

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1211/MUM/2024  
(Assessment Year: 2018-19)**

**Arora Brothers Fashions Private Limited**

G/001, Vikas Centre, Plot No. 106,  
Prima Czar Showroom, Santracuz(W),  
Near Bus Depot, Mumbai- 400054  
[PAN: AALCA7793A]

..... **Appellant**

**Income Tax Officer**

**Ward -12(1)(1), Mumbai**  
R.No. 129, 1<sup>st</sup> Floor, Aaykar Bhavan  
MK Road Mumbai – 400 020

Vs

..... **Respondent**

**ITA No. 1011/MUM/2024  
(Assessment Year: 2018-19)**

**Income Tax Officer**

**Ward -12(1)(1), Mumbai**  
R.No. 129, 1<sup>st</sup> Floor, Aaykar Bhavan  
MK Road Mumbai – 400 020

..... **Appellant**

**Arora Brothers Fashions Private Limited**

G/001, Vikas Centre, Plot No. 106,  
Prima Czar Showroom, Santracuz(W),  
Near Bus Depot, Mumbai- 400054  
[PAN: AALCA7793A]

Vs

..... **Respondent**

**Appearance**

For the Assessee : Shri Mehul Shah  
For the Department : Shri Raj Singh Meel

**Date**

Conclusion of hearing : 11.06.2024  
Pronouncement of order : 26.08.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. These are cross-appeals pertaining to Assessment Year 2018-19 arising from the order, dated 10/01/2024, passed by the National

Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'], whereby the Ld. CIT(A) had partly allowed appeal of the Assessee against the Assessment Order, dated 01/03/2023, passed under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

2. The appeal filed by the Assessee was accompanied by applicable seeking condonation of delay of 4 days in filing the appeal. The delay was on account of time taken to obtain necessary legal advice. In our view, the delay in filing the appeal preferred by the Assessee was not intentional. The Learned Departmental Representative also did not raise any serious objections to the application seeking condonation of delay. Accordingly, the same is allowed and we proceed to adjudicate the appeal on merits.
3. The Assessee has raised following grounds of appeal in ITA No. 1211/MUM/2024:
  - "1. *On the facts and in circumstances of the case, and in law, the Appellant prays for condonation of delay in filing the appeal by four days.*
  2. *On the facts, and in circumstances of the case, and in law, learned Commissioner of income the (Appeal) erred in partially upholding action of the Assessing Officer in restricting the disallowance of purchases amounting to RS. 23,371.849/- to 12.5% of the quantum addition without appreciating that the addition was made by the Assessing Officer without making any Independent inquiry by treating the purchases as bogus in nature on mere suspicion that the parties were identified by the Investigation wing of the department as Suspicious dealers, and without appreciating the fact that the material sourced was in fact resold and identified by your Appellant as having been sold against relevant purchases.*
  3. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) while estimating 12.5% as gross profit on the alleged bogus purchases erred in not appreciating the fact that what could at the best be added was difference in applicable gross profit made on the purchases made; and Gross Profit Ratio offered*

*by the Appellant was 50.77% as compared to 37.12% in immediately preceding precious year, which was quite higher than the estimation made @ 12.5%.”*

4. The Revenue has raised following grounds of appeal in ITA No. 1011/MUM/2024.

- "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 @ 12.5% of the bogus purchases as against entire bogus purchases added by the AO without appreciating the fact that the assessee is one of the beneficiaries of the bogus purchases from Rathi Style and textile Private Limited and SVG Style and Textile Company Private Limited entities of One World Group involved in bogus purchases and sales transactions wherein no actual goods were supplied/transferred?*
- 2. Whether on the facts and in circumstances of the case in law the Ld CIT(A) has erred in not relying on Hon'ble Supreme Court decision in the case of NK Proteins Ltd. us DCIT (2017)292CTR354(SC)*
- 3. Whether on the facts and in the circumstances of the case and in case, the Ld. CIT(A) has erred in restricting the addition @ 12.5% of the bogus purchases as against entire bogus purchases added by the AO without appreciating the fact that once it was established that the purchases from Rathi Style and textile Private Limited and SVG Style and Textile Company Private Limited were bogus, the entire bogus purchases was to be added to the total income of the assessee due to bogus/un-substantiated purchases.*
- 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 64 12.5% of the bogus purchases as against entire bogus purchases added by the AO without appreciating the fact that description of fabric shown to have been purchased from Rathi Style and Textiles Private Limited and SVG Style and Textile Company Private Limited is different from the corresponding sale bills.*
- 5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @12.5% of the bogus purchases as against entire bogus purchases added by the AD without appreciating the fact that as per assessee the transportation charges have been borne by Rathi Style and Textiles Private Limited and SVG Style and textile Company Private Limited, whereas on the other hand these entities do not accept the same implying that the purchases were un-proved.”*

5. The relevant facts in brief are that the Assessee is a private limited company engaged in the business of retail sale of readymade garments, hosiery goods and articles of clothing. The Assessee filed return of income for the Assessment Year 2018-19 declaring income of INR 1,687,910/-. The case of the Assessee was selected for scrutiny and assessment was completed under Section 147 read with section 144B of the Act vide Assessment Order, dated 01/03/2023, at assessed income of INR 2,50,59,759/- after making additions of INR 23,371,849/- under Section 69C of the Act. The Assessing Officer was of the view that the Assessee had taken accommodation entries for bogus purchase from the following entities:

Name of the Party	Amount (INR)
Rathi Style and Textiles Pvt Ltd.	1,07,41,949/-
SVG Style and Textile Company Pvt. Ltd	1,26,29,900/-
	Total 2,33,71,849/-

6. Being aggrieved, the Assessee preferred appeal before the CIT(A) which resulted in partial relief to the Assessee as, vide order dated 10/01/2024, the CIT(A) restricted disallowance on account of bogus purchases to 12.5% of the aggregate purchase amount of INR 2,33,71,849/-.
7. Not being satisfied by the partial relief granted by the CIT(A), the Assessee is in appeal before the Tribunal seeking deletion of the disallowances to the extent confirmed by the CIT(A), while the Revenue has preferred appeal against the order of CIT(A) restricted the disallowance of bogus purchases to 12.5% of the purchase amount.
8. We have heard both the sides and perused the material on record.

9. The case of the Revenue is that entire bogus purchases should be disallowed since the Assessee has failed to provide genuineness of purchases by filling documents showing movement of material. On the other hands it has been contended by the Assessee that it is undisputed position that the Assessing Officer has not disturbed the amount of sales and has accepted the sales disclosed by the Assessee are correct. It has been contended on behalf of the Assessee that there could be no sales without purchases. The Assessee has provided supporting invoices, ledger account, details of stock movement/reconciliation and therefore, the entire amount of the alleged bogus purchases cannot be disallowed. It was submitted that at best the profit element embedded in alleged bogus sales can be brought to tax in the hands of the Assessee. It was further submitted that the Assessee had already disclosed a gross profit margin of 50.77% during the relevant previous year. Thus, the CIT(A) erred in making further addition of 12.5% alleged bogus purchases without taking into consideration the gross profit margin already declared by the Assessee. In support of the aforesaid contention, reliance was placed on the decision of the Hon'ble Bombay High Court in the case of The Principal Commissioner of Income Tax-17 Vs. Mohommad Haji Adam & Co.: Income-Tax Appeal Nos. 1004, 1012, 1013, 1059, 1064, 1075, 1095 And 1204 of 2016, 11/02/2019 reported in [2019] 103 taxmann.com 459 (Bombay)[11/02/2019].
10. We note that as per Note 16 - 'Cost of Material Consumed' forming of Statement of Profit & Loss for the Financial Year ended 31/03/2018, the Assessee had made aggregate purchases of INR 7,99,13,205/- during the relevant previous year out of which purchases aggregating to INR 2,33,71,849/- have been alleged to be bogus. In the case of Mohommad Haji Adam & Co. (supra) the Revenue was aggrieved by the decision of Tribunal whereby the addition on account of alleged bogus purchases were restricted to

the difference between the gross profit rates of genuine sales and alleged bogus sales. Before the Hon'ble Bombay High Court, it was contended by the Revenue that entire purchases should be added. The Hon'ble Bombay High Court rejected the contention of Revenue and declined to frame question of law. While dismissing the appeal preferred by the Revenue on this issue, the Hon'ble Bombay High Court held as under:

*"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under—*

*" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the*

*revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."*

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."

11. On perusal of the above it is clear that the Hon'ble Bombay High Court declined to frame question of law holding that in case of bogus purchases where sales are accepted by the Revenue, entire amount of purchases cannot be added. Further, the Hon'ble Bombay High Court observed that the Tribunal had correctly restricted the additions to the difference in gross profit margins of alleged bogus purchases and other genuine purchases. Thus, the Hon'ble Bombay High Court provided a valid parameter for determining the amount of profits embedded in purchases made from grey market which could be adopted to determine the quantum of addition in a case of alleged bogus purchases representing the benefit drawn by an assessee in making purchases from grey market. We note that in the present case it has been contended by the Assessee that the Assessee has disclosed overall gross profit margin of 50.77%. Accordingly, keeping in view the above judgment of the Hon'ble Bombay High Court in the case of Mohommad Haji Adam & Co. (supra), the Assessing Officer is directed to compute/verify the gross profit margin declared/computed by the Assessee in respect of the genuine purchases as well as the alleged bogus purchases; and thereafter, restrict the quantum of addition sustained by the CIT(A) to the differential amount determined by taking into consideration the difference, if any, in the aforesaid gross profit margins. The Assessee is also directed to co-operate and provide to the Assessing Officer the computation of gross profit margins to implement the aforesaid directions of the Tribunal. In view of the aforesaid, Ground No. 2 & 3 raised by the Assessee are allowed

for statistical purposes. Whereas, all the grounds raised by the Revenue in cross appeal are dismissed as being without merit.

12. In result, the appeal preferred by the Assessee is allowed for statistical purposes whereas the appeal preferred by the Revenue is dismissed.

Order pronounced on 26.08.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 26.08.2024  
*Patil, Sr.P.S.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /((Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai