

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No.3797/Mum/2024  
(Assessment Year: 2011-12)**

<b>Vertex Chemicals</b> Office Numbai 110, B Wing, Kanakia Wall Street, Andheri Kurla Road, Chakala, Mumbai-400093. <b>PAN : AAAPV1257A</b>	Vs.	<b>ITO, Ward-12(2)(1),</b> Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Vipul Joshi / Shri Prashant  
Ghamre, AR

**Revenue / Respondent by** : Shri G.J. Ninawe, Sr. DR

**Date of Hearing** : 05.09.2024

**Date of Pronouncement** : 16.09.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 02.07.2024 for Assessment Year (AY) 2011-12. The assessee raised the following grounds of appeal:

**“1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION**

*1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [‘Ld. CIT (A)’] is bad, illegal and without jurisdiction, as*

*the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.*

*1.2 Otherwise also, in the facts and the circumstances of the case, and in law, the appellate order so framed by the Ld. CIT (A) is bad and illegal void as the same is arbitrary and perverse.*

**WITHOUT PREJUDICE TO THE ABOVE -**

**2. NATURAL JUSTICE**

*2.1 The Learned Commissioner of Income tax (Appeals) ["Ld. CIT (A)"] - National Faceless Appeal Centre ["the NFAC"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

*2.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

*(i) The same is framed in breach of the principles of natural justice; and*

*(ii) The same is passed without application of mind to the facts.*

**3. WITHOUT FURTHER PREJUDICE TO THE ABOVE**

*3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in rejecting books of accounts of the Appellant.*

*3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

**4. WITHOUT FURTHER PREJUDICE TO THE ABOVE**

*4.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 69,35,217/- to the income of the Appellant "on the basis of estimation of G.P.", on account of alleged non genuine purchase / alleged bogus purchase.*

*4.2 While doing so, the Ld. CIT (A) erred in:*

*(i) Basing his action only on surmises, suspicion and conjecture;*

*(ii) Taking into account irrelevant and extraneous considerations; and*

*(iii) Ignoring relevant material and considerations as submitted by the Appellant.*

*4.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

*4.4 Without prejudice to the above, assuming but not admitting that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.”*

2. The assessee is a partnership firm and filed the return of income for AY 2011-12 on 27.07.2011 declaring a total income of Rs. 7,96,770/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the course of hearing, the Assessing Officer (AO) called on the assessee to furnish list of parties with whom the sales and purchases were made above Rs. 50,000/-. In order to verify the genuineness of the purchases, the AO issued a notice under section 133(6) of the Income Tax Act, 1961 (the Act) to 20 parties. Since the notices of 10 parties were returned "Not Found" the assessee submitted correct addresses of the said parties and the AO received response from all parties except 2. The AO held that information has been gathered as per the statement recorded by Sales Tax Office and DGIT (Inv.) that out of the total purchases made by the assessee from various parties, the purchases made from the following parties are bogus:

<b>SR No.</b>	<b>HAWALA NAME</b>	<b>HAWALA PAN</b>	<b>HAWALA TIN</b>	<b>AMOUNT – Rs.</b>
1	KINGSY PHARMAX	ABRPW5450E	27490786979V	12,075/-
2	TRISHNA IMPEX	AAEPS4606C	27890650959V	23,444
3	CPRIHANS TRADE CENTRE	ADXPDP0923F	27950372536V	154,823
4	GROWELL ENTERPRISES	AHQPP1838A	27920289666V	357,000

3. The AO called on the assessee to furnish certain specific details with regard to the above parties. The assessee submitted the invoices from the parties, bank statements in support of the payments made, the quantitative details, stock details, ledger account of the parties and affidavit of a broker through whom purchases were made from 2 parties. The AO after perusing the details submitted by the assessee held that-

*“In order to verify the facts as claimed by the assessee that the parties are genuine, where duly registered with the sales tax department and the bill Depict their VAT Number and payments where made by account payee cheque, a notice U/s- 133(6) of the IT Act was issued and send by speed post to all the above 4 parties, Out of which 3 notices are received back from the postal authorities with the remarked that "Not known". In one of the case the relative of the parties informed that no confirmation can be supplied, since person is not alive. It is also noticed that list of the parties from whom assessee made purchase over Rs. 50,000/-, one of the parties appearing in the bogus purchase list, assessee purchased for a sum of Rs. 3,57,000/- is also not found as disclosed and other two parties purchase a below Rs. 50,000/-.*

*While recording the statement by the Sales Tax department and DIT (Inv), all the above mentioned 4 parties admitted that they issued bills as per the requirement of the customers without delivering any goods.*

*During the course of assessment proceeding the assessee argued that they have purchased goods worth Rs. 13,00,00,000/- during the year and what is logic for purchase of bogus bills for a meager amount of Rs. 5,00,000/- as blamed by the department.*

*In this context, it is observed from the details supplied by the assessee that the purchase and sales margin was 14%-16%, when the assessee had purchased bills without making any actual deliver of goods. It is therefore, obvious that the Profit ratio is automatically reduced.*

*The assessee has supplied one copy of item register (i.e. Purchase with corresponding sales) in respect of parties in which information are received from sales Tax and DIT (Inv) Mumbai. Perusal of the same reveals that the assessee has purchased items of chemicals and sold the same on the very day or subsequent day. The percentage yield on sale of all these 4 parties are average @16.79%. To quantify yield of sales (Gross profit) the assessee was asked to produced item*

*register for the entire month of March 2011. From stock summary produced by the assessee reveals that the average profit ratio for the month of March comes to 12.58%. The assessee shows gross profit @ R.26%. Hence, there was a difference of gross profit @ 4.38%.*

*In the forgoing paragraph, it is brought to record that assessee purchases bogus bill to inflate the purchase and suppress the sales. A random verification made by this office as stated above also reveals that there is high margin of difference in respect of Gross Profit and net profit ratio. As the assessee has purchased bills according to their requirements, the adjustment of profit ratio cannot be ruled out. It is apparent that assessee has not maintained proper books of account as per the accounting principal. Hence the books of account are rejected and profit ratio is enhanced to the extent of difference worked out @ 4.38% (i.e. Gross receipt of the assessee is estimated to 12.58%). The difference on gross profit @ 4.38% is worked out at Rs.69,35,217/- and added to the total income of the assessee.”*

4. Accordingly, the AO rejected the books of accounts of the assessee and made addition at 4.38% of the entire purchase of the assessee. On further appeal, the CIT(A) confirmed the additions made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

5. The ld. AR submitted that the AO has not disputed / controvert the various documents submitted by the assessee to prove the genuineness of the purchases. The ld. AR further submitted that the VAT Department has not taken any action against the parties as has been alleged by the AO. The ld. AR also submitted that the details of the corresponding sale income the impugned purchases were submitted before the AO and that the AO has not rejected the sales made by the assessee. The ld. AR took the bench to the various submissions made before the AO to submit that the books of accounts have been rejected by the AO without pointing out any specific defects whereas the account of the assessee are subject to audit under section 44AB of the Act. The ld. AR submitted that for alleged bogus purchase of Rs. 5.01 lakhs, the AO made an addition by applying the GP rate on

the entire purchases of the assessee which is not correct. The ld. AR drew the attention of the Bench to the various findings given by the CIT(A) to submit that the findings of the CIT(A) do not pertain to the assessee since they are factually incorrect. The ld. AR further submitted that the CIT(A) while upholding the disallowance has not applied his mind to the specific facts of the assessee's case and has simply copy pasted in some other assessee's order. The ld. AR also submitted that the CIT(A) did not give opportunity for hearing through video-conferencing as requested by the assessee. Accordingly, the ld. AR submitted that the order of the CIT(A) should be set-aside.

6. The ld. DR on the other hand relied on the orders of the lower authorities.

7. We heard the parties and perused the material on record. The AO based on information received from DDIT(Inv) held that the assessee has entered into bogus purchase transactions with 4 parties totaling to Rs. 5.01 lakhs. The assessee furnished various details pertaining to the alleged bogus transactions before the AO. However, the AO held that the assessee has inflated the purchases which is substantiated by the verification of sample purchases and accordingly treated the entire purchases as bogus by rejecting the books of accounts. The AO estimated a Gross Profit @ 4.38% on the entire purchase of the assessee to make an addition of Rs. 69,35,217/-. It is relevant to note that the provisions of section 145 of the Act provides that the Assessing Officer can reject the books provided he is not satisfied about the correctness or completeness of the accounts of the assessee, or the method of accounting has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified. From the findings of AO as extracted in the earlier part of this order we notice that the AO has rejected the books stating that the assessee has not maintained proper books

accounts whereas the accounts of the assessee have been audited under section 44AB and that the AO has not recorded any adverse findings with regard to the correctness and completeness of the accounts. The AO's only reason for rejecting the books is that out purchases of Rs.13 crores the sample verification of Rs.5.01 lakhs were alleged as bogus. Further we notice that other than the sample purchases the AO has not examined the books of accounts of the assessee to come to the conclusion on the correctness and completeness, or method of accounting regularly followed etc., for the purpose of rejecting the books of accounts. Therefore in our considered view, the basis on which the has rejected the books of accounts to make addition of GP on the entire purchases is not tenable. With regard to the alleged bogus transactions from the 4 parties, we notice that the assessee has submitted relevant documents such as invoices, stock statement, bank statement etc., and that the AO did not record any adverse findings on the same. Further AO has stated that the 4 parties have admitted to have entered into bogus transaction with the assessee, however the AO did not provide any further details on the said statement and did not share the same with the assessee in spite the assessee requesting the same. The reason for the AO to make the addition by applying the GP on the entire purchase is that the assessee has recorded higher margins on the alleged bogus transactions and therefore the GP on the entire purchase should have been more. This finding of the AO in our considered view is without any basis and is unsubstantiated. The AO himself is recording that out of 20 sample vendors to whom the notice under section 133(6) is issued, only 2 parties have not responded. Further the sample transactions which the AO is alleging as bogus is less than 1% of the total purchases of the assessee and AO on the basis of a small sample holding the entire transaction as bogus without any basis is not justifiable. From the perusal of the CIT(A)'s order, we notice that many findings given by the

CIT(A) does not pertain to the assessee and therefore there is merit in the contention of the assessee that the CIT(A) has simply confirmed the addition made by the AO without examining the appeal on merits by applying his mind. In view of these discussions we hold that the addition made by the AO deserves to be deleted.

8. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open court on 16-09-2024.*

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**