

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2180/Mum/2024
Assessment Year: 2010-11**

ITO-20(3)(1), Mumbai	Vs.	Sameer Mahesh Sachde Room No. 84/85, 3 rd Floor, 69 B. Kutchi Lohana Niwas, Mumbai- 400010. PAN: AHZPS 4210 J
(Appellant)		(Respondent)

**C.O. No.144/Mum/2024
(Arising out of ITA 2180/Mum/2024)
Assessment Year: 2010-11**

Sameer Mahesh Sachde Room No. 84/85, 3 rd Floor, 69 B. Kutchi Lohana Niwas, Mumbai-400010. PAN: AHZPS 4210 J	Vs.	ITO-20(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shri Vimal Punmiya, CA
Revenue by : Shri Suhas Dabade, Sr. DR

Date of Hearing : 29.07.2024

Date of Pronouncement : 29.08.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

The appeal filed by the revenue is directed against the order passed by the ld. CIT(A) NFAC, Delhi dated 09.02.2023. Since the appeal filed by the revenue and cross objection filed by the assessee are based on identical facts on similar issue, therefore, for the sake of convenience both these appeals are adjudicated together.

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2. Fact in brief is that return of income declaring total income of Rs. 7,19,520/- was filed on 08.09.2010. In this case information was received from DGIT(Inv.), Mumbai that assessee has taken bogus purchase bills without taking any delivery of goods from the following parties:

<i>Sl No.</i>	<i>Name</i>	<i>Particulars of transaction</i>	
		<i>F.Y.</i>	<i>Amount in (Rs.)</i>
<i>1</i>	<i>Darshat Trading Pvt. Ltd.</i>	<i>2009-10</i>	<i>649334</i>
<i>2</i>	<i>Akshar Distributors Pvt. Ltd.</i>	<i>2009-10</i>	<i>1182809</i>
<i>3</i>	<i>Mukta Steel</i>	<i>2009-10</i>	<i>436519</i>
<i>4</i>	<i>Vandana Metal Syndicate</i>	<i>2009-10</i>	<i>560102</i>
<i>5</i>	<i>Vishesh Steel Suppliers</i>	<i>2009-10</i>	<i>1952155</i>
	<i>Total</i>		<i>4780919/-</i>

3. Based on the information received, the case of the assessee was reopened by issuing of notice u/s 148 of the Act on 30.03.2017. During the course of assessment proceedings, the assessing officer issued notices u/s 133(6) of the Act to the aforesaid parties for verification of the genuineness of the transactions. However, the notices issued were returned unserved by the postal authority. Even the assessing officer could not get the verification while deputing Inspector of the Department. Further the assessee has not brought any material on record to prove the genuineness of the purchases at the time of assessment proceedings before the assessing officer. Therefore, the assessing officer concluded that the source of purchase made from gray market was not explained. Therefore, whole amount of purchases made from the above parties of Rs. 47,80,919/- was disallowed u/s 69C of the Act and added to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) after following the decisions of ITAT, Mumbai has restricted the addition to

the 10% of bogus purchases i.e. Rs. 4,78,091/- therefore appeal of the assessee was partly allowed.

5. Heard both the sides and perused the material on record. Based on information received that assessee had taken accommodation entries of purchases without any actual delivery of goods from the parties who had been engaged in the activity of providing accommodation entries as discussed above in this order, the case of the assessee was reopened. The assessee furnished copies of invoices received from the sale parties, bank statement reflecting payment to the said parties and statement showing sale of goods received from the said parties. However, the AO could not verify the genuineness of the transactions since no compliance to the notice issued u/s 133(6) of the Act were made and parties were not produced before the assessing officer. Further, the assessee has not produced documentary evidences such as lorry sheet, delivery challan, transport bills etc, therefore, the AO has treated the purchases made from the said parties bogus and disallowed Rs. 47,80,919/- u/s 69C of the Act. However, the ld. CIT(A) after following the decision of ITAT, Mumbai in similar case in the case of Leelaben Kantilal Parekh vs ITO (ITA 2926/Mum/2023) Hon'ble ITAT SMC bench, Mumbai relying on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Paramshakti Distributors Ltd. restricted the disallowance to 10% of bogus purchases of Rs. 47,80,919/- i.e. Rs. 4,78,091/-. The relevant extract of the decision of CIT(A) is reproduced as under:

"21. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of the assessee were initiated. Further, notice issued under section 133(6) by the AO to the entity was also returned unserved. The AO made an addition of the entire amount of the alleged

bogus purchases made from the said supplier. In support of his claim that the purchases are genuine, the assessee furnished copies of bills, and delivery challan issued by the supplier. Further, it is the claim of the assessee that all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee was unable to produce the parties. Even before us, no such detail is available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, the Revenue has not doubted the sales declared by the assessee. Further, it cannot be doubted that without the purchase of material, the assessee cannot carry out the sales. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entity and material purchased from somewhere else at a lower cost. Thus, we are of the considered view that entire bogus purchases cannot be added in such a case. We are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage. Therefore, in view of the above findings, we deem it appropriate to restrict the disallowance to 10% of the disputed purchases. We find that the same is also in line with the judgment of the Hon'ble jurisdictional High Court in PCIT Vs Paramshakti Distributors Ltd. in ITA NO. 413 of 2017 decided on 15/07/2019. As a result, revised grounds no. 3 and 4 raised by the assessee are partly allowed.

I find that in the present case also the appellant has failed to establish the purchases of Rs.47,80,919/- from the five parties mentioned by the Assessing Officer. However, the Assessing Officer has not made any comments on the stock tally has not rejected the books of accounts which are audited and has not doubted sales by the appellant. Therefore, following the above decision I hold that a reasonable disallowance of purchases would meet the possibility of revenue leakage

as in similar cases Hon'ble Tribunal has held that the possibility is that material was purchased from other party on other rates. The disallowance is restricted to 10% of bogus purchases of Rs.47,80,919/- that is Rs.4,78,091/-.

It is also pertinent to mention here that the Assessing Officer also disallowed this amount of Rs.47,80,9119/- u/s 40A(3) of the Act on the ground that the payment were made in cash only. The appellant has submitted copy of reply file during the assessment proceedings that the payments were through account payee cheque. Therefore, the addition on this ground is not sustainable. In view of the above discussion the ground of appeal is partly allowed.”

6. In the light of the above facts and findings, it is evident that assessing officer not has disputed the corresponding sales made by the assessee. The ld. CIT(A) after following the decision of ITAT has restricted the addition to the extent of 10% being the profit element embedded in such purchase transactions made from the parties. Therefore, we do not find any reason to interfere in the decision of ld. CIT(A) accordingly, the appeal of the revenue is dismissed.

7. The assessee in the cross-objection has stated that ld. CIT(A) erred in confirming the addition @ 10% amounting to Rs. 4,78,092/-. In this regard the assessee has referred the various judicial pronouncement wherein the addition amount was restricted lower than the 10% however, we find that ld. CIT(A) has restricted the disallowance to the extent of 10% after relying upon the similar decision of ITAT as discussed above in this order. Looking to the above facts and circumstances, we do not find any infirmity in the decision of ld. CIT(A) therefore the appeal of the revenue and cross-objection filed by the assessee are dismissed.

8. In the result, appeal of the revenue and cross-objection filed by the assessee are dismissed.

Order pronounced in the open court on 29.08.2024.

Sd/-
(PAWAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.08.2024
Biswajit, Sr. P.S.

*ITA No.2180/Mum/2024 & C.O. No. 144/Mum/2024
Sameer Mahesh Sachde
A.Y. 2010-11*

Copy to:

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

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai