

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 2514/Del/2023, A.Y.2010-11)

ARO Equipments Private Limited Plot No. 300, Phase-2, Gurgaon, Hayrana PAN : AACCA8471G	Vs.	ACIT C. R. Building, IP Estate, New Delhi
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Virendra Singh, Sr. Dr

Date of Hearing	24/10/2024
Date of Pronouncement	05/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Ld.CIT (A)/National Faceless Appeal Centre ["NFAC" for short], dated 05/06/2023 for the Assessment Year 2010-11.

2. The grounds of Appeal are as under: -

- "1. 1. That the assessment order is invalid, illegal and void.*
- 2. That the Ld. AO has erred in law and on facts in making the additions by ignoring the genuineness of purchases and considering it as bogus transaction.*
- 3. That the Ld. AO has erred in law and on facts in making the addition based on the statement of a third person recorded by another person/officer.*

4. Without prejudice, the Ld. CIT (A) has erred in appreciating the fact that the profit percentage assessed by the CIT(A) as GP margin on the alleged bogus purchase is already declared by the assessee in his ITR.”

3. None appeared for the Assessee. Even after service of notices except filing the adjournment application on an earlier occasion, neither the Assessee nor the representative of the Assessee have appeared before the Tribunal though a Power of Attorney executed by the Assessee found on record. Considering the above facts and circumstances, we deem it fit to hear the Ld. Departmental Representative and decide the present Appeal.

4. There is a delay of 32 days in filing the present appeal, the Assessee filed an application coupled with an affidavit contending that due to lack of timely professional assistance, there was a delay of 32 days in filing the appeal. For the reasons stated in the application for condonation of delay filed by the Assessee, we condone the delay of 32 days in filing the present Appeal.

5. Brief facts of the case are that, the assessee filed Original Return of Income for Assessment Year 2010-11 declaring a total income of Rs. 56,25,620/- on 14.10.2010. The Ld. AO issued notice u/s 148 of the Income Tax Act, 1961, ('Act' for short) stating that he has reason to believe that the income of the assessee to the tune of Rs. 12,27,144/- has escaped assessment. Thereafter the Ld.AO made additions to the tune of Rs. 7,39,00,240/- vide assessment order dated 11/12/2017. Aggrieved by the

assessment order dated 11/12/2017, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 05/06/2023, partly allowed the appeal of the Assessee by restricting the addition to 16.5% of amount disallowed by the A.O. as an additional taxable income without giving any benefit of expenses towards the same. As against the order of the Ld. CIT(A) dated 05/06/2023, the Assessee preferred the present Appeal on the grounds mentioned above.

6. The Ld. Departmental Representative relying on the orders of the Lower Authorities submitted that the Appeal of the Assessee is devoid of merit which requires no interference at the hands of the Tribunal, thus sought for dismissal of the Appeal.

7. We have heard the Ld. Departmental Representative and perused the material available on record. The Ld. CIT(A) while deciding the Appeal of the Assessee held as under: -

“Ground 1 to 5

The Learned AO has carried out addition of Rs.5.44Crore on accounts of bogus purchases made from two parties and Rs.1.38 crores by disallowing payment made to such parties. In this regard the appellant has raised multiple ground of appeal which are disposed off collectively as under:

6.2 Based on information received from DIT (investigation) Faridabad the learned AO was in possession of information pertaining to suspicious transaction in case of the appellant. As per said information the learned AO reopened the assessment and upheld that the appellant had made purchases of Rs.4,93,84,725 from m/s Shiv Shankar Enterprises and

Rs.40,53,174 from m/s Shiv Sai Traders are bogus purchases and therefore the same were disallowed. The learned AO observed that the appellant has made payment of Rs. 1,38,36,724 to m/s Shiv Shankar Enterprises, the said payment was also treated towards bogus purchases and being added back to total income of the appellant.

6.3 The very basic question in the underlined case is about genuineness of the purchases made by the appellant. The appellant filed supporting documents containing ledger extracts of parties, vat returns, excise returns, Payment details, bank statement reflecting such payment details, copy of invoices, purchase register, stock register, bank statements, audited books of accounts.

6.4. The learned AO has not questioned the sales made by the appellant and has accepted the sales amount as appearing in the financial statements. He has also not provided any adverse finding on inventory appearing in the books of account of the appellant.

6.5 In absence of visibility on correctness of the amount paid/payable to creditors, the possibility of purchasing the goods from grey market at lower rates and recording the same at inflated price in books of accounts cannot be ruled out.

6.6 However, if the entire purchases are disallowed, the corresponding sales also need to be ignored but the AO has not done so. There, this leaves with unjustified adjustment in case of the appellant.

6.7 Many high courts and tribunals have dealt with this issue of bogus purchases in greater details and have upheld that certain gross profit shall be added to total income instead of adding entire purchases (especially when corresponding sales are not challenged).

6.8 There is plethora of judicial precedents on this very issue and I have placed reliance on following cases:

The Hon'ble Gujarat High Court in the case of Commissioner of Income-tax vs. Simit P. Sheth reported in [2013] 38 taxmann.com 385 (Gujarat) has held as under:-

In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain

quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) Maved the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.

8. If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.

Nickunj Eximp Enterprises Pvt. Ltd WRIT PETITION NO.2860 OF 2012] Vs CIT(A) Bombay HC

In the underlined writ petition, Bombay HC upheld addition based on GP ratio

1. The Hon'ble Bombay High Court in the case of PCIT vs. Pinaki D. Panani vide order dated January 18, 2020 has held that even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed. As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated.

2. The Hon'ble Bombay High Court in the case of Usha Exports vs. ACIT vide order dated December 21, 2019 has held that in case of bogus purchases where sales are accepted, the addition can be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. The AO is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases.

3. PCIT vs. Jakharia Fabric (P) Ltd. (2020) 429 ITR 323 (Bom-HC) dated 10/02/2020

In the underlined case, honourable HC upheld the decision of ITAT for restricting adjustment to the tune of estimated profit element involved in bogus purchase.

6.9 The appellant has also submitted a chart depicting GP earned by it in 5 years. The average GP for such 5 years works out to 16.5%.

6.10 Therefore, it would be justified to restrict addition to the tune of certain gross profit. Considering totality of the case and relying on jurisdictional High Court's judgment and various other judicial pronouncements by Honorable High courts and ITATS, I am of the view that the addition shall be restricted to 16.5% of amount disallowed by AO as an additional taxable income, without giving any benefit of expenses towards the same.

It would be appropriate to apply this cross-profit ratio of 16.5 percent on both i.e., amount of purchases and payment made to these parties.

6.11 In view of the above total addition to income of the appellant amounts to Rs. 1,12,66,962/- (Rs.6,82,84,620/- X 16.5%)

6.12 Accordingly, the appeal of the Appellant for AY 2010-11 is partly allowed.”

8. The Ld. CIT(A) after considering the facts and circumstances of the case and also the judicial pronouncements on the issue, restricted the addition to 16.5% of the amount disallowed by the A.O. as an additional taxable income without giving any benefit of expenses towards the same. In the absence of any evidences or the argument in contravention of the findings and the conclusion of the Ld. CIT(A), we find no error or infirmity in the order of the Ld. CIT(A). Accordingly, finding no merit in the Grounds of appeal of the Assessee, we dismiss the Grounds of Appeal of the Assessee.

9. In the result, the Appeal of the Assessee is dismissed.

Order pronounced in open Court on 05th November, 2024

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 05/11/2024

R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI