

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.835/M/2024
Assessment Year: 2011-12**

Income Tax Officer- 19(2)(2) Room No. 503, 5 th Floor, Piramal Chamber, Lalbaugh, Parel- 400012.	Vs.	Shri. Khemaram Mandrupji Prajapati Room No. 2, Alka Smurti, 20 Bhandari Street, 1 st Kumbharwada Lane, Mumbai- 400004. PAN: ALQPP452IN
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Mayur Makadia, A.R.

Revenue by : Ms. Kakoli Ghosh, SR. D.R.

Date of Hearing : 25 . 06 . 2024

Date of Pronouncement : 25 . 07 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-

24/1059243939(1) Dated 01/01/2024 for the Assessment Year 2011-

12.

2. Following grounds of appeal have been raised by the appellant:

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 5% as against 12.5% addition made by the Assessing Officer on account of bogus purchases of Rs.1,91,16,306/-, by ignoring the fact that the Sales Tax Department, Govt. of Maharashtra has proved beyond doubt that alleged eight parties were declared as hawala traders, who were involved in providing only accommodation entry of purchases/sales transactions and the assessee was found to be one of the beneficiary of accepting accommodation entry for the purchase?"*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 5% as against 12.5% addition made by the Assessing Officer on account of bogus purchases of Rs.1,91,16,306/-, by ignoring the fact that action of the Assessing Officer was based on credible information received from the Sales Tax Department, Maharashtra State, and that the assessee during course of proceedings failed to produce any concrete evidence to establish the genuineness and creditworthiness of purchase transactions and of alleged parties/hawala Traders ?"*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 5% as against 12.5% addition made by the Assessing Officer on account of bogus purchases of Rs.1,91,16,306/-, by ignoring the fact that assessee could neither the quantity tally of day to day purchases, Sales, Stocks and corresponding values nor could produce the parties for verification in spite of opportunity provided by the Assessing Officer?"*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 5% as against 12.5% addition made by the Assessing Officer on account of bogus purchases of Rs.1,91,16,306/-, without appreciating the fact that the Assessing Officer has given detailed reasoning for quantifying the additions and Ld.CIT(A) has erred in not providing the adequate reasons for pegged to restrict the addition @ 5% as against 12.5% of bogus purchases?"*
 5. *Whether on the facts and in the circumstances of the case and in days the L. CITA) has erred in restricting the addition @ 5% as against 12.5% addition made by the Assessing Officer on account of bogus purchases of Rs.1,91,16,306/-, by ignoring the fact that it is a settled position in law that when an expenditure related to purchases, is claimed and debited to the Trading/profit and loss account, the onus is on the assessee to substantiate and prove the genuineness of the claim and commercial expediency of incurring such expenditure, which the assessee has failed to prove the during the assessment proceedings?"*
 6. *This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No. 3 of 2018 dated 11/07/2018 as amended vide P.No.279/Misc. 142/2007-IIJ(Pt) dated 20/08/2018.*
 7. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*
3. The facts of the case, in brief, are that the appellant is an individual and engaged in the business of trading in Ferrous and Non-ferrous metal scrap under the name & style of proprietary concern i.e. M/s. Pooja Steel (India). The return of income for the assessment year 2011-12 was filed on 13/09/2011 declaring the total income of

Rs.5,93,824/-. The AO received information from DGIT (Inv.) Wing, Mumbai that some of the dealers were indulged in the practice of providing accommodation entries in the form of issuing bogus sales/purchases bills without supplying any goods. As per the list of such parties forwarded by the DGIT Investigation Mumbai, the assessee was one of the beneficiaries of such bogus bills. The Assessing officer, therefore, reopened the case of the assessee and issued notice u/s. 148 of the Act and served upon the assessee. In response to the notice u/s.148, the assessee informed the department that the original return of income filed on 30/09/2011 may be treated as return filed u/s. 148 of the Income Tax Act. The AO, thereafter, issued statutory notices u/s. 142(1) and 143(2) of the Act from time to time and assessee made compliance to those notices. Finally, the AO after considering the facts of the case and the submissions made by the assessee, assessed the income at Rs.29,83,060/- being 12.5% of the alleged bogus purchases of Rs.1,91,16,306/-.

4. Aggrieved by the order of the AO, the assessee filed appeal before the Ld. CIT(A), who, restricted the addition from 12.5% to 5% of the alleged bogus purchases of Rs.1,91,16,306/-.
5. Not satisfied with the order of the Ld. CIT (A), the revenue has filed this appeal. During the submission before us, the Ld. CIT D.R. of the department submitted that this is a case of bogus purchases of

Rs.1,91,16,306/- as per the information received from DGIT (Inv.), Mumbai from Sales Tax Department, Government of Maharashtra that some of the parties were declared by them as “Hawala Traders” who were involved in providing accommodation entries of sales and purchases and the assessee was one of the beneficiaries of that accommodation entries. When the assessee was asked to substantiate that the purchases made from the said parties were genuine, the assessee, despite given several opportunities, couldn't explain that the purchases were genuine. The assessee also could not produce the details of quantitative tally of day-to-day purchases, sales, stocks and their corresponding values before the AO. The assessee also failed to produce the parties, in question, before the AO for their examination. According to the CIT D.R. that it is a settled position in law that when an expenditure related to purchases claimed and debited to the trading/profit & loss A/c., the onus is on the assessee to substantiate and prove the genuineness of the claim and commercial expediency of incurring such expenditure. In the present case, the assessee has failed to do so.

6. The A.R., on the other hand, submitted before us that even if the alleged purchases are treated to be bogus, only G.P. addition can be made as applied both by the AO and the Ld. CIT (A at 12.5% and 5% respectively which is higher and be reduced at 3.6% considering the

margin of profit in the sale of Ferrous and Non-ferrous Metal scrap.

We have considered the rival submissions and find that it is a case of admitted bogus purchases and Ld. CIT(A) has already reduced the G.P. addition from 12.5% to 5% in this case. Thus, there is no reason for us to give the assessee any further relief on this count. The appeal of the revenue is accordingly dismissed.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 25.07.2024.

Sd/-
AMIT SHUKLA
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: .2024.
Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.