

IN THE INCOME TAX APPELLATE TRIBUNAL, "D" BENCH  
MUMBAI  
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &,  
SHRI PAVAN KUMAR GADALE JUDICIAL MEMBER  
ITA No.778/MUM/2020  
(A.Y.2010-11)

ITO, Ward-2(1) Room No. 25, B-Wing, 6 <sup>th</sup> Floor, Ashar IT Park, Road No. 16Z, Wagle INDL. Estate, Thane-400604. Maharashtra	Vs.	Shri Mehul Shantilal Bhavsar, Prop-M/s Shanti Industries, Room No. 5, Mathura Dham Building, Cabin Road, Bhayander(E), Thane-401105. Maharashtra.
PAN/GIR No. AIBPB2782K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Smt.Mahita Nair. Sr. DR
Respondent by	None

Date of Hearing	03.09.2024
Date of Pronouncement	05.09.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The revenue has filed the appeal against order of Commissioner of Income Tax Appeal (CIT(A))-1 Thane passed u/sec 250 of the Income Tax Act. The revenue has raised the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety?.*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?*

*4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register, etc. to arrive at disallowance at 12.5% of the purchases from the non-existent vendors?*

*5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court?."*

2. The brief facts of the case are that, the assessee is engaged in the business of manufacturing of pipe fittings. The assessee has filed the return of income for the A.Y. 2010-11 on 30/09/2010 disclosing a total income of Rs. 2,48,750/- and the return of income processed u/sec 143(1) of the Act. Subsequently, the Assessing officer (A.O.) has received information that the assessee is a beneficiary of obtaining the accommodation entries/bills from the

bogus parties as per the information from Sales Tax Department Maharashtra. The A.O. has observed that the assessee has obtained the purchase bills from ten parties aggregating to Rs.30,78,951/- in the F.Y.2009-10 and the A.O has reason to believe that the income has escaped the assessment and has issued notice u/sec 148 of the Act. Further, the A.O. has issued notice u/s 143(2) and 142(1) of the Act and called for the information. In compliance, the assessee has submitted the information and details from time to time in the assessment proceedings. Whereas the A.O in order to check the transactions of the purchases has called for the additional information and the assessee has submitted the details. The A.O to test check the genuineness of the transactions has issued notice u/s 133(6) of the Act on the parties and the said notices were returned un served by the postal authorities. Finally, the A.O. has dealt on the information and the evidences and is of the opinion that the assessee has indulge in making bogus purchases and addition of purchase transactions of Rs.30,78,951/- and assessed the total income of Rs.33,27,700/- and passed the order u/sec 143(3) r.w.s. 147 of the Act dated 29/11/2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has considered the grounds of appeal, findings of the A.O in the scrutiny assessment, submissions of the assessee on the disputed issue. Finally the CIT(A) considered the judicial decisions of the Honble High Court and Hon'ble Tribunal

and restricted the addition to the extent of 12.5% of bogus purchases and partly allowed the assessee appeal.

4. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal. At the time of hearing, none appeared on behalf of the assessee. The Ld.DR submitted that the CIT(A) has erred in restricting the addition @12.5% irrespective of facts that no proper information was filed in the Assessment proceedings and relied on the order of the A.O.

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in restricting the addition to the extent @12.5% of the bogus purchases considering profit element embedded. We found that the CIT(A) has dealt on the facts and considered the Hon'ble High Court decision and took a view. Further, We find the Jurisdictional Honble High Court in the case of Pooja Paper Trading Co. Vs. ITO, (104 taxmann.com 95) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451) has considered the profit element embedded in the transaction.

6. We find that the Ld.CIT(A) took a reasonable view that the only profit percentage has to be added and estimated @ 12.5% of bogus purchases. The Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material but relied only on the A.O order. We find that the CIT(A) has dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales. The Ld.CIT(A) has relied on the decisions of Hon'ble High Court and passed a reasoned order. Accordingly, we do

not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 05.09.2024.

**Sd/-**  
**(BR BASKARAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 05/09/2024

Poonam,  
Steno

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt.Registrar)ITAT,  
Mumbai