

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

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

**ITA No.747/Mum/2024  
(A.Y. 2010-11)**

|                                                                                                      |     |                                                                               |
|------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------|
| Construction Technique<br>A-26 Royal Indust Estate,<br>Naigaon Cross Road,<br>Wadala, Mumbai- 400031 | Vs. | ACIT, Circle-20(1)<br>Piramal Chamber,<br>Lalbaug, Parel,<br>Mumbai – 400 012 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAAFc2940D                                                     |     |                                                                               |
| Appellant                                                                                            | ..  | Respondent                                                                    |

|                 |                    |
|-----------------|--------------------|
| Appellant by :  | Aditya Ramchandran |
| Respondent by : | H.M. Bhatt         |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 29.05.2024 |
| Date of Pronouncement | 21.06.2024 |

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order of Id. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2010-11.

The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) / NFAC has erred in confirming the validity of reopening of the assessment under Section 147 and consequential notice issued under Section 148 without appreciating the fact that it was in violation of the conditions laid down in first proviso to Section 147.*
- 2. On the facts and circumstances of the case and in law, the Ld CIT(A)/NFAC has erred in confirming the disallowance of the alleged bogus purchases of 1,23,92,481.*
- 3. On the facts and circumstances of the case and in law, the Ld. CIT(A)/NFAC has erred in not taking cognizance of the Honourable ITAT's order in the appellant's own case for the same assessment year wherein*

*the disallowance on account of bogus purchases (from other parties) was restricted to 18 25%.*

*The Appellant craves leave to add, alter, amend, vary and / or withdraw any or all the above grounds of appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.20,25,960/- was filed on 24.09.2010. The case of the assessee was reopened u/s 147 of the Act by issuing of notice u/s 148 of the Act on 08.03.2017 on the basis of information received from the Sale Tax Department through Directorate of Investigation, Mumbai that assessee had availed accommodation entries of bogus purchases from the following parties:

| <i>Hawala Tin</i> | <i>Hawala Name</i>    | <i>Hawala PAN</i> | <i>F.Y</i> | <i>Amount</i> |
|-------------------|-----------------------|-------------------|------------|---------------|
| 27070684487V      | Bhatiya Agencies      | AACPD2678K        | 2009-10    | 2,602,048     |
| 27430540729V      | Parikh Traders        | AAGPP2544L        | 2009-10    | 3,853,956     |
| 27170702183V      | Rim Associates        | AQXPS9886P        | 2009-10    | 2,027,690     |
| 27720623650V      | Hindustan Corporation | AAQPP4554N        | 2009-10    | 3,908,787     |
|                   |                       |                   |            | 1,23,92,481   |

During the course of assessment the AO issued notices u/s 133(6) of the Act to the parties from whom the assessee had shown the purchases, no response were received and some of the notices remained unserved. Alternatively, the assessee has failed to produce the said parties. Therefore, the assessing officer stated that assessee has merely furnished invoices of purchases and copies of ledger account and unable to produce i.e transport receipt and quantity wise and quality wise purchase registers. Therefore, the assessing officer has disallowed the entire 100% purchases of the amount of Rs.1,23,92,481/- u/s 69C of the Act and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us at the outset the Id. Counsel submitted that similar issue on identical fact in the case

of the assessee itself the ITAT, Mumbai for the assessment year 2010-11 vide ITA No. 6163/Mum/2018 dated 15.10.2019 has restricted the addition to the extent of 18.25% of the such purchases.

5. On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. In this case, the information was received from the Sale Tax Department through office of the DGIT(Inv), Mumbai in respect of purchases made from the parties who were indulged in providing accommodation entries as referred above in this order. To verify the purchases, notices u/s 133(6) of the Income Tax Act were issued to the alleged parties, however, no response received and some of the notices remain unserved by the postal authorities. The assessee also failed to produce the said parties before the assessing officer. Therefore, the AO has disallowed the entire purchases of Rs.1,23,92,481/-. We find that similar issue on identical fact has been adjudicated by the ITAT in the case of the assessee itself for the assessment year 2010-11. The relevant extract of the decision of the ITAT is reproduced as under:

*“5. We have heard the rival submissions of the parties and have perused the material available on record. The Ld. DR for the revenue heavily relied upon the order of the assessing officer. The ld. DR for the revenue further submits that the assessing officer provided ample opportunity to the assessee to prove the delivery of the goods, the assessee despite granting opportunity failed to provide any evidence. The assessing officer made assessment on the basis of material available on record and accordingly made additions of 100% of the bogus purchases shown by the assessee.*

*6. On the contrary the Ld. authorised representative (AR) for the assessee supported the order of the ld. CIT(A). And would submit that though the ld. CIT(A) restricted the additions to the extent of 18.25% which is on higher side the assessee has not filed further appeal only to buy peace. The ld. AR for the assessee prayed for dismissal of the appeal.*

*7. We have considered the rival submissions of the parties and perused the order of the lower authorities. The assessing officer made the addition of 100% of the purchases shown from the alleged hawala dealers on taking his view that the assessee failed to produce the evidence related with the delivery of the goods. Before the ld. CIT(A) the assessee urged that the purchases shown by*

*the assessee are genuine. The assessee has already paid sale tax to the vendors which can be set off against the output sale tax liability, if these parties have not deposited tax under Maharashtra Value Added Tax (MVAT). As those parties have defaulted in deposit of MVAT, thereby they were declared as suspicious dealers in the website of MVAT. The Assessing Officer has not considered the evidences furnished by the assessee. The sale of the assessee was not disputed. The sale is not possible without the purchase. The ld. CIT(A) after considering the submission of assessee restricted the addition to the extent of profit element embedded in such bogus purchases. The ld. CIT(A) restricted the addition to the extent of 18.25% after considering the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth (2013) 356 ITR 451 (Guj). In our view, the ld. CIT(A) disallowed the bogus purchases on reasonable basis. We have further noted that the decision arrived by ld. CIT(A) is in conformity with the order of Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth (supra), which we affirm. No other contrary decision has been brought to our notice by the Ld. DR for the revenue. Therefore, in this view of the matter, we uphold the order of the Ld. CIT(A) and dismiss the appeal filed by the revenue."*

In that case the ITAT considered the proposition that the sales made against the corresponding purchases was not disputed by the assessing officer, therefore, addition to the extent of profit element embedded in such bogus purchases was disallowed. Since during the year under consideration also the AO has accepted the corresponding sales against the impugned purchases therefore, following the decision of ITAT we direct the AO to restrict the disallowance to the extent of 18.25% of the purchases instead of disallowing the 100% purchases. Therefore, the appeal of the assessee is partly allowed. The ground no. one of the appeal of the assessee was not discussed therefore the same stand dismissed as infructuous.

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

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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