

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.4322/M/2023
Assessment Year: 2011-12**

Shri Govindbhai Tribhuvandas Patel, 22, 2 nd Floor, Ranchod Bhuvan, 55, Opera House, Maharashtra- 400 004 PAN: AHBPP4781D	Vs.	Income Tax Officer-19(1)(3), Matru Mandir, Mumbai Maharashtra - 400007
(Appellant)		(Respondent)

**ITA No.4827/M/2023
Assessment Year: 2011-12**

Income Tax Officer-19(1)(3), Piramal Chambers, Lalbaug, Parel, Mumbai Maharashtra - 400012	Vs.	Shri Govindbhai Tribhuvandas Patel, 4/F, Raghav Wadi, Opera House, Mumbai, Maharashtra- 400 007 PAN: AHBPP4781D
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Viraj Mehta, A.R.
Revenue by : Dr. Kishor Dhule, CIT-DR.
Date of Hearing : 04 . 07 .2024
Date of Pronouncement : 26 . 08 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These cross appeals i.e. ITA No.4322/M/2023 by the Assessee and ITA No.4827/M/2023 by the Revenue have been preferred against the order dated 31.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

2. These appeals emanates from the same impugned order, hence for the sake of brevity, the same were heard together and are being disposed of by this composite order. ITA No.4827/M/2023 pertains to the Revenue Department whereas ITA No.4322/M/2023 pertains to the Assessee.

3. We observe that on the basis of search and seizure action conducted in the cases of Pravin Kumar Jain Group on 03.10.2013 by the DGIT (Inv.), Mumbai, wherein it was found that group concerns are all paper companies/firms/proprietorship concern, with no real business activities, operating solely with the purpose of facilitation of fraudulent financial transactions which include, among others, providing of accommodation entries in the form of unsecured loans to interested parties, issuing bogus sale bills to various parties and providing a bogus front to concerns, which do not want to import diamond in their own hands/books of account.

3.1 On going through the documents forwarded by the DGIT (Inv.) Mumbai, it was found by the Assessing Officer (AO) that the Assessee has also obtained accommodation entries of bogus purchases to the tune of Rs.10,16,50,735/- from various concerns of Shri Pravin Kumar Jain & other group concerns during the financial year 2010-11, the details of which are as under:

Sr. No.	Name of the Hawala Party	Financial Year	Transaction Amount (Rs.)
1.	Atharv Business Pvt. Ltd.	2010-11	3,16,71,166/-
2.	Taj Impex	2010-11	2,78,86,720/-
3.	Vanguard Jewels	2010-11	4,20,92,849/-
		TOTAL	10,16,50,735/-

3.2 The AO therefore by recording the reasons for reopening u/s 147 of the Act, re-opened the case of the Assessee and consequently issued the notice dated 29.03.2018 u/s 148 of the Act. In response the Assessee by filing its return of income on 18.04.2018 declared total income at Rs.5,62,430/-. Thereafter, various statutory notices were issued to the Assessee. The AO in order to make third party enquiry also issued notices u/s 133(6) of the Act to various parties from whom the Assessee had made purchases during the year under consideration, however, no reply was received from the said parties.

3.3 Though the Assessee replied to the notices sent by the AO and also furnished various details/documents, however, the AO ultimately treated the entire purchase amount of Rs.10,16,50,735/- as non-genuine transaction and added the same to the total income of the Assessee u/s 69C of the Act.

4. The Assessee, being aggrieved, challenged the re-opening of the assessment u/s 147/148 of the Act and the aforesaid addition before the Ld. Commissioner, who though affirmed the re-opening of the assessment u/s 148 of the Act, however by following the judgment of the Jurisdictional High Court in the case of PCIT vs. SV Jiwani (2022) 145 taxmann.com (Bombay) and the Hon'ble Gujarat High Court judgment in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Guj.) restricted the addition to the tune of 12.5% of the alleged bogus purchases of Rs.10,16,50,735/- instead of 100% addition made by the AO.

5. The Revenue Department, being aggrieved, mainly on the reduction of addition to 12.5%, is in appeal before us, whereas the Assessee by filing separate appeal has challenged the addition restricted to 12.5% on account of disallowance of purchases alleged to be bogus/accommodation entries.

6. We have heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties. The Assessee has relied on the judgment rendered by the co-ordinate Bench of the Tribunal dated 30.11.2022 in the case of Shri Robinbhai vs. DCIT ITA No.7329/M/2018 and others specifically ITA No.7289/M/2018, which pertains to the Assessee herein and also drew our attention to para No.13 of the judgment, wherein the Hon'ble co-ordinate Bench of the Tribunal restricted the disallowance to the extent of 4% of the impugned purchases, as against 6% of the impugned purchases as restricted by the Ld. Commissioner in the identical facts and circumstances, therefore the Assessee has submitted that on the similar footing as of the co-ordinate Bench of the Tribunal, the addition restricted @ 12.5% of the alleged bogus purchases may be reduced to 4% as done by the co-ordinate Bench of the Tribunal.

6.1 On the contrary, the Ld. DR has claimed that in view of judgment rendered in NK Proteins Ltd. Vs DCIT (2017) 292 CTR 354 (SC) the addition @ 100% of the alleged bogus purchases is liable to be restored and therefore the impugned order may be set aside and the assessment order may be restored .

6.2 Both the parties have raised the grievance about restricting the addition to the tune @ 12.5% by the Ld. Commissioner.

6.3 We observe that the Hon'ble co-ordinate Bench of the Tribunal in the aforesaid case in the similar facts and circumstances, restricted the addition on account of disallowance qua alleged bogus purchases made, to the extent of 4% of the impugned purchases, by holding as under:

“10. Head both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order it is undisputed fact that assessee has shown corresponding sales against the said purchases debited. Both the lower authorities had

accepted this fact that this could only mean that the diamonds were brought by the assessee from the grey market and to adjust the same in the books of account the assessee has obtained bills from Pravin K. Jain group concern. The authority below have taken the view held by courts that in such circumstances only the profit margin embedded in such a transaction could be taxed. Taking all these facts that the diamonds purchased in the grey market are always cheaper than the diamond sourced from the genuine dealer, the A.O has estimated the profit margin at 8% of the purchase cost debited against Pravin Jain group concern. However, the ld. CIT(A) held that it is fair and reasonable to restrict the said disallowance @ 6% of the impugned purchases. In this regard we have gone through the finding of the ld. CIT(A) as elaborated supra in this order wherein he has categorically held that in case of purchases from Pravin Jain entity in the case of Remisa Impex Pvt. Ltd. vide ITA No. 4464/Mum/2016 and ITA No.4453/Mum/2016 dated 12.09.2017 the ITAT upheld disallowance of 4% of impugned purchases. After considering the above facts and finding we consider it fair and reasonable to also restrict the disallowance in the case of the assessee @ 4% of the impugned purchases. Therefore, the A.O is directed to restrict the disallowance to the extent of 4% of impugned purchases. Accordingly, the grounds of appeal of the assessee 5 to 7 are partly allowed.”

6.4 In the instant case, the AO has made 100% of the alleged bogus purchases. However, the Ld. Commissioner reduced the same to 12.5% on considering the dictum laid down by various courts that profit element can only be added in the income of the Assessee but not the entire amount of alleged bogus purchases.

And therefore in the interest of justice and fair-play and the decision of the co-ordinate Bench of the Tribunal in the aforesaid case, justice would be met by reducing the addition from 12.5% to 4% of the alleged bogus purchases, as affirmed by the Hon'ble Co-ordinate Bench by considering similar facts and circumstances as involved in this case, hence we are inclined to restrict the addition from 12.5% to 4% of the alleged bogus purchases. Accordingly, the addition @ 4% of the alleged bogus purchases is affirmed. As we have further reduced the addition, therefore the appeal filed by the Assessee is liable to be partly allowed, whereas the appeal filed by the Revenue Department is liable to be dismissed.

7. In the result, the appeal filed by the Assessee is partly allowed, whereas the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 26.08.2024.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.