

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2238 & 2236/Mum/2024**  
**Assessment Year: 2010-11 & 2011-12**

<b>Income Tax Officer - 19(3)(1), Mumbai</b>	Vs	<b>Rameshbhai Khimjibhai Thummar</b> 502, 5 <sup>th</sup> Floor Majestic Theaters Building 144, J.S.S. Road Girgaon Mumbai - 400004 <b>[PAN: ADVPT5947M]</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	None
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 20/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 20/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 2238 & 2236/Mum/2024, are two separate appeals by the revenue preferred against two separate orders dated 28/02/2024 by NFAC, Delhi, [in short "ld. CIT(A)"] pertaining to Assessment Years 2010-11 & 2011-12.

2. Since common grievance is involved in both the appeals, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The common grievance in both the appeals relate to the restriction of addition to 12.5% of the alleged bogus purchases from 100% addition made by the AO.

4. None appeared on behalf of the assessee in spite of notice. Therefore, we proceed to decide the appeal *ex-parte qua* the assessee.

5. We have heard the Id. D/R and carefully perused the orders of the lower authorities.

6. Briefly stated the facts of the case are that during the course of scrutiny assessment proceedings, the AO was seized with an information received from the DGIT (Inv.), Mumbai, regarding the issue of *hawala* bills/accommodation entries from four parties from whom the alleged purchases were made amounting to Rs.3,16,07,230/-. The return of income was accordingly selected for scrutiny assessment by issuing of notice u/s 148 of the Act. Assessee was confronted with the information. The assessee submitted copy of purchase bills, purchase & sale register and bank statement copies but the AO was of the opinion that the purchases are not supported by transport receipts, octroi receipt for payment of octroi duty nor there was receipt of weighbridge for weighing of goods, excise gate pass, goods inward register maintained at godowns/warehouse/storage house etc. The AO concluded by adding 100% of the bogus purchases.

6.1. The assessee challenged the addition before the Id. CIT(A), who after considering the facts in totality and drawing support from several judicial decisions and comparing the gross profit rate of the current year with the gross profit rate of earlier years, the Id. CIT(A) restricted the addition to 12.5% of the alleged bogus purchases and confirmed the additions to the extent of 12.5% and deleted the balance addition.

7. We find that under identical circumstances, when the assessee has furnished the primary evidence, the Hon'ble Courts have estimated the profit on the alleged bogus purchases.

7.1. The Hon'ble Gujarat High Court in the case of *PCIT vs. Rakesh Kailashchand Jain* [2023] 156 taxmann.com 82 (Gujarat), has held as under:-

*"4. When the appeals were taken up for hearing, learned advocate appearing for the Revenue submitted that the order of the Tribunal in the case of Pr. CIT v. Pankaj K. Choudhary was carried in appeal before this court and this court by an oral order dated 7-3-2023] in [Tax Appeal No. 617 of 2022 held as under:*

*"5.3 Considering the facts and relevant aspect, the Income-tax Appellate Tribunal partially allowed the appeal of the assessee to further reduce the disallowance at 6%. In so concluding, the Tribunal observed in paragraph No. 21 as under,*

*".....during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ 78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs. 1,81,840/-only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs. 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Ld. CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in *Mayank Diamond Private Limited* (supra) is directly applicable on the facts of the present case. We find that in *Mayank Diamonds* the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in *Mayank Diamonds P Ltd* (supra), the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases/disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed."*

*6. The view taken and the conclusion arrived at by the appellant Tribunal are based on material before it and after analysing the facts and figure available*

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*before it. When the Tribunal has thought it fit to reduce the disallowance at 6% from 12.5%, the Tribunal had before it the facts which were duly analysed by it. No interference is called for in the said conclusion and findings of the Tribunal in the present appeal by this court.*

*6.1 The another weighing aspect is that the Tax Appeal No. 674 of 2022 in Principal Commissioner of Income-tax 1, Surat v. M/s. Surya Impex which came to be decided by the co-ordinate Bench on 16-1-2023 dealt with the very issue of accommodation entries provided by Bhanwarlal Jain Group. The group involved in the said case is the same group who is saddled with allegations of providing accommodation entry to the assessee. In M/s. Surya Impex (supra) the court held in favour of the assessee. The questions of law involved in the said case were of the same nature and were in the context of similar facts involving the same group."*

7.2. Similar view was taken by the Hon'ble Rajasthan High Court in the case of *Goenka Jewellers vs. CIT [2018] 100 taxmanncom 517 (Rajasthan)*.

8. The decisions relied upon by the Id. CIT(A) are also directly on the point of dispute. Therefore, considering the facts in totality, in the light of the judicial decisions, we do not find any reason to interfere with the finding of the Id. CIT(A).

9. In the result, both the appeals of the revenue are dismissed.

**Order pronounced in the Court on 20<sup>th</sup> August, 2024 at Mumbai.**

Sd/-  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

Sd/-  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 20/08/2024

*Sd/-*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai