

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

**BEFORE MS PADMAVATHY S, AM, &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No.3614/Mum/2024
(Assessment Year: 2011-12)**

ITO-22(1)(1), Room No. 319, 3 rd Floor, Piramal Chambers, Parel, Mumbai-400012.	Vs.	Gehrilal Rooplal Paliwal, Flat No. 703, Bldg. No.29, Cosmos CHS Ltd. Azad Nagar, Veer Desai Road, Andheri (E), Mumbai-400058. PAN : AKNPP4642A
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri V.K. Chaturvedi, Sr. DR

Respondent /Assessee by : Shri Sumit Mantri, AR

Date of Hearing : 19.09.2024

Date of Pronouncement : 24.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 24.05.2024 for Assessment Year (AY) 2011-12. The Revenue has raised the following grounds:

“1. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the addition made on account of bogus purchase to 10% of total bogus purchases ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchases”.*

2. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer”.*

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO u/s. 68 of Rs. 30,98,500/- on account of unexplained cash deposits, without appreciating the fact that the assessee has failed to explain the sources of these cash deposit.”*

2. The assessee is an individual and engaged in the business of trading in marbles and granites. The assessee filed the return of income for AY 2011-12 on 29.09.2011 declaring a total income of Rs. 4,78,453/-. The Assessing Officer (AO) received information from DGIT (Inv.) that the assessee has made purchases from the following parties who indulge in issuing bills without supply of goods for a commission,

Sl.No.	Name of the party	Amount – Rs.
1	Ajay Stone	6,54,499/-
2	Sunico Traders Pvt. Ltd.	2,00,002/-
3	Deep Traders	58,030/-
4	Karni Granimarmo Pvt. Ltd.	1,70,471/-
5	Rajhans Steel India Pvt. Ltd.	13,09,220/-
	Total	23,92,222/-

3. Accordingly, the AO issued a notice to the assessee under section 148 of the Income Tax Act, 1961 (the Act) reopening the assessment. The AO called on the assessee to furnish details pertaining to the above purchases. The assessee furnished copy of bills, bank statements etc. in support of the alleged bogus purchases. After perusing the details furnished by the assessee, the AO held that

“8.1 The submissions of the assessee as also the documents furnished have been carefully perused. However the same are not found to be acceptable for the following reasons:

(i) The assessee has not made available the details of transportation of all the material purported to have purchased from the aforesaid hawala dealer, such as transportation receipts delivery challans, Lorry receipts.

(ii) The assessee has also not substantiated as to how the items purchased from the aforesaid hawala dealer were utilized/consumed in the process of its business including the corresponding sales made with the full details of the parties and documentary evidences.

(iii) The assessee has neither produced the stock register nor produced the records goods purchased from the said parties.

(iv) The deduction of VAT in the Bill also does not bolster the case of the assessee. It is because of the fact that such deduction does not prove genuineness of a particular transaction in terms of supply of material. Such deduction is basically linked with the payment aspect only and cannot establish the purpose for which payment is made.

(v) The production of invoice is of no help to the assessee, since in the activity or accommodation entry, such documents are meticulously maintained both by the entry provider and entry seeker. It is also not important whether the amount is small or big and whether the assessee is having loss or profit. There may be number of reasons for seeking the accommodation entry as it leads to generation of the cash in the hands of assessee.

(vi) The onus was upon the assessee to prove the genuineness of the expenditure claimed as it was the assessee, which has made the claim.

(vii) The Sales Tax Department being a statutory authority, has certified that the aforesaid parties are Hawala Operators after conducting independent enquiries.

(viii) The contention that the payment are made by account payee cheque is not a fool proof method of substantiating the assessee's claim and is not sufficient to establish the genuineness of the purchases. Reliance is placed on Kachwal Gems Vs. Jt. CIT (2007) 284 ITR 10 (SC).

(ix) It is well-settled law that strict rules of evidence do not apply to IT Act and the real test with regard to genuineness of the transaction is "Preponderance of

Probabilities and not "Beyond reasonable doubt". Reliance is placed on C Vasantlal & Co Vs CT (1962) 45 IFR 206 (SC) Chaturbhuj Panauj AIR 1969 (SC) and SumatiDaval Vs CIT (1995) 214 ITR 801 (SC) One has to consider the totality of facts, surrounding circumstances and human probability for arriving at a conclusion as held in CIT Vs. Durga Prasad H2 ITR 40 (SC) and SumatiDayal Vs. CIT (1995) 214 ITR 801 (SC).

(x) The purchases from hawala operator falls within the ambit of the term colourable devices and the Hon'ble Supreme Court observed in the case of McDowell and Co. I td. Vs. CTO 154 ITR 148 that Tax planning may be legitimate provided it is within the framework of law Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious method. It is obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

(xi) The Sales Tax Department made a finding and uploaded on its website the name of entities which are involved in giving bogus bills only after carrying out a detailed enquiry & investigation

Further, with regards to the assessee's contention that they have shown the corresponding sales, offered the income thereon for taxation and there can be no sale without purchase, we need to elaborate on different modus operandi through which business entities inflate their purchases and their corresponding tax implication The inflation of purchases can be done in various ways:-

a) By taking bogus entries (where corresponding sale is not there):- In this case no material is bought and only bills are taken. The main reason for this is reduction of GP and generation of cash. Mainly manufacturing concerns and few trading concerns where quantitative analysis are not maintained are indulged in the practice of taking bogus entry to reduce their profitability.

b) By taking accommodation entry (where corresponding sale is there): In this case, the purchase material is there but not at the cost which is shown in the books. This again can be done in many ways i.e. either by purchasing in cash from grey markets and taking accommodation bills from some entry operators or by entering into some arrangements with brokers/suppliers who provide the material at higher price than the market rate and difference amount after deducting commission is paid in cash to the party who have made the purchase and such cash receipts are not offered for taxation. The purpose accommodation entry is also the same to reduce GP and generation of cash.

c) Apart from above of some cases, the business entities are involved in cyclic entry, wherein both purchase and sale are bogus. The main motto is to increase the turnover.

Therefore in the cases where bath purchase and corresponding sale is there and where purchases remains unverifiable possibility of leakage of Revenue can not be ruled out.”

8.2 to 8.6. *****

8.7. Considering the facts of the case, the nature of business and failure of the assessee to prove the genuineness of the above purchases and in light of the above exercises and conclusions, I am not satisfied with the profit declared by the assessee. From the above transactions, I am satisfied that the assessee has intentionally inflated the purchases to reduce his taxable income Thus, the above transactions clearly establish mens rea on the part of the assessee

In view of these facts, an amount of Rs. 2,99,028/- i.e. 12.5% of suspicious purchase of Rs. 23,92,222/- on account of suppression of profits by the assessee by making non-genuine purchases is hereby disallowed and added back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the I.T Act. 1961 are initiated for furnishing inaccurate particulars of income and concealment of income.

4. The AO also noticed that the assessee has deposited a sum of Rs. 30,98,500/- and called on the assessee to furnish the source of the cash deposit. The assessee submitted before the AO that the deposits are out of the withdrawals from the bank during the year and furnished bank statements in this regard. However, the AO did not accept the submissions of the assessee and held that

“(i) The source of deposit of Rs. 30,98,300/- not been proved by assessee in the bank account of the assessee.

(ii) The purpose of the withdrawals also could not be established with any documentary supporting, even could not be explained by the assessee satisfactorily.

(iii) Assessee could not explain as to when entire receipt of sale proceeds are received through cheques and there is negligible cash sale, in that situation, what was the source of deposits.

(iv) The assessee could not explain as to when a number of comfortable mode of transactions are available and assessee is aware of the same too e.g. cheques, RTGS etc, in that situation what was the reasons and compulsions to transact in cash mode.”

5. Accordingly, the AO added the entire amount of Rs. 30,98,500/- as unexplained credits under section 68 of the Act. On further appeal the CIT(A) reduced the G.P. percentage of addition on alleged bogus purchases to 10% and deleted the addition made under section 68 of the Act. The Revenue is in appeal before the Tribunal against the order of the CIT(A).

6. The ld. DR submitted that the assessee has not discharged the onus of proving the genuineness of the purchases and has not submitted the relevant documents such a stock register, transport bills, etc. The ld. DR further submitted that the AO has considered the profit percentage of the assessee on genuine purchases and has correctly applied 12.5% as G.P. ratio on the non-genuine purchases. Therefore, the ld. DR submitted that the CIT(A) is not correct in reducing the GP percentage further to 10% and that the case law relied on by the CIT(A) in this regard is distinguishable on facts. With regard to addition made under section 68 of the Act, the ld. DR relied on the order of the AO.

7. The ld. AR on the other submitted that for the year under consideration, the assessee has disclosed G.P at 10.37% which is way higher than the Industries G.P. The ld. AR further submitted that the alleged bogus purchases are already part of the assessee's books of account and the G.P. rate is already part of the income declared by the assessee. Accordingly, the ld. AR submitted that adding a G.P. rate

at 12.5% by the AO is not correct. With regard to the addition made under section 68 of the Act, the Id. AR submitted that the assessee has furnished the bank statements in support of the previous withdrawals to substantiate the source for subsequent deposits and this fact has not been questioned by the AO. The Id. AR further submitted that the AO has made the addition stating that the assessee had no reason to hold such huge cash and that the assessee should have made payments using Non-cash Methods. The Id. AR also submitted that from the said findings of the AO it is clear that the addition is based on mere surmise and conjecture and not based on any adverse factual finding with regard to the evidences submitted. Accordingly, the Id. AR argued that the CIT(A) has correctly deleted the addition.

8. We heard the parties and perused the material on record. The assessment was re-opened in assessee's case based on information received from DGIT (Inv.) with regard to certain alleged bogus purchases. The AO while completing the assessment has applied 12.5% on the impugned transactions and made addition of Rs. 2,99,028/-. The AO also made an addition of Rs. 30,98,500/- under section 68 of the Act towards cash deposited into the bank account. The CIT(A) restricted the G.P. rate to 10% and deleted the addition made under section 68 of the Act. With regard to the alleged bogus purchase from the perusal of the AO's order, we notice that the assessee has not fully discharged its onus of proving the genuineness of the purchases. Even before the CIT(A) the assessee did not furnish any further details except the purchase bills and bank statements as submitted before the AO. Considering the facts of the present case in our considered view the AO has correctly applied the G.P. percentage of 12.5% on the impugned transactions and to this extent the order of the CIT(A) is set aside. The ground raised by the Revenue in this regard is allowed.

9. With regard to addition made under section 68, it is relevant to take note of the following relevant observations of the CIT(A).

“5.3 Ground 3

Vide this ground, the Appellant has challenged the action of the AO in making an addition of Rs 30,98,500/- u/s 68 of the Act. In this regard, the Appellant has submitted that the AO has erred in not accepting factual submissions of the Appellant that the cash deposits are out of cash withdrawals. The Appellant has submitted that he has made cash withdrawals to the extent of Rs 42,84,550/- and cash deposits are from these cash withdrawals. The Appellant has further submitted that the AO has failed to bring on records any other source of income of the Appellant.

I have considered the submissions of the Appellant. I have also perused the assessment order. It is observed from the assessment order that the AO has not doubted the cash withdrawals which are supported by bank statement. However, the AO has made the addition on the ground that there is no reason why should the Appellant be making withdrawals for the purpose of cash deposits. The AO has also raised concerns that why should the Appellant be indulging in cash transactions when there are other modes of non-cash transactions. In my considered opinion, once there are sufficient cash withdrawals to explain cash deposits, no addition can be made u/s 68 since the cash withdrawals explain cash deposits, unless and until, there are evidences on records that these cash deposits could be from any other sources, which is missing in the assessment order. In view of the same, I direct the AD to delete the addition made u/s 68 of the Act. Ground is, thus, allowed.”

10. From the perusal of the findings of the AO with regard to the basis on which the addition is made (as extracted in the earlier part of this order) it is clear that the AO has not recorded any adverse finding with regard to the documents submitted by the assessee explaining the source of cash deposits. The AO has made addition only for the reason that the assessee has not explained the purpose of which cash was withdrawn and also that when other modes of payment are available why the assessee needed cash. The CIT(A) has given relief to the assessee after considering this fact and therefore we see no infirmity in the order of the CIT(A) deleting the

addition made under section 68 of the Act. The ground raised by the Revenue in this regard is dismissed.

11. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 24-09-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai