

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'E', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER**

**ITA No.2698/Mum/2024
Assessment Year: 2009-10**

ITO-19(3)(1), Mumbai	vs	Thana Ram Mangi Lal Choudhary 33/36, Prabhu Shree Ram Mandir, 4 th Kumbharwada, Maharashtra-400004. PAN: AFEPC 1898 P
(Appellant)		(Respondent)

Present for:

Assessee by : None

Revenue by : Shri P.D. Chougule Addl. CIT/ Sr. DR

Date of Hearing : 24.07.2024

Date of Pronouncement : 29.08.2024

ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order dated 13.03.2024 passed by Id. Commissioner of Income Tax (Appeal), NFAC, Delhi for Assessment Year 2009-10.

2 Fact in brief is that assessee has filed return of income relevant to A.Y. 2009-10 on 29.09.2009 declaring total income of Rs. 3,65,690/-. The case of the assessee was reopened u/s 147 of the Act by issuing of notice u/s 148 of the Act on the basis of information received that assessee has availed accommodation entries in the form of purchase bills from various dealers as per the communication received from the Sales Tax Department by the DGIT (Inv.). During the course of assessment proceedings, the

assessing officer issued notice u/s 142(1) of the Act to the assessee for proving genuineness of the transactions. However, the AO stated that assessee could not explain the transaction satisfactorily therefore, the entire amount of Rs. 88,98,967/- was treated as unexplained expenditure and added to the total income of the assessee.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) after relying on the decision of Hon'ble Bombay High Court and the other Courts restricted the addition to the extent of profit element embedded in the transaction to 12.5% of the amount of bogus purchases of Rs. 88,98,967/- i.e. Rs. 11,12,371/-. The relevant extract of the decision of CIT(A) is reproduced as under:

“4.0 I have perused the assessment order and the appeal documents. In grounds of appeal, the assessee challenged the rejection of books of accounts u/s. 145(3) stating that without providing opportunity of being heard, the AO rejected the books of accounts. The AO in the assessment order has clearly stated the reason(s) for rejection of books of accounts of the assessee. The relevant part of the order is produced as following;

3.4 From the above discussions and on the basis of materials available on record, the following inference is drawn: ...

(iii) The assessee was asked to produce the said ‘non genuine dealers’ for examination, but the assessee failed to do so. Thus, in the books of accounts of the assessee, the purchases to the extent made from the above said parties remained unverifiable and hence I arrive at a conclusion that the purchases shown by the assessee in the books of accounts are inflated and bogus purchases are debited to trading account to suppress the true profits to be disclosed to the department.

(iv) The assessee did not file the vital documents such as delivery challans, transport receipts, octroi receipt for payment of Octroi duty, receipt of weighbridge for weighing of goods, excise date pass, goods inward register maintained at godown/warehouse/storage house etc.

The items shown to have purchased from the said parties are of such in nature that they require separate transportation. Hence the mode of transportation is not explained properly....

.... Since the purchases to that extent remain unverifiable, I am not satisfied about the correctness and completeness of the accounts of the assessee. I, therefore, reject the book of accounts of the assessee by invoking the provision of Section 145(3) of the IT Act.

5.0 As regards the merits of the case, the appellant, did not furnish required details during the assessment proceedings and failed to establish that the purchases were genuine and did not support his claim with the correct and complete addresses of the parties, invoices/bill, details of transportation of goods etc during the assessment proceedings. In view of this, the AO vide detailed discussion in para 3.4 to 4 of the assessment order, treated the transactions of the assessee with the parties as accommodation entries. Accordingly, the AO made an addition of Rs 88,98,967/-.

6.0 During the appellate proceedings, hearing notices were issued to file submissions in support of the grounds. After considering the submissions and in the background of the above facts and circumstances, I give my findings.

i. To begin with, the primary onus was on the assessee to prove the genuineness of purchases by producing the confirmation parties. Since it was established from the investigation that the parties were bogus entities, the purchases were dubious.

ii. Mere payment through banking channels is not sacrosanct.

iii. If the seller is found to be non-existent then purchase price can be treated as income.

6.1 It is well settled law that strict rules of evidence do not apply to Income tax proceedings and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. The AO is entitled to arrive at a conclusion on appreciation of several facts, the cumulative effect whereof may be considered to judge the soundness of the conclusion. It is conceivable that a mere denial by the assessee is not sufficient to rebut the circumstantial evidence which considered along with the conduct of the assessee has led to the inescapable conclusion

that the assessee had taken accommodation entries and alleged purchases were not genuine.

6.2 The Hon'ble Gujarat High Court in the cases of M/s. Sanjay Oil Cake Industries Vs. CIT (10 DTR 153) and Hon'ble Ahmedabad Tribunal in the case of M/s. Vijay Proteins Ltd. Vs. ACIT (58 ITD 428) has extensively dealt with this issue and came to conclusion that disallowance of 25% of impugned purchases would suffice the matter. Similarly, the Hon'ble Jaipur Tribunal in the case of Deepak Dalela Vs. ITO (50 DTR 502) had extensively dealt with this issue. However, in the Misc. Application filed before it, the Hon'ble Jaipur Tribunal in the case of Shri Anuj Kr. Varshney Vs. ITO & Ors. Revenue Authorities ITA 187/JP/2012 dated 22.10.14 sustained the addition to the extent of 15% after elaborate discussion and extensive findings instead of 25%. It is a settled law that Income Tax Authorities are entitled to look into the surrounding circumstances to find out the reality of the recitals made in documents. It is the duty of the authority to go behind the smoke-screen and discover the true state of affairs. The authority is not to be satisfied with the form but with the substance of the transactions. Though the transactions in the present case were initially settled through banking channel but these were ultimately settled in cash. Merely because a paper trail had been created, that would not by itself make the transaction genuine. It was held by Hon'ble Punjab & Haryana High Court in the case of Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341) that if on the examination of the evidence, it is found that there was no genuine transaction between the parties, a pure paper transaction could not have entitled the assessee to claim benefit under the law.

Similarly, the Hon'ble Mumbai Tribunal held in the case of Balaji Textiles Industries Pvt Ltd Vs. ITO (49 ITD 177) that issue of bills by the alleged suppliers was not a conclusive proof. On the same facts, in the case of ITO Vs. Sunsteel (92 TTJ 126), the Hon'ble Ahmedabad Tribunal upheld 10% of the purchase price as inflated amount where suppliers were found to be nonexistent and did not respond to the notices issued by the Department. There are number of decisions by the various courts, wherein 25% to 100% disallowances of bogus purchases, have been upheld. Some of these are mentioned below:

6.3 100% disallowance of bogus / unverifiable purchases was upheld, in following cases:-

1. *CIT Vs. La Medica (2001) 250 ITR 575 (Del)*
2. *Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (All)*
3. *Khandelwal Trading Co. Vs. ACIT (1996) 55 TTJ (JP) 261 Swetambar Steels Ltd. Vs. ITO 707 / 1075 / 1262 / 1263 / JD (2002) ITAT (Ahd).*

In the case of Swetambar Steels Ltd. (supra), the Hon'ble ITAT, Ahmedabad had confirmed the is allowance of the bogus purchase in entirety stating that the purchases shown from the respective parties were found ingenuine. It was not a matter to be looked into whether the assessee had made purchases from different parties other than the alleged ones. It was also worth mentioning that the appeal against the decision of Hon'ble ITAT was not admitted by the Hon'ble Gujarat High Court and the assessee had also lost before the Hon'ble Supreme Court. So, the decision over the issue had become final. There were judicial decisions wherein the whole amount of bogus purchases was disallowed and the said orders were also confirmed by the High Courts. It was held that after invocation of provisions of section 145(3) of the Act, the Assessing Officer acquired the mandate even to add the whole amount of purchases found as bogus to the total income of the assessee. One such case was Sri Ganesh Rice Mills Vs. CIT 294 ITR 316 (All) wherein the entire amount of bogus purchases, from 5 parties, was disallowed and same was also upheld. The relevant portion of the order of the Tribunal as confirmed by High Court of Allahabad is reproduced, here as under:

“Once it is found that the purchases were bogus, addition has to be made to the extent of the purchases found to be fictitious. The consideration that the gross profit disclosed by the assessee compares favorably as compared to the earlier years is wholly irrelevant. To neutralize the effect of inflation in purchases, the only course open to the Income-tax Officer is to add back that amount to the income irrespective of the fact whether the rate of gross profit goes up and whether the resultant gross profit is higher than the gross profit normally shown in the earlier years.”

6.4 25% disallowance of bogus/unverifiable purchases has been upheld in following cases:-

1. *Sanjay Oil Cake Industries Vs. CIT (2008) 316 ITR 274 (Gujarat HC)*
2. *Vijay Proteins Ltd Vs. ACIT 58 ITD 428 (Ahmedabad)*

3. *M/s. Nand Kishore Meghraj Jewellers, Jaipur Co. No. 105/JP/09 arising out of ITA No. 433/JP/2009 by ITAT Jaipur*

4. *M/s. Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.*

Disallowance @ 25% out of Bogus purchases, was held as a reasonable in the case of Vijay Proteins Ltd. (supra) in view of the fact that the savings occurred to the suppliers on account of sales tax, duties and Income-tax having MMR of 30%. By buying the goods from grey market at lower rates and booking the purchases at normal rate, the assessee got the benefit of this proportion. In view of this, the disallowance @ 25% was held to be fully justified. Further in the case of M/s. Trident Jewellers Vs. ITO, ITA No. 552/JP/2013, on account of bogus purchases, an addition of 25% of such purchases was confirmed by the Hon'ble ITAT, Jaipur Bench. 6.5 15% disallowance of bogus/unverifiable purchases has been upheld in following cases :-

1. *Shri Anuj Kr. Varshney Vs. ITO & Ors. Revenue Authorities ITA 187/JP/2012 dated 22/10/14.*

2. *ITO Vs. Bhansali Trading Corporation ITA No. 253/JP/2012.*

6.6 10% disallowance of bogus/unverifiable purchases has been upheld in following cases:

(i) Uniword Telecom Ltd. Vs. Addl. CIT (45 DTR 433) (Delhi ITAT).

(ii) ITO Vs. Sunsteel (92 TTJ 1126) (Ahmedabad ITAT).

6.7 In view of the foregoing discussion, the percentage of disallowance of bogus purchases/ accommodation entry must be based on the facts of each case. The same cannot be generalized in every case. The decisions rendered in the cases of Sanjay Oil Cake Industries (supra) and Vijay Protein Ltd. (supra) are however distinguishable on facts since in case of Sanjay Oil Cake Industries, a specific finding was given by the Assessing Officer that purchases were made from the alleged bogus suppliers at higher rate as compared to the other parties. In the case of Vijay Proteins Ltd. (supra), after examining the bank account, it was established that cheques issued to various parties were deposited in one of the accounts, which were found to be owned by the assessee himself but there are no such circumstances in the present case. Moreover, the question whether entire purchases should be disallowed or addition should be restricted to the profits embodied on sale proceeds

was answered by Hon'ble Gujarat High Court in the case of CIT Vs. President Industries (258 ITR 654) and Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Balchand Ajit Kumar (263 ITR 610).

6.8 Considering the above decisions, and a catena of recent decisions passed by the Tribunals relying on the aforesaid decisions, only the profits embodied on sale proceeds should be taxed instead of addition on account of entire purchases. Looking to the circumstantial evidence in the present case, it is evident that impugned purchases from the alleged supplier were not genuine. One must consider the totality of facts, surrounding circumstances and human probability for arriving at such a conclusion.

6.9 In the ground No. 2 and 3 of the appeal, the assessee has contended that the AO made an error in adding the entire amount of purchases to the income and that addition may be restricted to G.P. or N.P. of the impugned year.

6.10 At this point, it is pertinent to note that the entire purchases debited cannot be disallowed. I would like to place reliance on the recent decision of the Hon'ble High Court of Bombay in the case of PCIT vs. S.V. Jiwani [2022] 145 taxmann.com 230 (Bombay) wherein, under similar set of facts and circumstances of the case, the Hon'ble High Court has upheld the decision the Hon'ble ITAT Mumbai that addition to the extent of 12.5% of the bogus purchases is fair and reasonable. The relevant portion of the decision is reproduced below for ready reference.

"2. The following questions of law have been proposed for our consideration: "6.1 Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is perverse in not considering the order of Hon'ble Supreme Court in the case of N K Protein Ltd. dated 16-1-2017, which is on the similar issue of bogus purchases and when the Hon'ble Apex Court order was already the law of the land when the Hon'ble ITAT has pronounced its order on 3-5-2017? 6.2 Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in ignoring the decision in the case of N K Proteins by Hon'ble Ahmedabad High Court, further affirmed by Hon'ble Supreme Court, as mentioned at ground No. 1 above, wherein Hon'ble High Court, relying on the findings of the Hon'ble ITAT, Ahmedabad, that the suppliers are bogus, has given a finding that once the suppliers are held bogus, then it is not correct to tax only 25% of the bogus claims? This is further supported by the fact that in this case

also, the AO has categorically and conclusively held that the parties from whom the purchases are shown to be made are bogus purchases as the concerns are providing bogus bills and this finding of the AO has been further strengthened by the findings of the higher appellate authority which is never controverted by Hon'ble ITAT? 6.3 Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in overlooking the fact that addition made by AO based on details of scam unearthed by Sales Tax Department wherein it was established that the assessee had taken bills from bogus parties without actually making purchases from them? 6.4 whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in ignoring that the purchases from bogus parties are debited in P & L Account for which the assessee had not submitted any evidences, and the same was not allowable? 6.5 Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in upholding the order of the Ld.CIT(A) who had limited and disallowance to the extent of 12.5% of the total alleged purchase without verification and confirmation of quantitative data of material sourced and its subsequent movement during the year?" 3. Briefly stated the material facts are as under: The Assessee undertakes civil contract works awarded mostly by Municipal Corporation of Greater Mumbai (MCGM). Return of income was fled for the assessment year 2009-10, declaring a total income of Rs. 92,36,071/-. The assessment was completed under section 143(3) of the Act, at a total income of Rs. 93,72,290/-. The case of the assessee was reopened on the basis of information received from Sales Tax Department through DGIT (Inv.), Mumbai, that the assessee had made purchases of Rs. 4,50,08,383/-, which seemed to be accommodation entries. An order under section 143(3) r/w section 147 was passed on 26th March, 2014, making an entire addition of Rs. 4,50,08,383/- as bogus purchase under section 69C of the Act, thereby determining the assessee's income at Rs. 5,43,80,670/-. 4. An appeal was preferred before the Pr. Commissioner of Income Tax, (Appeals), who allowed the appeal partly vide its order dated 19th May, 2015. The Appellate Authority held that payments made by the assessee were through banking channels and that there was no evidence to prove that the cash had flowed back to the appellant. Purchase invoices and ledger statements also appear to have been produced before the Appellate Authority. It was held that what was taxable under the Income-tax Act, was only the real income. Even when the transaction was not verifiable only the income component, could be taxed and not the entire transaction amount. It was also held that it was undisputed

that the sale proceeds of the goods had been duly accounted for in the books and offered to tax, hence, the entire purchase amount could not have been added in the present case and that with a view to plug any revenue leakage in the aforementioned circumstances, disallowance of @12.5% was held to be reasonable to safeguard the interest of revenue. It, therefore, confirmed the addition to the extent of 12.5% of the alleged purchases of Rs. 4,50,08,383/- i.e. Rs. 56,26,047/-, therefore, relief was granted to the appellant to the extent of Rs. 4,50,08,383/- - Rs. 56,26,047/- = Rs. 3,93,82,336/-. The order of CIT(Appeals) was challenged before the Tribunal vide its order dated 03rd May, 2017, dismissed the same. It was held that without purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the MCGM, which is a Government Authority. It also held that the A.O. had not disputed the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute work awarded by MCGM. The Tribunal, therefore, held that the entire purchase made by the assessee could not be added back as income, but only profit element embedded therein, be treated as income of the assessee. 5. We have gone through the well reasoned order of the Tribunal, which has taken into account all relevant facts before passing the order impugned. In our opinion, the order does not warrant any interference. No substantial questions of law arise in the present appeal and the same is, accordingly, dismissed.” (emphasis supplied)

6.11 In view of the matter, considering the factual matrix of the case, I am of the opinion that the ratio of the decision of the Hon’ble High Court of Bombay in the case of PCIT vs. S.V. Jiwani [2022] 145 taxmann.com 230 (Bombay) (supra), PCIT vs Ashwin Purshotam Bajaj in ITA. 576 of 2018 dated 12-07-2023 and the decision of Hon’ble High Court of Gujarat in the case of CIT vs. Simit Sheth (supra) are squarely applicable mutatis mutandis to the instant case. Accordingly, the addition is restricted to 12.5% of the amount of bogus purchases of Rs. 88,98,967/- i.e. Rs. 11,12,371/-.

In the result, the appeal is partly allowed.”

4. Heard the ld. DR and perused the material on record. Without reiterating the fact as elaborated above in this order, the

ld. CIT(A) has discussed the various judicial pronouncement in his findings to the proposition that when the transaction was not verifiable only income component could be taxed and not the entire transaction amount. It is also discussed that the corresponding sale proceeds of the goods was not disputed in the case of the assessee. Therefore, the ld. CIT(A) has restricted the addition to the extent of profit element embedded in the alleged purchases to the extent of 12.5% as discussed above in this order. The ld. CIT(A) has also referred the decision of Hon'ble Bombay High Court in the case of PCIT vs S.V. Jiwani (2022) 145 taxmann.com 230 (Bom) wherein the addition to the extent of 12.5% of the bogus purchases is held as fair and reasonable.

5. In view of the above facts and findings as discussed supra, we do not find any reason to interfere in the decision of ld. CIT(A) therefore, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.08.2024

Sd/-

**(ANIKESH BANERJEE)
JUDICIAL MEMBER**

Sd/-

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 29.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai