

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.2121/M/2024  
Assessment Year: 2011-12**

<b>Mr. Vinesh Arvindkumar Shah,</b> C-26, 2 <sup>nd</sup> Floor, Arvind Niwas, Morvi Lane Chowapatty, Mumbai Maharashtra – 400 007 <b>PAN: AVKPS0785P</b>	Vs.	<b>Income Tax Officer,</b> Ward 19(3)(1), Piramal Chambers, Dr. SS Rao Marg, Parel, Maharashtra - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Tisha Bagh, Ld. A.R.  
Revenue by : Shri V.K. Chaturvedi, Sr. D.R

Date of Hearing : 12.12.2024  
Date of Pronouncement : 12.12.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 06.03.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** In the instant case, the Assessee is engaged in ferrous metal and as per the information received from Sales Tax Department, the Assessee has shown purchases of Rs.19,43,378/- from various parties as mentioned in para no.2 of the assessment order and the said concerns were not doing genuine business of purchases and sales and merely indulged in providing accommodation bills. Considering the aforesaid facts the Assessing Officer (AO) afforded opportunity an opportunity to the Assessee to substantiate his claim, but the Assessee failed to establish the same and therefore the AO treated the purchases to the tune of Rs.19,43,378/- from the parties referred to above, as bogus purchases/accommodation bills and added the said amount of Rs. 19,43,378/- in the income of the Assessee, while passing the assessment order dated 28.11.2016 u/s 144 r.w.s. 147 of the Act.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, but could not succeed as the Ld. Commissioner by considering the conclusion drawn by the AO in making the addition, as well as claim/reply of the Assessee, ultimately affirmed the aforesaid addition, by observing and holding as under:

*“**Grounds 1 to 6:** In these grounds of appeal the appellant has stated that the AO erred in adding purchases made as bogus as communicated by Sales Tax Department. On perusal of the above documents, it is noted that there is clear evidence that appellant has indulged in accommodation bills through booking bogus purchases thereby reducing profit and thus evaded taxes. There are no evidences for bogus sales. Appellant also not submitted any evidence like Purchase and Sales register, Inventory register or any other evidences to prove his claims of bogus sales.*

*In view of the above, **order of AO is upheld and the grounds are noted as dismissed.**”*

**5.** The Assessee, being aggrieved, is in appeal before this Court. At the outset, the Ld. Counsel Ms. Tisha Bagh has demonstrated that impugned order is a cryptic order and the Ld. Commissioner has not considered the factual aspects in its right perspective. Even otherwise,

from the conclusion drawn, it appears that the Ld. Commissioner has recorded that there are no evidences for bogus sales and therefore according to the Ld. Counsel the impugned order is liable to be set aside. The Ld. Counsel further stated that without prejudice to the rights of the Assessee, if addition is to be affirmed then 100% cannot be made, as the profit element embedded in the bogus purchases can only be added in view of the judgment passed by the Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. M/s. Mohammad Haji Adam & Co. (in ITA No. 1004 of 2016 and others dated 11.02.2019).

**6.** On the contrary, the Ld. D.R. refuted the claim of the Assessee by contending that the Assessee before the authorities below has failed to substantiate his claim specifically before the AO as no material was produced by the Assessee for establishing the genuineness of the purchases and therefore there is no infirmity in the orders passed by the authorities below.

**7.** Heard the parties and perused the material available on record. Admittedly, the Assessee before the AO as well as before the Ld. Commissioner except filing the reply has not produced proper documents to establish genuineness of the purchases made, and therefore the same has been considered as bogus by the authorities below and thus on this aspect no interference is warranted. However, coming to the second/alternate claim raised by the Ld. Counsel on behalf of the Assessee, this Court is in concurrence with the alternate claim of the Ld. AR and not refuted by the Ld. DR that profit element only can be subjected to addition and hence, the AO is directed to verify whether the bogus purchases have already been shown by the Assessee in its profit & loss account and on finding answer "affirmative" then to apply GP rate @5% of the bogus purchases over and above the GP/profit already shown on the same, if any by the Assessee, and recompute the income accordingly.

**8.** In the result, the appeal filed by the Assessee stands **partly allowed.**

**Order pronounced in the open court on 12.12.2024.**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.