

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"H (SMC)" BENCH, MUMBAI**

**BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND**  
**SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no. 3018/Mum./2024**  
(Assessment Year : 2009-2010)

**Shri. Dilip K. Doshi**

A-701, R N Royal Park, M. G. Road,  
Dahanukar Wadi, Kandivali West,  
Mumbai - 400067.  
PAN-ACCPD7925K

..... Appellant

v/s

**ITO Ward 42(1)(2)**

Room No. 745, 7<sup>th</sup> Floor,  
Kautilya Bhavan, BKC,  
Bandra East, Mumbai - 400051.

..... Respondent

Assessee by : Shri Dharmil Jhaveri, CA

Revenue by : Shri Akhtar Hussain Ansari, Sr. DR

Date of Hearing - 02/09/2024

Date of Order - 12/09/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The present appeal has been filed by the assessee challenging the impugned order dated 01/04/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Addl./Joint Commissioner of Income Tax (Appeals)-7, Delhi [*learned Addl./Joint CIT(A)*], for the assessment year 2009-10.

2. In this appeal, the assessee has raised the following grounds: -



"GOA No. 1: 100% Addition on Account of bogus purchases of Rs. 17,40,726/-

- ❖ *The Ld. CIT(A) not justified in confirming disallowances @ 100% on account of purchases affected from suspicious hawala dealer, which is unwarranted/ unjustified.*
- ❖ *The Learned CIT (A), confirmed the sales figure as per books of accounts but accepted the addition made the Learned AO in assessment order u/s 143(3) @ 100% of purchases.*
- ❖ *The Learned CIT (A), neither considered the fact that without purchase how sales can be affected? Nor considered the facts that books of accounts were never rejected u/s 145 by the department nor proved the cash trail by the department nor done any independent enquiry except issuance of notice u/s 133(6).*
- ❖ *The Ld. CIT(A) not considered the facts that the Hon,ble ITAT deleted the adhoc additions fully in similar cases. We relied on the following judgments of the higher forum :-*
  - *PCIT vs. Mohommad Haji Adam (Bombay High Court) INCOME TAX APPEAL NO. 1004 OF 2016 dated 23/04/2019.*
  - *ITO V/s Nityasudha Combines V/s ITA Chennai.*
  - *Rice Mills Vs CIT 218 ITR 508, Allahabad High Court.*
  - *CIT VS M Venkatesh Road and Others (2015) 370 ITR 215 Tamil Nadu and Andhra Pradesh High Court.*
  - *M/s Fancy Wear V/s ITO Ward 24(3)(1), ITA No. 1596/1597/Mum/2016 dt. 20/09/2017.*
  - *Shri Hiralal Chunilal Jain V/s ITO Ward 14(1)(4), ITA No. 4547/1275/Mum/2014 dt. 01/01/2016.*
  - *M/s Ramesh Kumar & Co. v/s ACIT Ward 21(1), ITA No. 2959/Mum/2014 dt. 28/11/2014.*
  - *Shri Pranhat Gupta v/s ITO, ITAT Mumbai dt. 09/03/2018.*
  - *M/s Paras Organic Pvt Ltd vs DCIT 10(2), ITA no. 2369/Mum/2014 dt 26/02/2016.*
  - *M/s Talco Marketing vs ITO 14(2)(3) ITA No. 3394/Mum/2014 dt 07/07/2016. Shree Ganpatraj A Sanghavi v/s ACIT 15(3), ITA No 2826/Mum/2013 dt 05/11/2014.*
  - *ACIT 8(3) v/s Tristar Jewellery, ITA No 7593/2011 & 6435/Mum/2013 dt 31/04/2015.*
  - *ACIT 25(2) v/s Tarla R Shah ITA No 5295/Mum/2013 dt 02/02/2016.*
- ❖ *We reserve our rights to add, amend, alter anything stated herein above or may be stated herein after."*

3. The only dispute raised by the assessee is against the addition made on account of alleged bogus purchases.



4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual and is running a proprietary concern in the name and style of M/s Archana Traders, which is engaged in trading in cutting tools and hardware items. For the year under consideration, the assessee filed its return of income on 30/09/2009 declaring a total income of Rs.1,90,910. On the basis of the information received from the Sales Tax Department through DGIT (Investigation), Mumbai that the assessee is a beneficiary of bogus transaction of purchase bills from bogus hawala bills providers, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued. In response to the aforesaid notice, the assessee furnished a copy of the return filed on 30/09/2009. Subsequently, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. In response to the statutory notices, the assessee furnished the details/explanations as called for. During the assessment proceedings, the assessee furnished a purchase ledger copy, sample sales bills along with a ledger copy, bank statements, etc., and accordingly contended that the transactions entered into were genuine. The Assessing Officer ("AO") vide order dated 26/02/2015 passed under section 143(3) read with section 147 of the Act did not agree with the submissions of the assessee and held that the parties with whom the assessee has stated to have entered into alleged business transactions have in their statements recorded on oath categorically accepted that they have not done any business as well as there



was no actual delivery of goods to the purchase parties. During the assessment proceedings, in order to verify the transaction, notices under section 133(6) of the Act were issued to these parties, which were returned unserved by the postal authorities with the remark “left”. From the perusal of the bank statement filed by the assessee, the AO noted that the name of the hawala parties does not appear in the bank statement and therefore came to the conclusion that the assessee has not entered into the transaction with these parties. Since the assessee failed to prove the genuineness of the transaction by producing any necessary documentary evidence, the AO disallowed the entire purchase transaction of Rs.17,40,726 by considering the same as bogus and added the same to the total income of the assessee.

5. It is evident from the record that despite multiple notices being issued by the first appellate authority, no one appeared on behalf of the assessee. Accordingly, the learned Addl./Joint CIT(A) dismissed the appeal filed by the assessee and upheld the addition of Rs.17,40,726 vide ex parte order. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned AR submitted that his gross profit from trading in cutting tools and hardware items is 8.85%. We find that the Co-ordinate Bench of the Tribunal in ITA no.5156/Mum./2018, vide order dated 19/09/2019, for A.Y. 2010-11, in Shri Narpat H. Mehta v/s ITO, while dealing with a similar issue of bogus purchases observed as under:-

*"4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase.*



*Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of NikunjEximp Enterprises (in writ petition no 2860, order dt 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to government agency. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 there off) the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.*

*5. We respectfully following the aforesaid judgement of the Honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases, Needless to add the assessee should be granted adequate opportunity of being heard."*

7. Thus, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal which in turn has followed the decision of the Hon'ble Bombay High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019, we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. No order shall be passed without affording the assessee a reasonable



opportunity of hearing. Accordingly, the grounds raised in the assessee's appeal are allowed for statistical purposes.

8. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12/09/2024

**Sd/-**  
**PRASHANT MAHARSHI**  
**ACCOUNTANT MEMBER**  
**MUMBAI, DATED: 12/09/2024**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

*Karishma J. Pawar, (Stenographer)*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai