

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA No. 45/Mum/2024

(Assessment Year: 2009-10)

Income Tax Officer
Room No.405, 4th Floor, Piramal
Chambers,
Parel, Mumbai-400 012

(Appellant)

Vs.

Sureshkumar Hansraj Shah
2nd Floor, 2/1,
Kikabhai Mansion,
Kika Street Gulalwadi
Mumbai-400 004

(Respondent)**CO No. 52/Mum/2024**

(Assessment Year: 2009-10)

Sureshkumar Hansraj Shah
2nd Floor, 2/1,
Kikabhai Mansion,
Kika Street Gulalwadi
Mumbai-400 004

(Appellant)

Vs.

Income Tax Officer
Room No.405, 4th Floor, Piramal
Chambers,
Parel, Mumbai-400 012

(Respondent)

Assessee by : Shri Vimal Punmiya, AR
Revenue by : Shri R.R. Makwana, DR

Date of hearing: 05.06.2024

Date of pronouncement : 27.06.2024

ORDER**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Income Tax Officer, Ward 19(3)(1), Mumbai for A.Y. 2009-10, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 8th November, 2023, wherein the

appeal filed by the assessee against the reassessment order passed under Section 147 read with section 143(3) of the Act on 4th March, 2015, by the learned Assessing Officer, was partly allowed. Assessee has also filed a cross objection against the same appellate order challenging that the addition to the extent of 12.5% on alleged bogus purchases upheld by the learned CIT (A) is not proper. The learned Assessing Officer has challenged the appellate order holding that the learned CIT (A) is not correct in deleting the addition to the extent of 25% on alleged bogus purchases and instead restricting it to 12.5%. In Cross Objection the assessee has also challenged the reopening of the assessment.

02. The brief facts of the case shows that the assessee is an individual engaged in the business of trading in ferrous and non-ferrous metal. Assessee filed his return of income on 24th September, 2009, at a total income of ₹1,11,091/- . The return was processed under Section 143(1) of the Income-tax Act, 1961 (the Act).
03. On the information received from DGIT (Investigation) on 26th December, 2013, it was communicated that assessee has made purchase of ₹42,32,703/- from 8 different parties, who are involved in providing bogus purchase bills. Notice under Section 148 of the Act was issued on 3rd March, 2014 and the reasons were communicated. On 13th March, 2014, the assessee responded that original return filed may be treated as return in response to notice under Section 148 of the Act. Notice under Section 143(2) of the

Act was issued on 15th July, 2014. The assessee was asked to prove the genuineness of the purchases and also notices under Section 133(6) of the Act were issued to the various parties which could not be served and returned back. The assessee gave the information of purchase from various parties by producing their invoices, delivery of the material and also the corresponding sales of the same material to the various parties. The learned Assessing Officer examined the same holding that there is no proper proof of delivery and rejected the books of account by applying section 145(3) of the Act. After discussion he made the addition at the rate of 25% of such bogus purchases amounting to ₹10,58,175/- to the total income of the assessee computing the assessed income at ₹11,69,270/- by assessment order dated 4th March, 2015.

04. The assessee is aggrieved with the same preferred the appeal before the learned CIT (A), who after elaborate discussion following judicial precedents, held that the rate determined by the learned Assessing Officer at the rate of 25% is excessive. He upheld the addition at the rate of 12.5% on bogus purchases of ₹42,32,703/-, thereby confirming the addition of ₹5,29,088/-. He also confirmed the reopening of the assessment. Therefore, the learned Assessing Officer is in appeal and assessee filed cross objection.
05. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and submitted that the addition should be upheld at the rate of



25%. The learned Authorized Representative submitted that the decision of the Hon'ble Bombay High Court in case of PCIT vs. M/s Mohamed Haji and Co. in ITA 194 of 2016, dated 11th February, 2019 may at the most be applied.

06. We have carefully considered the rival contentions and perused the orders of the lower authorities. Undoubtedly, the assessee could not prove the genuineness of the purchases which are found in the information received from the DGIT Investigation. However, the purchase of ₹42,32,703, were shown by the assessee by a chart showing that the purchases from these parties have also gone into sales of the equal quantity. The assessee has also got his account tax audited where the quantitative details are available. In such circumstances, it is settled principle that only profit which is less than the profit shown on untainted purchases should be compared and difference is required to be added to the total income of the assessee. Hon'ble Bombay High Court in M/s Mohd. Haji and Company (supra), has also upheld the same principle. In the present case, the assessee has also shown one to one co-relation between the quantity of the alleged bogus purchases and consequent sales accounted there from. In view of this, we direct the learned Assessing Officer to work out the addition only to the extent of the difference in gross profit earned in such tainted purchases with gross profit earned in untainted purchases. The assessee is directed to furnish the requisite information before the learned Assessing Officer



demonstrate the gross profit of bogus purchases and gross profit of required basis.

07. In the result, the appeal filed by the learned Assessing Officer is dismissed and cross objection of the assessee to the above extent is allowed.

Order pronounced in the open court on 27.06.2024.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.06. 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,

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