

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'C', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.3676/Mum/2024
Assessment Year: 2009-10**

ACIT 32(1), Mumbai	vs	P B Construction Company Monarch Castle CHS Ltd. Hanuman Road, Dattawadi Vile Parle East, Mumbai-400057. PAN: AACFP 2842 B
(Appellant)		(Respondent)

Present for:

Assessee by : Shri A.N. Shah
Revenue by : Shri Raj Singh Meel, Sr. DR

Date of Hearing : 26.08.2024

Date of Pronouncement : 14.11.2024

ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the revenue is directed against the order of ld. CIT(A), NFAC dated 22.05.2024 for Assessment Year 2009-10. The revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,03,37,643/- on account of bogus purchases."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the addition was made on the basis of information received from DIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchases made by the assessee from dealers without actual supply of goods."

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the hawala dealers have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody."*

4. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee could not prove the genuineness and creditworthiness of the purchase transactions during the course of assessment proceedings."*

5. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in estimating the profit at 12.5% of the total alleged bogus purchases from hawala dealers without appreciating the fact that it is not incumbent on CIT(A) to restrict such disallowance to only 12.5% and while doing so, Ld, CIT(A) failed to confirm to the ratio laid down by the Hon'ble Apex court in the case of N.K. Proteins Ltd. vs. DCIT in SLP (Civil) No.769/2017 dated 16.01.2017."*

6. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that purchases were made from some other parties which were not recorded in the books of accounts and only accommodation bills were obtained from hawala parties."*

7. *The appellant craves leave to amend or alter or add a new ground which may be necessary."*

2. Fact in brief is that the case was reopened by issuing of notice u/s 148 of the Act on 22.03.2013 on the basis of information received from DIT(Inv.) and Sales Tax Department in respect of accommodation bills obtained by the assessee from the dealers who were indulged in providing bogus purchases entries. During the year under consideration as per the detail given at page no. 1 & 2 of the assessment order, the assessee has obtained accommodation entries from the following parties as under:

<i>TIN</i>	<i>Name of bogus dealers</i>	<i>PAN</i>	<i>F.Y.</i>	<i>Amount</i>
27970618226V	Shreeji Traders	AILPB7423K	2008-09	22,14,576
27020614820V	Bhagwati Trading Co.	AAIFB0449E	2008-09	27,81,751
27170360840V	Sampark Steels	ABAFS4806M	2008-09	28,05,197
27740535951V	Prayan Trading Co.	AAISP6755D	2008-09	12,30,284
27830385697V	Vitarag Trading Co.	AAFFV2004C	2008-09	11,72,997
27940638564V	Smartlink Tradex Pvt. Ltd.	AALCS0441B	2008-09	16,09,645

3. During the course of assessment, assessee submitted that assessment for the year under consideration was already completed u/s 143(3) of the Act on 08.12.2011 assessing the total income at Rs. 1,05,10,100/- as against return of income of Rs. 1,03,10,092/-. In respect to the notice u/s 142(1) issued by the assessing officer, the assessee has filed details of purchases along with copies of ledger accounts of respective purchase parties utilization of purchase material with details of realization and execution of contract. The assessing officer also stated that statement of the parties indulged in providing accommodation bills were also recorded u/s 131 of the Act wherein they had admitted to have provided accommodation bills without supplying any goods mentioned in the bills. The assessing officer stated that the assessee had failed to furnish any evidences regarding the actual receipt of goods such as gate pass, register movement of goods, date of purchase and date of receipt of material, date of transportation, payment of octroi etc. The assessing officer concluded that assessee had not substantiate the claim of purchases except providing extract of bills and payment made through banking channel therefore, the hundred percent 100%

purchases to the amount of Rs.1,18,14,449/- was disallowed and added to the total income of the assessee.

4. The assessee filed appeal before the Ld. CIT(A). The ld. CIT(A) has restricted the addition to the extent of 12.5% of the impugned purchases after referring the decision of First Appellate Authority in the case of the assessee itself for assessment year 2010-11 relying on the decision of Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth 356 ITR 451 (Guj).

5. During the course of appellate proceedings before us, the Ld. Counsel filed Paper Book comprising copies of documents and details furnished before lower authorities. The Ld. Counsel submitted that on similar facts and identical issues in the case of the assessee ITAT Mumbai for the assessment year 2010-11 vide ITA No. 3165/Mum/2017 dated 13.11.2017 has upheld the decision of Ld. CIT(A) in sustaining the purchases @ 12.5%.

6. On the other hand the Ld. DR supported the order of Ld. CIT(A).

7. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above, the Assessing Officer has disallowed the 100% of the purchases made by the assessee from the supplier who were indulged in providing accommodation bills without supplying any material as per the information received from the Sales Tax Department. The Ld. CIT(A) has restricted the addition to the extent of 12.5% by

relying upon the decision of Hon'ble Gujarat High in the case of Simit P. Sheth as referred supra in this order that only profit earned by the assessee has to be taxed on reasonable basis. Since similar issue on identical fact has already been adjudicated by the Co-ordinate Bench of ITAT in the case of the assessee as discussed above in this order, therefore with the assistance of Ld. Representative we have perused the decision of ITAT in the case of the assessee vide ITA No. 3165/Mum/2017 for A.Y. 2010-11 the relevant extract of decision is reproduced as under:

“4. We have carefully considered the rival submissions and perused the material placed before us including the impugned orders of authorities below. The undisputed facts are that the assessee is a beneficiary of bogus purchases to the tune of Rs.95,48,660/- which could not be proved by the assessee and even notices sent to the parties u/s 133(6) by the AO could not be served and therefore entire amount of bogus purchases added to the total income of the assessee. In the appellate proceedings, the ld.CIT(A) directed the AO to sustained the addition at the rate of 12.5% by following the decision in the case of Simit P Seth (supra) by observing that only profit earned by the assessee has to be taxed on reasonable basis. Considering the circumstances in totality, we are of the view that the order of the ld.CIT(A) does not suffer from any illegality or infirmity as the FAA has taken a very reasonable view in sustaining the purchases at the rate of 12.5%. The ITAT in a number of cases on identical facts and circumstances, have taken a consistent view that some percentage addition ranging from 5% to 12.50% or a reasonable percentage of the bogus purchase has to be made to tax the savings by the assessee by purchasing the material from gray market thereby saving VAT and other incidental taxes. The AO has not disputed sales corresponding to the bogus purchases . On these e facts on record, we find that the ld.CIT(A) has taken a reasoned view and there is no necessity to interfere in the appellate order. Accordingly, we uphold the order of the ld.CIT(A) and dismiss the appeal of the revenue.”

8. Since, the issue in appeal is squarely covered by the decision of ITAT in the case of the assessee itself therefore, following the decision of ITAT to tax only profit element on reasonable basis we do not find any infirmity in the decision of Ld. CIT(A) in restricting the disallowance to the extent of 12.5% of the purchases as discussed. Therefore, all the grounds of appeal of the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14.11.2024

Sd/-

Sd/-

(RAHUL CHAUDHARY)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai:14.11.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai