

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.3605/Mum/2024  
Assessment Year: 2011-12**

Shri Rajesh Bhavarlal Jain  104, 1 <sup>st</sup> Floor, Astal Mansion, Opp. Godrej, K.K. Marg, 7 <sup>th</sup> Rasta Jacob Byculla, Mumbai- 400011.  <b>PAN: AAEPJ 8093 L</b>	Vs.	ITO-21(3)(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nisheeth Doshi  
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 30.10.2024  
Date of Pronouncement : 09.12.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2011-12 is directed against the order dated 21.05.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO of reopening the assessment even though he did not possess any reliable material and information establishing that assessable income had escaped assessment.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the computation of income of the Appellant made by the Ld. AO at Rs. 1,27,86,450/- in the assessment order framed*

*u/s 143(3) rws 147 of the Act as against the returned income of Rs. 8,20,210/-.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the assessment u/s 143(3) r.w.s 147 of the Income- tax Act, 1961 which was invalid and illegal because the reopening of the assessment is not in conformity with the express legal provisions in view of the following:*

*a) Re-opening of the assessment is done without independent application of mind relying on the information received from the Investigation Wing without there being any incriminating document corroborating the allegation that the transactions were not genuine.*

*b) The Ld. Assessing Officer has not established a live link between material being relied upon to reopen the assessment proceedings and the Appellant.*

*c) The Ld. Assessing Officer could not rely on the conclusion drawn by the Sales tax authorities relying on the statement of the suppliers for reopening the assessment when no opportunity of cross examination of the suppliers had been provided to the Appellant.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred confirming the addition u/s 69C of the Act of Rs. 1,19,66,240/-.*

*5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the levy of interest u/s 234A, 234B and 234C.*

*6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the contention of the Assessing Officer to initiate penalty proceedings u/s 274 rws 271(1)(c) of the Income Tax Act, 1961.*

2. Fact in brief is that return of income declaring total income of Rs. 8,20,210/- was filed on 24.09.2011. Subsequently, on the basis of information received from the Sales Tax Department through DGIT(Inv.) Mumbai, the case of the assessee was reopened on the alleged bogus purchases made from the following parties:

<i>Sl. No.</i>	<i>Name of the party</i>	<i>Amount (Rs.)</i>
1	<i>Marutilmpex</i>	<i>585905</i>
2	<i>Rajguru Metal Industries</i>	<i>1,94,98,852</i>
3	<i>Subham Steel Impex</i>	<i>14,93,078</i>
4	<i>Jay Vijay Tubes P. Ltd.</i>	<i>32,02,480</i>
5	<i>Chambal Steel and Alloys</i>	<i>47,34,925</i>
	<i>TOTAL</i>	<i>1,19,66,240</i>

3. The assessing officer stated that assessee failed to establish the genuineness of the purchase transaction made from the aforesaid parties, therefore, treated the whole amount of purchases of Rs. 1,19,66,240/- as unexplained expenditure u/s 69C of the Act and added to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition made by the assessee after reiterating the facts reported in the assessment order.

5. During the course of appellate proceedings before us, the ld. Counsel submitted that assessee is carrying on the business re-selling of ferrous & non-ferrous metal. The assessee had furnished copies of bills, copies of bank statement, copy of ledger account of purchase parties and detail of subsequent sales made to various dealers etc. He also submitted that assessee has not only prove the purchases but the corresponding sales also therefore, the ld. CIT(A) is not justified in sustaining the hundred percent purchases without disproving the corresponding sales made by the assessee. The ld. Counsel has also placed reliance on the decision of ITAT in the case of assessee itself for the A.Y. 2010-11 wherein on similar issue and identical fact the ITAT has restricted the addition to the extent of 12.5% of the disallowance made by the assessing officer.

6. On the other hand, ld. DR supported the order of lower authorities.

7. Heard both the sides and perused the material on record. The assessee is carrying on the business of re-selling of ferrous and non-ferrous metal. The case of the assessee was reopened on the basis of information received from the Sales Tax Department through the DGIT(Inv.) that assessee had shown purchases from the parties who were indulged in providing accommodation bills of purchases without supplying any material. The assessing officer has disallowed hundred percent purchases of Rs. 1,19,66,240/- made u/s 69C of the Act from the parties as referred above in this order who were engaged in supplying accommodation bills of purchases. However, we find that the assessing officer has not disputed the corresponding sales shown against the purchases shown during the year under consideration. In such type of transaction, we consider that there is extra profit element embedded as the assessee purchased the material from the gray market without any bills. We find that on identical and similar issue, the ITAT in the case of the assessee itself for A.Y. 2010-11 vide ITA No. 5610/M/2017 dated 05.02.2018 has restricted the addition to the 12.5% of the bogus purchases. The relevant extract of the decision of ITAT is reproduced as under:

*“15 As regards merits of addition, I find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtained bogus bills, assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information assessment was reopened. The credibility of information relating to reopening has been confirmed by the learned CIT(A) and by ITAT as above. Furthermore, it is noted that in such factual scenario Assessing*

*Officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce any of the parties. The necessary evidence for transportation of goods have been provided by the assessee. In this factual scenario it is amply that assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills are bogus and non-existent and there is no cogent evidence of transportation of goods. The sales tax Department in its enquiry have found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved Assessee has not been able to produce any of the parties. The assessing officer has noted that there is no cogent evidence of the provision of goods. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there is no doubt that these parties are non-existent.*

*16. Hence purchase bills from these non-existent the/bogus parties cannot be taken as cogent evidence of purchases, in light of the overwhelming evidence the revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) and CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC). In the present case the assessee wants that the unassailable fact that the suppliers are non-existent and thus bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of above apex court decisions.*

*17. In these circumstances, the learned departmental representative has referred to Gujarat High Court decision in the case of Apex Appeal No. 240 of 2003 in K Industries vs Dy CIT, order dated 20.06.2016, wherein hundred percent of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1.2017.*

18. *The Id. Departmental Representative further submitted that Hon'ble Rajasthan high court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had inter alia held as under:*

*"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law Pronounced in the aforesaid three judgments.*

*19. Upon careful consideration, I note that this is not an appeal by the Revenue. the enhancement of disallowance cannot be considered by the ITAT. Further on facts and circumstances of the case 12.5% disallowance is found to be serving the interest of justice. Hence, I confirm the order of Id. Commissioner of Income Tax (Appeals). Since, the issue has been decided keeping in consideration the Hon'ble High Court's decision on this issue, the decision of tribunal relied upon by the assessee are not relevant."*

8. Following the decision of ITAT as referred above we restrict the disallowance to the extent of 12.5% of the alleged bogus purchases. Accordingly, ground no. 4 of the appeal of the assessee is partly allowed.

9. Technical ground of appeal of the assessee from 1 to 3 are as under:

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO of reopening the assessment even though he did not possess any reliable material and information establishing that assessable income had escaped assessment.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the computation of income of the Appellant made by the Ld. AO at Rs. 1,27,86,450/- in the assessment order framed u/s 143(3) rws 147 of the Act as against the returned income of Rs. 8,20,210/-.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the assessment u/s 143(3) r.w.s 147 of the Income- tax Act, 1961 which was invalid and illegal because the reopening of the assessment is not in conformity with the express legal provisions in view of the following:*

*a) Re-opening of the assessment is done without independent application of mind relying on the information received from the Investigation Wing without there being any incriminating document corroborating the allegation that the transactions were not genuine.*

*b) The Ld. Assessing Officer has not established a live link between material being relied upon to reopen the assessment proceedings and the Appellant.*

*c) The Ld. Assessing Officer could not rely on the conclusion drawn by the Sales tax authorities relying on the statement of the suppliers for reopening the assessment when no opportunity of cross examination of the suppliers had been provided to the Appellant.*

10. Heard both the sides and perused the material on record. We find that assessing officer has received information from the Sales Tax Department through DGIT(Inv.), Mumbai that assessee has taken bogus purchase bills to reduce and suppress the profit. The assessing officer after appraisal of the material on record i.e. return of income filed by the assessee, information received that assessee has obtained bogus bills of purchases, arrived at the conclusion that assessee had failed to disclose all material facts for determination of income. We find that there is tangible material on the basis of which the AO has formed reason to believe after referring the material available on record. Therefore, we find that at the stage of reopening of assessment, the assessing officer is not required to prove the

escapement of income but to link the information received with reason to believe that income has escaped assessment. Therefore, we do not find any merit in this ground of appeal filed by the assessee about the validity of reopening of assessment. We further find that on similar issue also the ITAT in the case of the assessee itself for A.Y. 2010-11 has dismissed the appeal of the assessee about the validity of reopening of the assessment. Therefore, considering the above facts and finding grounds of appeal no. 1 to 3 regarding validity of the assessment are dismissed.

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

Order pronounced in the open court on 09.12.2024.

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 09.12.2024  
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