

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA NO. 2630/MUM/2024 & : A.Y : 2011-12
CO NO. 143/MUM/2024**

Income Tax Officer,
Mumbai. (Appellant)

Vs. Sameer Mahesh Sachde
Room no. 84/85, 3rd floor,
69, B. Kutchi Lohana Niwas,
Mumbai 400 010.
PAN : AHZPS4210J
(Respondent/Cross Objector)

**Appellant by : Shri Pravin Chavan
Respondent by : Shri Vimal Punmiya**

**Date of Hearing : 30/07/2024
Date of Pronouncement : 02/08/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The appeal filed by the Revenue and the Cross objection filed by the assessee are directed against the order passed by the learned Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' for short) and they relate to assessment year 2011-12. Both the parties are aggrieved with the decision of the learned CIT(A) with regard to the income estimated by him on alleged bogus purchases.

2. The facts relating to the issue are stated in brief. The assessee is the proprietor of M/s. Nova Steel Corporation, which is engaged in the business of trading in ferrous and non-ferrous metals like stainless steel bars, rods, wires, etc. The Assessing Officer received information from the DGIT (Inv.), Mumbai that the assessee has availed accommodation entries in the form of bogus purchases from hawala operators. Accordingly, the Assessing Officer reopened the assessment for the year under consideration by issuing notice under Section 148 of the Income Tax Act, 1961 ('Act' for short). The Assessing Officer noticed that the assessee has purchased goods from six hawala traders to the tune of Rs.41,57,681/-. The assessee submitted before the Assessing Officer that he has actually purchased goods from the above said parties. It was submitted that the assessee has sold all the above said goods. It was submitted that the purchases and sales could be reconciled through the stock register. The Assessing Officer did not accept the contentions of the assessee and accordingly, disallowed the entire amount of alleged bogus purchases of Rs.41,57,681/-.

3. In the appellate proceedings, the Ld CIT(A) referred to the decision rendered by Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth (356 ITR 451)(Guj), wherein it was held that only the profit earned from alleged bogus purchases could be assessed. The Ld CIT(A) also followed the decision rendered by the ITAT in the case of Leelaben Kantilal Parekh vs. ITO (ITA 2926/M/2023), wherein the Tribunal has estimated the profit element observing that it is possible that the assessee procured material from one source and bill from another source. Accordingly, the learned CIT(A) estimate the profit from alleged bogus purchases @ 10% and accordingly restricted the addition to 10% of the value of bogus purchases. Aggrieved by the relief granted by the learned CIT(A),

the Revenue has filed this appeal, while in the Cross objection, the assessee has challenged the addition sustained by the learned CIT(A).

4. The main contention of the assessee is that the purchases have been recorded in the stock register and all the goods have been sold. So, it is the contention of the assessee that it could not have sold goods without actually purchasing it. The assessee further submitted that it has furnished the copies of invoices for purchases as well as sales. Further, the payments for purchases were made through banking channel. Accordingly, it was contended that the Assessing Officer could not have made the addition without disproving the documents furnished by the assessee. The assessee further relied on the decision rendered by the Hon'ble Bombay High Court in the case of *PCIT vs Mohommad Haji Adam & Co.* (Income Tax Appeal 1004 of 2016 dated 11.2.2019) wherein it was held by the Bombay High Court that the addition should be limited to the extent of bringing the gross profit rate on alleged bogus purchase at the same rate of other genuine purchases. The learned AR further submitted that various Benches of the Tribunal have estimated the gross profit rate on the alleged bogus purchases at rate ranging from 0.21% to 2.1%.

5. The learned DR, on the contrary, submitted that the assessee has not proved the movement of goods. Accordingly, he submitted that the order passed by the Assessing Officer should be upheld.

6. We heard the parties and perused the record. There is no dispute that the assessee could match the sales relating to alleged bogus purchases. Before us also, the assessee has furnished the stock reconciliation statement. The documents produced by the assessee in this regard have not been doubted with

or disproved by the AO. Since the assessee has sold the goods, the corresponding purchases cannot be doubted with, since the said goods could not have been sold without purchasing them. In view of the allegation that the assessee has purchased from hawala operators, as observed by the Tribunal in the case of Leelaben Kantilal Parekh (supra), it is possible that the assessee might have purchased goods from one source and obtained bill from another source. We noticed that the various Benches of the Tribunal have estimated the profit that could have been made by the assessee on the alleged bogus purchases. Hence, as per the decision rendered by Hon'ble Gujarat High Court in the case of Simit P Sheth (supra), we are of the view that the Ld CIT(A) was right in holding that the entire purchases could not be disallowed and profit element alone could be assessed. We noticed that the Ld CIT(A) has estimated the profit @ 10%. For arriving at the rate, the Ld CIT(A) has not given any basis.

7. We notice that the Hon'ble Jurisdictional High Court has held in case of *Mohammad Haji Adam & Co. (supra)* that the addition should be restricted to the difference between the gross profit on genuine purchases and the alleged bogus purchases. Thus, the profit rate should be determined on the basis of facts prevailing in each case. In the instant case, we noticed that the average gross profit declared by the assessee in the books is 3.4%. We also noticed earlier that various Benches of the Tribunal have estimated the gross profit at the rate ranging from 0.21% to 2.1% for a trader dealing in ferrous and non-ferrous metals. Accordingly, we are of the view that the profit rate, in the instant case, may be taken at the rate of 2.5% and the same would put the dispute at rest. Accordingly, we modify the order passed by the learned CIT(A) and direct

the Assessing Officer to restrict the addition to 2.5% of the value of alleged bogus purchases.

8. In the result, the appeal filed by the Revenue is dismissed and the Cross objection filed by the assessee is partly allowed.

Order pronounced in the open court on 2nd August, 2024.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 2nd August, 2024

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "J (SMC)" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai