

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

**BEFORE SHRI PRASHANT MAHARISHI, AM**

**AND**

**SHRI SUNIL KUMAR SINGH, JM**

**ITA No. 106/M/2024 for Assessment Year 2011 – 12**

**ITA No. 107/M/2024 for Assessment Year 2012-13**

M/s R Ramesh & co  
81, Kamal,  
Walkeshwar Road  
Mumbai 400006

PAN AADFR8573L  
(Appellant)

Appellant by

Revenue by

Date of hearing

Date of pronouncement of order

Vs. The Assistant Commissioner of  
Income Tax  
Circle 19 (3) Mumbai  
Matru Mandir, Tardeo,  
Nana Chowk Mumbai 400007

(Respondent)

Shri Suchak Ancheliya CA

Smt. Mahita Nair, DR

28<sup>th</sup> May, 2024

19<sup>th</sup> June, 2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. ITA number 106 /M/2024 is filed by M/s R Ramesh & co Mumbai (the assessee/appellant) for assessment year 2011 – 12 against the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) dated 21/11/2023 wherein the appeal filed by the assessee against the reassessment order passed under section 143 (3) read with section 147 of The Income Tax Act [ the Act] dated 21 December 2018 passed by the ACIT Circle 19 (3), Mumbai (the learned AO) was dismissed.
2. The only issue in this appeal is that the learned assessing officer reopened the case of the assessee based on information received from the

investigation wing that assessee has obtained bogus purchases from three bogus hawala parties of Rs. 8,034,771 which was added by the learned assessing officer to the total income of the assessee considering 100 % of such purchases under section 69C of the act, on appeal before the learned CIT – A, as the assessee failed to establish the genuineness of the transaction , addition was confirmed.

3. Brief facts of the case shows that assessee is a partnership firm, trader in diamond, filed its return of income on 18/08/2011 declaring total income of Rs. 131,580/-. This return was processed under section 143 (1) of the act. The case was reopened under section 147 of the act after recording reasons with the prior approval from the Principal Commissioner of income tax, a notice under section 148 of the act was issued on 27/3/2018.
4. During survey and search conducted in case of one Mr Bhanwar Lal Jain and others on 3/10/2013 by the DGIT (investigation), Mumbai it was found that he is running several dummy concerns for providing accommodation entries to the parties. It was found that assessee has made a purchase of Rs. 8,034,771/- from three different parties. The notice under section 142 (1) and notice under section 143 (2) was issued on 30/7/2018. In response to the notices no reply was received from the assessee however the assessee uploaded the vouchers and bills from those parties along with other details. The learned assessing officer after examination of details, issued show cause notice on 19/11/2018. In response to which the assessee filed the bills, vouchers and assessee also tried to substantiate his claim as to the genuineness of the impugned purchases with the help of book entries and documents prepared. The AO was of the view that as the assessee has claimed the expenditure on account of purchases it is the duty of the assessee to prove the genuineness of same. As assessee failed to prove the genuineness of the

purchases to the satisfaction of the AO, he held that the impugned purchases are bogus and therefore it should lead to increase in estimation of net profit by making the above addition. The learned assessing officer has made the addition of the 100 % of such bogus purchases under section 69C of the act to the total income of the assessee of Rs. 131,580/- and determined the total income of Rs. 8,166,350/- as per the reassessment order passed under section 143 (3) read with section 147 of the act on 21/12/2018.

5. The assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A challenging the reopening of the assessment as well as addition made by the learned assessing officer of 100 percent of such purchases to the total income of the assessee. The learned CIT – A reproduced the assessee's submission at paragraph number 4 of appellate order. In the assessee's written submission, the learned CIT – A noted that assessee is an employee, and the case was selected for limited scrutiny. He discussed that the assessee has deposited cash in his bank account.
6. The learned CIT – A in paragraph number 5 recorded that several opportunities were granted to the assessee for hearing and ultimately assessee was granted the opportunity of video conference on 6/11/2023. The learned CIT – A dismissed the ground of reopening of the assessment. On the merits of the case, it is submitted the copies of the bills and other details submitted before the learned assessing officer and stated that the purchases from these parties have been duly recorded in sales and exported to TIE diamonds UAE and balance quantity is available in closing stock. During videoconferencing assessee was asked to submit further details however the assessee did not submit any details and therefore the learned CIT – A, upheld the addition. Thus, the purchases from three different parties of Rs. 8,034,771/- addition to the

extent of 100 % was confirmed. Therefore, assessee is in appeal before us.

7. The learned authorised representative Mr Suchek Anchaliya , CA appeared and submitted a paper book containing 72 pages and relied upon the decision of the honourable Bombay High Court in case of Principal Commissioner of Income Tax – 17 versus M/s Mohammad Haji Adam & co (income tax appeal number 1004 of 2016 dated 11/2/2019). His submission was that that assessee has sold the goods by way of an export to a party in UAE which was stated to be bogus purchases. Therefore, only the gross profit involved in the transaction in view of the above decision of the honourable Bombay High Court could have been added by the lower authorities. Therefore, according to him the hundred percent addition made by the learned AO and confirmed by the learned CIT – A not sustainable. He did not press the ground number 1 with respect to the reopening of the assessment and ground number 3 with respect to the opportunity of cross-examination not afforded to the assessee. Thus, his arguments were only on the merits of the addition.
8. The learned departmental representative vehemently supported the orders of the learned lower authorities.
9. We have carefully considered the rival contention and perused the orders of the learned lower authorities. As the assessee has not pressed ground number 1 with respect to the reopening of the assessment and ground number 3 with respect to the completion of the reassessment proceedings without providing any opportunity of cross-examination to the assessee, those are dismissed. Therefore, the only issue that remains in this appeal is with respect to the addition of bogus purchases under section 69C of the act.
10. Fact shows that assessee is a trader in diamond, filed its original return of income on 18<sup>th</sup>/8/2011 declaring a total income of Rs. 13,1,580/- .

Reopening of the assessment was done on receipt of information with respect to bogus purchases from three different parties totalling to Rs. 8,034,771/-. The learned assessing officer made the addition to the extent of hundred percent of such bogus purchases and the learned CIT – A confirmed the same. However, we find that during assessment proceedings the assessee has submitted that assessee has purchased goods from M/s Mayur exports, prime Star and Mohit enterprises totalling Rs. 8,034,771/-. To substantiate the genuineness of such purchases, the assessee produced the purchase invoices, account confirmation, audited financial statements and income tax returns of all these parties. Assessee has also produced a chart containing 1 to 1 mapping of the alleged bogus purchases with corresponding sales. Assessee also showed that the bank statement of the appellant which shows that the purchases are made by banking channel. The assessee has stated that diamonds purchased from Mayur export of Rs. 1,712,428/- on 25/10/2010 has been exported to TIA Diamond UAE on 26/10/2020 wherein the gross profit of 6.08% is earned. With respect to the purchases from prime Star of Rs. 32,83,623/- on 02/12/2010 has also been exported to the same party on 9/12/2010 wherein the gross profit of 4.13% was earned. With respect to the purchases of Rs. 30,38,720 from M/s Mohit enterprises was lying in closing stock of the same amount. Honourable Bombay High Court in case of the Principal Commissioner of Income Tax versus Mohd. Haji Adam & co (supra) has held that that purchases cannot be rejected without disturbing the sales in the case of a trader. Assessee in this case also is a trader. The honourable High Court further held that the addition should be restricted to the extent of bringing the gross profit rate on alleged bogus purchases at the same rate of other genuine purchases. The honourable High Court also considered the decision of the honourable Gujarat High Court in case of NK industries Ltd (tax appeal number 240

of 2003) and considering the paragraph number eight of the judgement has held that only the differential gross profit is required to be added. We find that the facts of this case are like the case of the issue decided by the honourable Bombay High Court. In view of this following the decision of the honourable jurisdictional High Court, we direct the learned assessing officer to restrict the addition to the extent of bringing the gross profit rate on alleged bogus purchases at the same rate of gross profit of other genuine purchases. Assessee is directed to produce the evidence of gross profit earned by him on tainted purchases and the gross profit earned on untainted purchases as above, the learned assessing officer is directed to verify the same and restrict the addition only to the extent of difference in the gross profit. In the result ground number 2 of the appeal of the assessee is partly allowed accordingly.

11. Before parting, we find that the learned CIT – A has reproduced the fact of some other cases in paragraph number 4 of his appellate order. Those facts are relating to some other cases but reproduced in the order of this assessee.
12. In the result ITA number 106/M/2024 is partly allowed.
13. ITA number 107/M/2024 for assessment year 2012 – 13 is filed by the above assessee against the appellate order passed by the National faceless appeal Centre, Delhi dated 21/11/2023 wherein the appeal filed against the reassessment order passed under section 143 (3) read with section 147 of the act dated 15/12/2019 passed by the ACIT Circle 19/3, Mumbai (the learned assessing officer) was dismissed.
14. The only grievance of the assessee is that the learned assessing officer based on intimation received from search on accommodation entry provider got the information that assessee has obtained bogus accommodation entry of purchase of diamond of Rs. 19,403,736 from four different parties. The learned assessing officer made an addition in

the reassessment proceedings of 100 percent of such purchases. The learned CIT – A also confirmed the same.

15. Assessee filed its return of income on 10/8/2012 declaring a total income of Rs 112,770/-. This return of income was not picked up for scrutiny but on receipt of information about the bogus purchase bills of obtained by the assessee, the case of the assessee was reopened by issue of notice under section 148 of the act on 25/3/2019. During assessment proceedings, the assessee was asked to justify the purchases. The assessee could not justify the purchases and its genuineness to the satisfaction of the learned assessing officer and therefore he made an addition of 100 percent of such bogus purchases of Rs. 19,403,736/- and by reassessment order dated 15/12/2019 passed under section 143 (3) read with section 147 of the act determined the total income of the assessee at Rs. 19,516,560/ -. The assessee preferred an appeal before the learned CIT – A challenging the reopening of the assessment as well as the addition made by the learned assessing officer on its merits. The learned CIT – A confirmed reassessment proceedings and confirmed the addition on the merits of the case.
16. Assessee, aggrieved is in appeal before us, the learned authorised representative submitted a paper book containing 104 pages wherein he submitted that purchases made from these four parties are not bogus. For this he submitted the affidavit of the parties, the bank statement of the parties, purchase invoices, account confirmation, their audited financial statement, and the income tax returns. His submission was that the assessee has made payment for these purchases by account payee cheques. He submitted that the assessee has produced all these details before the learned assessing officer however despite this fact the addition to the extent of hundred percent of such purchases are made. It was also the case of the assessee that whatever the diamonds assessee has

purchased from these parties have gone in export which is recorded in the profit and loss account and due profit thereon has been already Incorporated in the return of income of the assessee . For this, he submitted a chart showing that all these purchases have resulted into the export and assessee has earned gross profit at the rate of 5.42%. He referred to the chart placed at page number 98 of the paper book. Even otherwise he submitted that even if the purchases are treated as bogus, the addition is required to be limited to the extent of the gross profit earned by the assessee from untainted purchases. He relied upon the decision of the honourable Bombay High Court in case of PCIT versus, Mohd. Haji Adam and company. He submitted that issue in this case is identical to the case of the assessee for assessment year 2011 – 12. The learned authorised representative also did not press ground number 1 with respect to the reopening of the assessment and ground number 3 wherein the addition is made without providing any opportunity of cross-examination to the assessee was challenged. In view of this, it was the submission that the addition made by the learned assessing officer and confirmed by the learned CIT – A of the hundred percent of the purchases is not sustainable.

17. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that assessee has failed to justify the genuineness of the purchases and therefore the lower authorities have made correct addition under section 69C of the act to the extent of hundred percent of such bogus purchases.
18. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the facts of this case are identical to the facts of the case of the assessee for assessment year 2011 – 12. In this case also the assessee is found to have obtained the bogus purchase invoices from 4 different parties amounting to Rs. 19,403,736/-. Before

the assessing officer the assessee failed to prove the genuineness of such purchases and therefore, they hundred percent addition was made by the learned assessing officer. Same was confirmed by the learned CIT – A. We find that the assessee has produced to prove the genuineness of the purchases the various evidence in the form of the income tax return, the audited financial statements, account confirmation, purchase invoices, bank statement and affidavit of the sellers. Over and above the assessee has also demonstrated that the goods purchased from these four different parties have been exported and the sales realisation is Rs. 20,253,868/- which resulted into the gross profit of 5.42%. this cross profit has already been offered for taxation. For assessment year 2011 – 12 on identical facts and circumstances, in case of the assessee we have held that addition is required to be restricted only to the extent of difference of gross profit earned by the assessee from untainted purchases. Therefore, with similar direction we also direct the assessee to show the gross profit earned by it from untainted purchase and the gross profit earned by the assessee on these alleged bogus purchases, the learned assessing officer, on verification is directed to restrict the addition to the extent of difference of gross profit from untainted purchases. Accordingly ground number 2 of the appeal of the assessee is partly allowed.

19. In the result appeal of the assessee for assessment year 2012 – 13 is partly allowed.
20. Accordingly, both the above appeals are partly allowed.

Order pronounced in the open court on 19<sup>th</sup> June, 2024.

Sd/-

(SUNIL KUMAR SINGH)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19<sup>th</sup> June, 2024

*Dragon*

Copy of the Order forwarded to :

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar

Income Tax Appellate Tribunal, Mumbai