

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 991/MUM/2024  
(A.Y.2010-11)

ITO(IT)-3(1)(1), Room No.1630, AIR India Building, Nariman Point, Mumbai-400021.	Vs.	Mohit Jain, 24,CCI Chambers, D.N Vachha Road, Mumbai-400020.
PAN/GIR No. AFAPJ6477R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri P.D.Chougule.Sr.DR
Respondent by	Shri.Jayant.R.Bhatt.AR

सुनवाई की तारीख/Date of Hearing	10.06.2024
घोषणा की तारीख/Date of Pronouncement	01.07.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – 51, Mumbai passed u/sec 143(3) r.w.s 147 and u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

*“1 . Whether on the facts and in circumstances of the case and in the law, the Ld.CIT(A) was erred in restricting addition/disallowance made on account of bogus purchases to 1.97% of gross profit instead of upholding AO's action of disallowing entire bogus purchases?”*

*2. Whether on the facts and in circumstances of the case and in the law, the Ld.CIT(A) was correct in placing reliance on Tribunal's order in the assessee's own case, and thereby taking contrary view against the law laid down by Hon'ble Supreme Court in the case of NK Proteins V. CIT, 84 Taxmann.com 195 (SC) (2017), wherein it was held that entire undisclosed income generated out of bogus transactions deserves to be added back to the total income.*

*3. Whether on the facts and in circumstances of the case and in the law, the Ld.CIT(A) has failed to appreciate the fact that there has been concrete findings that the assessee is indulged in providing bogus accommodation entry and has not undertaken any genuine transactions in respect of impugned purchases”*

2. The brief facts of the case are that, the assessee is engaged in the business of trading of iron and steel. The assessee has filed the return of income for the A.Y 2010-11 on 19.09.2010 disclosing a total income of Rs.20,50,730/- and the Assessing Officer (A.O) has rejected the books of account and estimated the gross profit margin @3% on the total turnover and determined the total income of Rs. 46,44,780/- and passed the order u/sec 143(3) of the Act dated 28.03.2013. Subsequently, the Assessing Officer (AO) has received the information from DGIT (Inv), Mumbai that the assessee was engaged in bogus purchase transactions as per Sales Tax Department of Maharashtra and the assessee is a beneficiary. The Assessing Officer (AO) has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. Subsequently the notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire was

issued. In compliance to notices, the Ld. AR of the Assessee appeared from time to time and submitted the financial statements and details in support of return of income filed. The AO has dealt on the facts with respect to turnover and found that the assessee has made transactions of bogus purchases with 10 parties aggregating to Rs.5,75,30,617/-.The AO has called for the details to substantiate the genuineness of transactions along with the evidences. Further the A.O. has issued notice u/s 133(6) of the Act on the parties and the said notices were returned un served by postal authorities. The assessee was asked to produce the books of accounts, sales bills, purchase transactions, bank statements etc. Whereas the AO was not satisfied with the explanations and details and has dealt on the various facts and modus operandi of the transactions and is of the opinion that the purchase transactions are not genuine and made addition of bogus purchases u/sec 69C of the Act of Rs.5,75,30,617/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 31.02.2016.

3. Aggrieved by the A.O. order, the assessee has filed an appeal before the CIT(A). In appellate proceedings, the CIT(A) has considered the grounds of appeal, findings of the Assessing Officer in scrutiny assessment on the disputed issue, submissions of the assessee and the remand report. Whereas the CIT(A) has sustained the validity of reassessment proceedings and further has

relied on the Honble Tribunal decision in the assessee's own case. Accordingly the CIT(A) has restricted the addition @ 1.97 % of the total turnover and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed the appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in restricting the addition irrespective of the fact that partial information was filed by the assessee in the Assessment proceedings and the Ld.DR relied on the order of the A.O. Per Contra, the Ld.AR supported the order of the CIT(A) and substantiated the submissions relying on the factual paper book and the Honble Tribunal decision in the assessee's own case

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has erred in restricting the GP ratio u/sec 69C of the Act irrespective of the fact that the assessee has obtained bogus purchase bills. Whereas, the CIT(A) has dealt on the facts, remand report and relied on the judicial decision and is of an opinion that the profit embedded in the transactions has to be taxed. Further the CIT(A) has considered the Honble Tribunal decision in the assessee's own case and restricted the GP rate @ 1.97% and partly allowed the assessee appeal dealt at Page 23 Para 8 to 10 of the order read as under:

*“8. Ground No. 2 pertains to the addition of Rs. 5,75,30,617/- made by the AO on account of bogus purchases.*

*8.1 The AO found that the assessee had made purchases amounting to Rs. 5,75,30,617/- from bogus Hawala Parties. Since it was established, as a result of independent inquiry by the Investigation Wing of the Department as well as Sales Tax Department, that these concerns were only providing accommodation entries without supplying any goods, the AO concluded that the assessee had only obtained bills from these parties without actually getting any material. These bills were thus held to be nothing but accommodation entries taken to suppress the profits and the AO added the entire amount of such bogus purchases amounting to Rs. 5,75,30,617/- to the total income of the assessee.*

*8.2 The appellant on the other hand has argued that the same issue of the impugned purchases from the alleged Hawala Parties was already considered by the AO at the time of the original assessment proceedings and vide the original assessment order dated 28.03.2013 the books were rejected and the GP was estimated @3% of the total turnover. The total turnover being Rs 9,68,53,444/-. The AO had thus made an addition of Rs. 13,94,055/- at the time of the original assessment on this issue. In appeal, the then Ld CIT (A) vide order dated 13.11.2014 had reduced the estimation of GP to 2.5% of the total turnover. The Hon'ble ITAT Mumbai in the assessee's own case vide order dated 26.08.2016 in ITA No. 1130/Mum/2015 further reduced the estimation of GP to 1.97%. The said ITAT order was not contested by the Department by way of further appeal. The relevant extracts of the aforesaid order of the Hon'ble ITAT are as under:*

*"Ground No. 2 relates to the estimation of gross profit @2.5% against the gross profit declared by the assessee @1.56%. The brief facts related to this issue are that the Assessing Officer rejected the books of and invoked the provisions of section*

*145(3) of the Act. After rejecting the books of account, the Assessing Officer estimated the After count profit @3%. When the matter went before the CIT(A), the assessee did not challenge the rejection of books of account. The CIT(A) reduced the estimation of gross profit @2.5%. Rejection of books of account is not the issue before me as the assessee has not challenged the same. The only issue before me is estimation of profit. The assessee has shown the gross profit @1.56%. The provision of section 145(3) clearly laid out that once the books of account are rejected, the Assessing Officer has to determine the income in the manner as stated u/s 144 of the Act. Section 144 talks of the determination of income on the basis of material available on record and as gathered by the Assessing Officer. I noted that the Assessing Officer even though observed that the gross profit in this line of business is more than 3% but has not given any instance. Similarly, the CIT(A) has also not given any comparative instance. Under these facts, estimation of the gross profit by the CIT(A) @2.5%, in my opinion, is on the higher side. Keeping in view the facts and circumstances of the case and the line of business in which the assessee is involved, I feel it will meet the ends of justice if the gross profit is estimated @1.97% I accordingly set aside the order of CIT(A) and direct the Assessing Officer to determine the income of the assessee estimating the gross profit @1.97%.*

*8.5 The settled position of the law is that the onus lies on the appellant to prove the genuineness of the purchase transactions claimed as genuine. However, as seen from the records, this onus has not been discharged. The Courts have time and again held that if the investigation done by the department leads to a doubt in respect of the genuineness of the transactions/purchases, it is incumbent on the assessee to produce the parties along with the necessary documents to establish the genuineness. In the instant case, there is uncontroverted evidence regarding the bogus nature of the purchases from an impeccable source ie the Investigation Wing of the Income Tax Department and also the Sales Tax*

*Department that the so-called sellers have been issuing bogus bills which are in the nature of accommodation entries. On the same set of facts, the AO, during the course of the original assessment proceedings, had come to the conclusion that the assessee, on account of such accommodation entries, had suppressed his GP which was estimated by the AO to be 3% of the total turnover against 1.56% declared by the assessee. The Hon'ble ITAT reduced the estimation of GP to 1.97%. The AO in his remand report dated 02.05.2019 has stated that no further appeal has been filed against the order of the Hon'ble ITAT. Therefore, respectfully following the Hon'ble Mumbai ITAT in the assessee's own case as above, the AO is directed to determine the income of the assessee by taking the GP@ 1.97% of the total turnover instead of the rate of 1.56% declared by the assessee. The addition would therefore be restricted to 0.41% [1.97% minus 1.56%) of the total turnover. This ground of appeal is, therefore, partly allowed.*

*9. Ground No. 3 is general in nature and does not require any adjudication.*

*10. As a result, the appeal is partly allowed”.*

6. We find that the CIT (A) considering the facts, circumstances and the judicial decisions has restricted the addition to the extent of profit embedded in the transactions. The Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material to take a different view but relied only on the A.O order. Whereas the CIT(A) dealt on the facts, remand report and has considered the profit element in the bogus purchases and the Honble Tribunal decision in the assessee own case. We have considered the facts, circumstances, submissions and respectfully follow the judicial precedence and are of the view that the CIT(A) has passed a conclusive and reasoned order.

Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 01.07.2024.

Sd/-  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 01/07/2024

KRK

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai