

IN THE INCOME TAX APPELLATE TRIBUNAL

“G” BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

**ITA No.5198/M/2024
Assessment Year: 2009-10**

**ITA No.5201/M/2024
Assessment Year: 2008-09**

Income Tax Officer- 41(1)(5) Room No.830D, Kautilya Bhawan, Mumbai- 400051.	Vs.	Swapnil Enterprises B-104, Harshad Apartment, Everad Nagar, E. E. Highway, Sion (East), Mumbai- 400022. PAN: ABDFS2784B
Appellant	:	Respondent

Present for:

Assessee by

: None

Revenue by

: Shri Suresh Gaikwad, SR. D.R.

Date of Hearing

: 28.11.2024

Date of Pronouncement

: 28.11.2024

ORDER

Per Narendra Kumar Billaiya, A.M.:

ITA No.5198/M/2024 & ITA No.5201/M/2024 are two separate appeals by the revenue preferred against two separate orders of Ld. CIT(A) 51, Mumbai dated 07/08/2024 pertaining to A.Y. 2008-09 and 2009-10.



2. Since common grievance is involved in the captioned appeals, they were heard together and are disposed off by these common orders for the sake of convenience and brevity.
3. The assessee is a partnership firm consisting of four partners engaged in the business of civil engineering and transport contractor.
4. During the course of the scrutiny assessment proceedings, the Ld.AO received information from DDIT Investigation VI, Mumbai from which the Ld.AO came to know that the assessee with its associates concerns had booked a sum of Rs.46,73,63,536/- on account of bogus purchase of service/goods from certain parties.
5. On the basis of this information, the Ld.AO found that out of total purchases of Rs.2,07,15,422/-, an amount of Rs.1,27,24,840/- pertained to bogus bill accommodation parties. The Ld.AO accordingly added a sum of Rs.1,27,24,840/- in A.Y.2008-09.
6. Assessee challenged the additions before the Ld. CIT(A). Before Ld. CIT(A), it was strongly contented that though the Ld.AO has disallowed Rs.1,27,24,840/- as purchases but has not disturbed the sales and without disturbing the sales the Ld.AO could not have disallowed the impugned purchases.
7. After considering the facts and submissions and joint support from various judicial decisions, the Ld. CIT(A) was of the opinion that when the sales have been accepted, the entire



purchases cannot be disallowed and only a reasonable profit percentage can be added. On finding that the operative profit of the assessee ranges between 14 to 15%. The Ld. CIT(A) directed the Ld.AO to restrict the addition to 15% of the bogus purchases.

8. Before us, the Ld.DR strongly supported the findings of the Ld.AO. None appeared on behalf of the assessee inspite of notice. Therefore we decided to proceed ex-parte.
9. We find that on similar situation, the Hon'ble High Court of Bombay in the case of Mohammad Hazi Adam & Company in ITA No. 1004 of 2016 & others has held as under:-

"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the



assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."

10. In the light of the above, we do not find any reason to interfere with the findings of the Ld. CIT(A). Both the appeals by the revenue are dismissed.

11. In the result, both the appeals are dismissed.

Order pronounced in the open court on 28.11.2024.

Sd/-
RAHUL CHAUDHARY
JUDICIAL MEMBER

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Place: Mumbai,

Dated: 28.11.2024

Snehal C. Ayare, Stenographer

Copy of the order forwarded to :

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

//True Copy//



BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai