

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,
ITA No.251/Mum/2024
(A.Y. 2011-12)**

Income Tax Officer- 19(3)(1), Piramal Chamber, Room No.405, Lalbaug Mumbai - 400 012	Vs.	Sandeep Ramesh Shah Reshmo Mac Tools Centre 2/10, Summit House, Forjett Hill Road, Opp Bhatia Hospital, Mumbai - 400036
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFPS2666B		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	H.M. Bhatt

Date of Hearing	14.05.2024
Date of Pronouncement	04.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order of ld. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2011-12.

2. The return of income declaring total income of Rs.15,07,200/- was filed on 28.09.2011. The return was processed u/s 143(1) of the Act. Subsequently, information was received from the DGIT(Inv), Mumbai regarding bogus/accommodation entries of purchases provided by certain parties as per the information provided by the Sales Tax Department, Government of Maharashtra. As per the information provided during the financial year 2010-11 the assessee had obtained the accommodation entries of purchases from the following parties:

<i>Sr. No.</i>	<i>Hawala Name</i>	<i>Amount</i>
1.	<i>Vatsa Enterprises</i>	<i>2,65,241</i>
2.	<i>Laxman Sales Pvt. Ltd.</i>	<i>1,94,962</i>
3.	<i>Swastik Enterprises</i>	<i>6,12,408</i>
4.	<i>D.N. Enterprises</i>	<i>4,15,756</i>
5.	<i>Reliance Enterprises</i>	<i>1,37,392</i>
6.	<i>Dhani Products Pvt. Ltd.</i>	<i>1,69,313</i>
7.	<i>Raj International</i>	<i>2,05,875</i>
8.	<i>Real Traders</i>	<i>2,59,311</i>
9.	<i>Vardhman Traders</i>	<i>2,26,564</i>
10.	<i>Vaishali Enterprises</i>	<i>2,80,294</i>
11.	<i>Everready Marketing Pvt. Ltd.</i>	<i>2,19,228</i>
12.	<i>M.N. Comtrade Pvt. Ltd.</i>	<i>3,49,621</i>
13.	<i>Mahi Sales Pvt. Ltd.</i>	<i>11,15,803</i>
14.	<i>Abhilasha Sales Pvt. Ltd.</i>	<i>12,28,736</i>
15.	<i>Anshu Mercantile Pvt. Ltd.</i>	<i>87,688</i>
16.	<i>Dhiren Mercantile Pvt. Ltd.</i>	<i>1,13,129</i>
17.	<i>Ashley Tradres Pvt. Ltd.</i>	<i>4,73,355</i>
18.	<i>Choksi Brothers</i>	<i>15,48,358</i>
19.	<i>R.S. Industries</i>	<i>3,18,634</i>
20.	<i>Globe Impex India</i>	<i>5,59,626</i>
21.	<i>Meridain Trading Co.</i>	<i>6,34,047</i>
22.	<i>Banjara Enterprises</i>	<i>1,60,313</i>
23.	<i>Aadeshwar Enterprises</i>	<i>2,11,808</i>
24.	<i>Real Value commercial Pvt. Ltd.</i>	<i>2,56,331</i>
25.	<i>Waksons Enterprises</i>	<i>2,68,706</i>
26.	<i>Sai Jain Trading Pvt. Ltd.</i>	<i>2,98,643</i>
28.	<i>Vihol Enterprises</i>	<i>3,54,830</i>
29.	<i>Binal Enterprises</i>	<i>3,81,697</i>
30.	<i>Comex Trading Co.</i>	<i>4,10,377</i>
31.	<i>Kamalnayan Exim Pvt. Ltd.</i>	<i>5,77,750</i>
32.	<i>Riddhi Siddhi Corporation</i>	<i>6,36,412</i>
33.	<i>H.R. Sales Pvt. Ltd.</i>	<i>6,49,945</i>
34.	<i>Shivam Sales Corporation</i>	<i>7,16,041</i>
35.	<i>Rushabh Enterprises</i>	<i>8,63,323</i>
36.	<i>Patel Trade Link Pvt. Ltd.</i>	<i>10,10,542</i>
	<i>Total</i>	<i>1,74,48,059</i>

On the basis of the aforesaid information the case of the assessee was reopened u/s 147 of the Act by issuing of notice u/s 148 dated 21.03.2016. During the course of assessment assessee has not made any compliance before the assessing officer. The assessing officer stated in the assessment order that assessee was required to furnish the details such as correct and complete addresses of the aforesaid parties, purchase details, invoice/bills, copies of ledger accounts, details of transportation of goods i.e lorry receipts, etc. The AO also stated that notices u/s 133(6) of the Act issued to the aforesaid parties were returned unserved with the remark 'not known'. The assessing officer

observed that assessee had adopted a modus operandi to reduce his true profits by inflating expenses including purchases. The AO has arrived at the conclusion that purchases shown by the assessee in the books of account were inflated to suppress the profit. The AO further stated that assessee had not filed relevant supporting document as mentioned supra in this order and assessee has failed to establish the genuineness of purchases made by the assessee, therefore 100% purchases amounting to Rs.1,74,48,059/- was added to the total income of the assessee by treating the same as unexplained expenditure.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has partly allowed the appeal of the assessee by restricting the addition to the extent of 12.5% of the aforesaid purchases of Rs.1,74,48,059/-.

4. During the course of appellate proceedings before us the ld. D.R has supported the order of assessing officer.

5. Heard the ld. D.R and perused the material on record. The assessing officer has treated the whole purchases as non genuine on the basis of information provided by the Sales Tax Department and because of not making any compliance by the assessee during the course of assessment proceedings. We have perused the decision of ld. CIT(A) wherein after referring the decision of Hon'ble jurisdictional High Court held that 100% purchases cannot be disallowed without disturbing the corresponding sales shown against such purchases. The relevant extract of the decision of CIT(A) is reproduced as under:

“5. The issue of assessment of income under the Act in the context of alleged bogus purchase found by sales tax department initially and then investigated by Income Tax department is no more res integra. There are several cases adjudicated by courts and Tribunals across the country including jurisdictional Bombay High Court and Income Tax Appellate Tribunal (ITAT in short), Mumbai Bench.

6. *In Babulal Hajarimalji Jain vs. ITO (ITAT Mumbai) ITA No.274/M/2023, it was held,*

“6. Undisputedly the entire addition in this case has been made by the AO as well as Ld. CIT(A) on the basis of guess work and estimation on the basis of some alleged information received from Sales Tax Department of Maharashtra and from DGIT (Inv.), Mumbai that “the assessee has taken bogus purchase bills without having taken any delivery of the goods, without applying their mind. It is also not in dispute that the AO has also not examined the books of accounts of the assessee nor has reached a definite conclusion that the bills for purchasing the goods relied upon by the assessee are bogus but simply made the addition on the basis of information received from DGIT (Inv.) and from Sales Tax Department of Maharashtra.

10. The Hon'ble High Court of Bombay in case of Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings

“4. Having considered the memo of Appeal and the Orders passed by AO/CIT(A) and the Order of ITAT, the only issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.

5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.

11. In view of what has been discussed above and following the order passed by the Hon'ble Bombay High Court (supra), we are of the considered view that in the light of the gross profit earned by the assessee in the earlier years on the basis of which profit element was fixed at 6.5% of the alleged bogus purchases, we direct the AO to charge the assessee at the gross profit rate @ 6.5% on bogus purchases of Rs. 3,70,79,423/-

7. The hon'ble Bombay High Court in the case of Pr. CIT v. Nitin Ramdeoji Lohia [2022] 145 taxmann.com 546 held that where Assessing Officer made addition by disallowing expenses on purchases on ground that an information was received from sales tax department that assessee was beneficiary of accommodation entries on account of bogus purchases, since Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, impugned addition made on account of bogus purchases to be

deleted. The Commissioner (Appeals) also observed that the Assessing Officer had not made available any evidence to show that the money which was given by cheques to such persons had come back to the assessee in the form of case In DCIT Vs Silmohan Gems Private Limited (ITAT Mumbai), ITA Nos 450 & 449/Mum/2023, also it was held similarly.

8. In PCIT Vs M/s Mohommad Haji Adam & Co. (Bombay High Court), it was held-

"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases"

9. In ITO vs. Madhukar Yashwant Kutrekar, ITA no. 4689/Mum/2019, Income Tax Appellate Tribunal (ITAT in short), Mumbai Bench, held.

"On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, I do not find any infirmity in the order passed by the Ld.CIT(A) in restricting the addition to 13.71% as against the entire bogus purchases disallowed by the Assessing Officer. Grounds raised by the revenue are dismissed. In arriving at the above decision, the ITAT cited the judgment of ITAT in another case:

7.4.5 The Hon'ble ITAT, Mumbai vide its order dated 14.12.2016, in the case of Shri Ashwin Purushotam Bajaj in ITA Nos. 4736/Mum/2014 and 5207/Mum/20:14 has adjudicated similar facts/circumstances, 05 that of in the present case. Therein also the Ld. AO had held that the assessee had made purchases to the tune of Rs. 1,13,44,77/- from allegedly bogus parties as per information received from Sales Tax Department, Government of Maharashtra, who as per Government of Maharashtra web-site are suspicious parties providing accommodation entries and are thus bogus bill giving entities without doing any business. In view of the facts and circumstances of said case, the Assessing Officer therein observed that human probability is that goods mentioned in the paper transactions have been purchased by the assessee through an undisclosed entity the assessee does not wish to disclose and purchases were made from undisclosed source of income. Accordingly, the Assessing Officer added the said sum of Rs. 1,13,44,778/- to the total Income of the assessee u/s 69C of the Act. The Ld CIT(A) after considering the materials on records held that when the Assessing officer has not doubted the genuineness of Sales, could not have gone ahead and made the

addition in respect of maximum credit balance of purchase especially when the AO himself recorded a finding that the assessee made purchases from some other party and the Ld. CIT(A) observed that the element of profit embedded in bogus purchases which the assessee would have made from some unknown entities needs to be computed and estimated the same @ 12.5% of such bogus purchase. Accordingly, the Ld. CIT(A) partly allowed the appeal on this issue. Before the Hon'ble TAT both the Revenue and the assessee preferred an appeal against said order of the Ld. CIT(A). The Hon'ble ITAT dismissed both the appeals filed by the Revenue and assessee and held as under:

"The assessee has to discharge the primary onus as to the genuineness and bonafide of the transaction of purchase of goods. It is observed that the A.O. has made addition of the entire purchases amount to Rs.1.13 crores by making additions of Rs. 1,31,88,227/-being peak credit payable during the year for purchases to these parties which included balance of Rs.18,43,451/- for purchases made in the earlier year, while the AO has, however, not doubted the sales made by the assessee against these purchases. The assessee has reconciled the quantitative details of the stock reflected in these purchases with quantitative details of stock as per sale invoices. The A.O has doubted the purchases from these four alleged accommodation entry providers being hawala dealers as Concluded by Sales Tax Department of Government of Maharashtra to be bogus purchases, that these four parties only provided accommodation bills and the goods were never supplied by these parties and the assessee allegedly made purchases from some other parties for which payments were made through undisclosed income. Thus, the A.O observed that the assessee has purchased the material from someone else while bogus bills were organized by these hawala dealers, hence, section 69C of the Act was invoked by the AO and additions were made by the AO. The conclusion of the Id. CIT(A) that the assessee has purchased material from some other dealers but quantitative reconciliation of the stock was duly done by the assessee of the sale and purchase and hence the profit element in this accommodation entries are to be added to the income cannot be faulted. The Id. CIT(A) restricted the addition by estimating GP ratio of 12.5% of Rs.1,13,44,778/- being purchases from these alleged four accommodation entry providers We do not find any infirmity in the well reasoned order of the Id CIT(A) whereby net profit was estimated which was a reasonable estimation made by learned C/T(A) and we sustain/affirm the order of learned CIT(A) In the result, we dismiss both the appeal of the assessee as well of Revenue. We order accordingly."

10. Respectfully following the ratio of ITAT and jurisdictional Bombay High Court and considering that the AO has not disputed sales and related expenses and considering that the appellant also stated that 10-15% is the usual percentage of profit in the line, I consider 12.5% will be right as profit percentage instead of adding entire amount of purchase. Accordingly, I reduce the addition from Rs. 1,74,48,059/- to Rs. 21,81,007/- (12.5% of Rs 1,74,48,059/-)."

In the case of the assessee, the assessing officer has not disproved the corresponding sales made against the purchases. The Id. CIT(A) has discussed in his findings the view taken by the courts that in such circumstances only the profit element embedded in such transactions could be taxed. In the light of above facts and circumstances, we don't find any infirmity in the decision of Id. CIT(A) and we consider that Id. CIT(A) has reasonably estimated the gross profit @ 12.5% after following judicial pronouncements of the Hon'ble jurisdictional High Court as discussed supra in his findings. Accordingly, the ground of appeal filed by the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 04.07.2024

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 04.07.2024
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.