

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 2069/Mum/2024 (A.Y.2012-13)

Haresh Hansraj Prasad HUF,

L-5 APMC Grain Market II,

Phase II Turbhe,

Maharashtra 400 703

PAN: AAAHH9675Q

..... Appellant

Vs.

ITO Ward-28(1) (5)

Vashi Station Complex,

Mumbai- 400 703

..... Respondent

Appellant by	:	Shri Satyaprakash Singh, Ld. AR
Respondent by	:	Shri P. D. Chougule, Ld. DR
Date of hearing	:	09/07/2024
Date of pronouncement	:	21/08/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 12.03.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

- 1. The order dated 12/03/2024 bearing No. ITBA/NFAC/S/250/2023-24/1062457553(1) by the CIT [A], National Faceless Appeal Centre [NFAC], Delhi is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*

2. on facts and in the circumstances of the case and in law the Hon'ble CIT (A) has erred in confirming the addition of the suspicious purchases even though all the necessary evidence was filed during the course of Assessment Proceedings.

3. the appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal.

2. The brief facts of the case are that the assessee individual filed its return of income on 31.08.2012 and no sale declaring total income at Rs. 14,73,577/-. Thereafter, an information received from the office of DDIT(Inv.), Karnal, wherein it was stated that during the search proceedings u/s. 132 of the Act conducted at the premises of M/s. Mittersain Rajesh Kumar, Karnal certain incriminating documents like loose papers, blank signed cheque books and laptop etc. were seized and it was observed that the party mentioned (supra) is involved in issuing bogus purchase bills in lieu of certain commission and no actual sale/purchase took place during the F.Y. 2011-12. Subsequently, the department issued notices to the banks concerned and, in the information, provided the assessee M/s. H.H. Trading Co., Prop. Shri Haresh Hansraj Prasad (HUF) was also identified as one of the beneficiaries.

3. During the year under consideration the assessee transacted with M/s. Raghuvver Singh Davinder Kumar, Karnal (Firm belongs to the entry provider) mentioned (supra). Thereafter the case of the assessee was reopened u/s. 148 of the Act vide notice dated: 29.03.2019. In response to the same, the assessee filed his return u/s. 148 of the Act vide dated: 23.04.2019 declaring the same figure of income, i.e. 14, 73,577/-. The AO treated the same as bogus purchase transaction, hence the case of the assessee was assessed by making addition of Rs. 36,

57,360/-. The assessee being aggrieved with the same, preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO passed u/s. 143(3) r.w.s. 147 of the Act. The assessee being further aggrieved with the order of the Ld. CIT (A) passed u/s. 250 of the Act preferred the present appeal before us.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. It is observed that the AO himself agreed for sales made by the assessee vide para 5 of the assessment order, wherein he stated *"In order to avoid disallowance u/s. 40A (3) of the Act, the assessee has obtained only the bills from the said party. The purchases have been made from the undisclosed parties in grey market in cash, since the purchase price will be significantly lower. If the purchases are made without bill on account of non-payment of sales tax etc. the supplier also does not pay any income tax and other applicable taxes, which results in lower purchase price for the assessee."*In view of this finding, it is crystal clear that the whole *modus-operandi* was in the knowledge of the AO and he understood that the whole manipulation was done to procure cheaper goods by avoiding applicable taxes on the purchase.

5. We have gone through the order of the Ld. CIT(A) also, wherein a log of hearing notices issued to the assessee and response received is reproduced vide para 4 of the appeal order. Out of 5 hearing notices, the assessee responded against 3 notices. We have considered the facts of the case in the light of judicial pronouncements by the Hon'ble Jurisdictional High Court, Apex Court and coordinate benches also on similar facts. Considering the facts of the case we relied upon the decision of Hon'ble Jurisdictional High Court in the case of [2019]

103 taxmann.com 459 (Bom.)PCIT-17vs.Mohommad Haji Adam & Co., wherein the Hon'ble 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."

6. In view of the facts of the matter and finding of the Hon'ble jurisdictional High Court on similar issue, we deem it fit to restore the matter back to the file of the Jurisdictional AO with a direction to work out the figures of applicable taxes saved by the assessee with this modus-operandi and applicable G.P. rate in such type of trade to be the only addition he can make. It is further directed that G.P.

already declared should be set-off against the G.P. worked out (supra). The assessee is directed to cooperate with the AO during the proceedings without fail and seeking any adjournment. **In these terms grounds raised by the assessee is allowed for statistical purposes.**

7. **In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 21st day of August, 2024.

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/08/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai