

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3722/MUM/2023  
Assessment Year: 2010-11**

<b>ACIT, CIR 20(1),</b> Piramal Chambers, Lalbaug, Parel, Mumbai - 400012	Vs.	<b>Shri Rajendra Kumar Mansukhlal Shah,</b> 301 The Orient, Off Jame Jamshed Road, King Circle, Matunga, Mumbai - 400019 <b>PAN: BCNPS0106D</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Manish Goyal, A.R.  
Revenue by : Smt Mahita Nair, SR. D.R.

Date of Hearing : 11 . 06 . 2024

Date of Pronouncement : 28 . 06 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Revenue against the order dated 31.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2010-011.

**2.** In the instant case, the Assessee had declared his total income at Rs."Nil" by filing his return of income on 14.10.2010, which was processed and accepted by the CPC vide intimation dated 02.03.2012 u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny through CASS and therefore statutory notices were issued to the assessee for seeking basic details, in response to which the assessee filed the relevant details.

**2.1** On perusing the details filed, the Assessing Officer (AO) observed that the assessee is a civil contractor with MCGM (Municipal Corporation of Greater Mumbai) and during the financial year under consideration has shown gross contract receipts of Rs.4.33 crores but declared income of Rs."Nil". The assessee had claimed purchase of material at Rs.3.49 crores from 40 parties, whereas the Assessee has given names of 39 parties under the head "miscellaneous parties". Major purchases includes M.S. Plate, M.S. Angle, metal, sand, bricks, C.I. Socket, C.I. Pipe, PVC pipe, cement, unipaver blocks etc. Therefore, in order to verify the genuineness of the transactions of material purchased, information under section 133(6) of the Act was called by the AO from various parties, however, notices issued to the parties as mentioned in para No.4 of the Assessment order, from whom the Assessee had transacted the purchases to the tune of Rs.2,25,04,993/- in total, returned back with remarks "not known", "unclaimed etc." and some of them got served but did not reply.

**2.2** The AO further observed that Sales Tax Department of the Maharashtra Government has investigated the affairs of the dealers, who have been issuing the bogus purchase bills, as a result thereof publicly displayed a list of nearly 2000 persons/dealers on the website of the Sales Tax Department, who have admitted to issuing bogus purchase bills. Therefore, by issuing a show cause notice dated 26.02.2013 the Assessee was given an opportunity for establishing the

genuineness of the parties and the purchases made from them, with supporting evidences and also to produce the parties before the AO along with the books of account, as the aforesaid parties were found to be prima-facie non-exist. Furthermore, all the 8 parties were in the list of hawala dealers, who have admitted to issuing bogus bills before the Sales Tax Authorities. The AO further observed that on examination of details filed, it is seen that ledger copies of these parties with purchase bills were entered in the books of account during the financial year 2009-10 from time to time but payment was not made from time to time and paid in one stroke or two after a long period of purchases from these parties, which is quite abnormal and unusual business. The AO also observed that no stock register is maintained, wherefrom the quantity details can be examined.

**2.3** The Assessee before the AO in reply to the aforesaid allegations submitted that he has purchased the goods and properly accounted the same in his books of account which are properly audited and all the payments to the vendors have been made through account payee cheques in the subsequent year. There are no cash payments made for the purchases made during the year. The assessee in support of his claim, also filed ledger confirmation of the vendors. Though the AO perused and considered the claim of the assessee, however, on the basis of the investigation carried out by the Sales Tax Department, ultimately made the addition of Rs.2,25,04,993/- by holding as under:

*“4.13 Thus, from the above case laws and analysis of the facts in the case of assessee it is crystal clear that the purchases made by the assessee from the eight parties appearing in sales tax hawala list and claimed in its profit & Loss account are not genuine. Their names also appear in the list of Hawala dealers put up on the website by the Maharashtra Sales Tax Department. Thus, the purchases from these parties at Rs.2,25,04,993/-are treated as*

*bogus and added to the business income of the assessee. In view of fact that the assessee has furnished in accurate particulars of purchases and has also concealed particulars of income, penalty proceedings u/s 271(1)(c), of IT Act, 1961 for the aforesaid addition are being initiated.*

*(Addition of Rs.2,25,04,993/-)”*

**3.** The Ld. Commissioner, on challenge though affirmed the alleged bogus purchases but ultimately restricted the addition to the extent of 12.5% of Rs.2,25,04,993/-, against which the Revenue Department is in appeal before us.

**4.** Heard the parties and perused the material available on record. The Revenue Department has emphasized that in the alleged bogus purchases, the addition @ 100% is supposed to be made. We are not impressed by the said contention of the Revenue Department, as the Hon'ble Jurisdictional High Court in the case of PCIT vs. Ashwin Puruthotam Bajaj ITA No.576 of 2018 also dealt with the identical issue wherein the addition was made on the basis of information received from the Sales Tax Department of the Maharashtra Government with regard to the bogus accommodation entries without supplying any goods and the AO made the addition @ 18% of the alleged bogus purchases, whereas the Hon'ble Jurisdictional High Court affirmed the decision of the Hon'ble Tribunal and the Ld. Commissioner (Appeals) in affirming the addition to the extent of 12.5% of the alleged bogus purchases. Hence, we are inclined not to transgress ourselves from the dictum laid down by the Hon'ble Jurisdictional High Court in the aforesaid case. Even otherwise we do not find any reason and/or material contrary to the findings arrived at by the Ld. Commissioner in sustaining the addition to the extent of 12.5% of the alleged bogus purchases.

**5.** In the result, the appeal filed by the Revenue Department stands dismissed.

**Order pronounced in the open court on 28.06.2024.**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy./Asstt.Registrar, ITAT, Mumbai.