have been accepted by the Assessing Officer. Therefore, we concur with the CIT(A) that in the aforesaid facts and circumstances only profit element embedded in the alleged bogus purchases can be brought to tax in the hands of the Assessee, and that the judicial precedents relied upon by the Revenue in grounds of appeal are distinguishable in view of the aforesaid facts. In the present case the rate of profit embedded in the alleged bogus purchases has been accepted to be 3% by the Assessing Officer and the CIT(A) in the aforesaid assessment/appellate proceedings. There is nothing on record to show that the aforesaid decision of the Assessing Officer/CIT(A) have been challenged by the Revenue and/or have been overturned in the revision/appellate proceedings. Accordingly, we do not find any infirmity in the order dated 01/12/2023, passed by the CIT(A)

restricting the addition on account of alleged bogus purchases to the profit element of 3% embedded therein. We note that the decision of the CIT(A) is also in line with the decision in the case of the Mumbai Bench of the Tribunal in the case of Oopal Diamond Vs. Assistant Commissioner of Income Tax 19(2), Mumbai : [ITA No.1499/Mum/2020, ITA No.1500/Mum/2020 & ITA No.1501/Mum/2020, dated 26/10/2022] cited by the Assessee before the CIT(A). There is nothing on record to persuade us to take a view different from the view taken by the CIT(A). Accordingly, we do not find any infirmity in the order passed by the CIT(A). All the grounds raised by the Revenue are dismissed as being without merit.

9. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 27.05.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27.05.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai