

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAJ KUMAR CHAUHAN, JM

**ITA No.1925/Mum/2024**  
(Assessment Year: 2011-12)

ACTUBE ENTERPRISE  
82, Narayan Dhuru Street,  
2<sup>nd</sup> floor, Mumbai-400 003

Vs.

Income Tax Officer,  
Ward 34(1)(1),  
Kautilya Bhavan,  
Mumbai-400051

**(Appellant)**

**(Respondent)**

**PAN No. AABFA2570J**

**Assessee by** : Shri V.P. Kothari, AR  
**Revenue by** : Shri Dhiraj Kumar, DR

**Date of hearing:** 18.07.2024

**Date of pronouncement** 26.07.2024

:

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 1925/Mum/2024 is filed by ACTUBE Enterprise, Mumbai (assessee /appellant) against the appellant order passed by the Addl. Commissioner of Income Tax (Appeal) ADDL/JCIT (A)-3, Kolkata [the learned CIT (A)], for A.Y. 2011-12, dated 22<sup>nd</sup> March, 2024, wherein the appeal filed by the assessee against the assessment order passed by the Income Tax Officer, ward 25(2)(1), Mumbai (the learned Assessing Officer under Section



143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 30<sup>th</sup> November, 2016, was dismissed.

02. The only ground of appeal of the assessee is confirmation of the addition of ₹18,67,913/- under Section 69C of the Act on account of non-genuine purchases.
03. The brief fact shows that the assessee is engaged in the business of manufacturing and supplying goods for railway workshop and engineering consumables. It filed its return of income on 6<sup>th</sup> September, 2011, at ₹19,890/-. Notice under Section 148 of the Act was issued on 22<sup>nd</sup> February, 2016, for the reason that assessee was found to have purchased invoices without goods from accommodation parties named in Sales tax Inquiries.. The learned Assessing Officer found that assessee has purchased invoices of ₹18,67,913/- from four different parties. These parties were found to be bogus hawala dealers. During the course of assessment, notices under Section 133(6) of the Income-tax Act, 1961 (the Act) were issued to the parties and assessee was also asked to produce those parties. However, assessee failed to do so. The learned Assessing Officer rejected the books of account of the assessee by applying provisions of Section 145 of the Act and made addition of 100% of the bogus supply. Accordingly, the total income of the assessee was assessed at ₹18,87,810/-.
04. Before the learned CIT (A), assessee did not succeed and appeal was dismissed. Therefore, the assessee is in appeal before us.
05. The learned Authorized Representative submitted that identical issue arose in case of the assessee for A.Y. 2010-11 and matter reached to the Hon'ble High Court wherein in Income Tax



Appeal No. 1173 of 2020, filed by the Revenue were dismissed. He submits that the issue is identical and addition confirmed by the ITAT @ 12.5% were upheld.

06. The learned Departmental Representative supported the order of the learned lower authorities.
07. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The assessee was found to have obtained the invoices from bogus hawala parties of purchases amounting to ₹18,67,913/-. On identical facts and circumstances, the co-ordinate Bench in assessee's own case in ITA No. 3941/Mum/2017 dated 5<sup>th</sup> August, 2019, for A.Y. 2010-11 has held that the addition to the extent of only 12.5% is chargeable to taxes. This order was challenged by the Revenue before the Hon'ble High Court, wherein the appeal of the Revenue was disposed off by order dated 12<sup>th</sup> April, 2022. In view of the decision of the co-ordinate Bench in assessee's own case confirmed by decision of the Hon'ble High Court on the challenge of the order of the ITAT, we direct the learned Assessing Officer to restrict the addition to the extent of 12.5% of such bogus purchases. Accordingly, the appeal of the assessee is partly allowed.
08. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.07. 2024.

Sd/-  
(RAJ KUMAR CHAUHAN)  
(JUDICIAL MEMBER)

Mumbai, Dated:26.07.2024

*Sudip Sarkar, Sr.PS*

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

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