

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

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

**ITA No.3733/M/2023  
Assessment Year: 2011-12**

<b>Income Tax Officer, Ward-42(1)(2), Room No.745, 7<sup>th</sup> Floor, Kautilya Bhavan, BKC Bandra (East), Maharashtra - 400 051</b>	Vs.	<b>Shri Dilip Ramniklal Bania, D/5, 615, Kalpak Society, Sec. No.6, Charkop, Kandivali (W), Maharashtra - 400067 PAN: AAEPB9897N</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri V.K. Chaturvedi, Sr. D.R

Date of Hearing : 11.12.2024  
Date of Pronouncement : 11.12.2024

**O R D E R**

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

This appeal has been preferred by the Revenue against the order dated 23.08.2023, 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 case of the Assessee was reopened u/s 147 of the Act on the information received from the Sales Tax Department and Director General of Income Tax (Investigation), Mumbai, to the effect that certain entities were involved in the business of issuing bogus bills for commission, without actually entering into actual business and the Assessee was also beneficiary of such bogus purchase bills during the

assessment year under consideration, allegedly accepted from the following parties:

<i>Name of the party</i>	<i>PAN</i>	<i>Tin</i>	<i>Amount</i>
<i>Vruksha Enterprise</i>	<i>BGMPS2816M</i>	<i>27530620893V</i>	<i>1,248,031</i>
<i>Parshav Enterprise</i>	<i>AIRPG1848F</i>	<i>27070506977V</i>	<i>1,583,198</i>
<i>Darshan enterprises</i>	<i>AHGPK0209G</i>	<i>27220710934V</i>	<i>46,000</i>
<i>Swastik Trading Company/metal India Corporation</i>	<i>AFPPJ0417G</i>	<i>27180317233V</i>	<i>426,300</i>
		<i>TOTAL</i>	<i>33,03,529/-</i>

**3.** The AO therefore reopened the case of the Assessee by issuing the notice dated 02.01.2016 u/s 148 of the Act, to the Assessee. The Assessee in response to the said notice neither attended nor filed any submission including return of income. Thereafter, various statutory notices including dated 03.05.2016 u/s 142(1) of the Act along with the questionnaire and final show cause notices dated 10.01.2016 and 30.11.2016 were issued to the Assessee, however, the Assessee neither attended nor filed any details. Therefore, in the constrained circumstances, the Assessing Officer (AO) by considering the material available on record and in view of lack of material deficiencies and the fact that notices u/s 133(6) of the Act remained to be served to the purchase parties and purchases shown by the Assessee during the year remained un-verifiable, rejected the books of account of the Assessee by invoking the provisions of section 145(3) of the Act and declined to accept the purchases made by the Assessee on the following reasons:

*“a) The Director General of Income-tax (Investigation), Mumbai vide letter dated 26.12.2013 informed the list of beneficiaries of hawala dealer. The assessee's name reflecting in this list and is one of the beneficiaries of above said dealers.*

*b) It will not be out of place to mention here that the proprietor/partners of these above-mentioned firms, in their statements, had admitted that bogus bills were issued after deducting certain commission.*

*c) The Sales Tax Department has come down hard on the pernicious practices indulged in by these unscrupulous traders figuring in the list of suspicious dealers and the purchase parties themselves denied to made any sales and accordingly, it is evident that the assessee has not purchased the goods from this alleged supplier. The assessee has, thus, incurred expenditure on such purchases which is not explained.*

*d) It is worth to mention decision of Delhi High Court in the case of CIT vs La Medica and Allahabad High Court in the case of Sri Ganesh Rice Mills Vs CIT where disallowance of bogus purchase of these concerns was confirmed by the Hon'ble High Courts.”*

**4.** The AO ultimately treated the purchases made from the above 4 parties amounting to Rs.33,03,529/- as bogus and unexplained expenditure u/s 69C of the Act and added the same to the total income of the Assessee while passing the ex-parte assessment order under section 144 of the Act.

**5.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, in spite of sending 4 notices or affording 4 opportunities, the Assessee neither responded to the notices issued nor submitted any written submission/document. Therefore, the Ld. Commissioner in the constrained circumstances though affirmed the bogus purchases made by the Assessee, however, ultimately restricted the addition to the extent of 3% of the non-genuine purchases/bogus purchases, mainly on the ground that there cannot be sales without there being corresponding purchases and once the purchases are made corresponding to sales and bills are obtained from unregistered entities, only the profit embedded in such modus operandi needs to be brought to tax and entire purchases cannot be disallowed.

**6.** The Revenue Department, being aggrieved, is in appeal before this Court.

**7.** The notices including for the date of hearing for today sent to the Assessee at the address mentioned in Form No.36 has been returned back by the Postal Authority with the remarks "addressee left" meaning thereby the Assessee is not situated at the address mentioned in form No.36 filed on 17.10.2023, hence, this Court is constrained to decide this appeal by this ex-parte order.

**8.** Having heard the Ld. D.R. and perusing the material available on record it is observed from the orders passed by the authorities below that the purchases made to the tune of Rs.33,03,529/- were treated as unexplained expenditure and bogus by the AO and added the same to the income of the Assessee. The Ld. Commissioner though affirmed the aforesaid purchases as bogus, however, by considering the corresponding sales ultimately affirmed the addition to the extent @ 3% only. It is admitted fact that before both the authorities below, the Assessee has neither complied with the notices nor filed any substantive document in order to substantiate its claim. Therefore, the consideration of the corresponding sales by the Assessee as accepted by the Ld. commissioner, appears to be illusory and un-substantiated and even otherwise the restricting of the addition @ 3% is also not based on any material. Thus, on the aforesaid analyzations, action of the Ld. commissioner in restricting the addition to the extent of 3% only is un-sustainable and therefore for just and proper decision of the case and substantial justice, it would be appropriate to remand the case to the file of the Ld. Commissioner for decision afresh, however, considering the non-complaint attitude of the Assessee, subject to deposit of Rs.10,000/- by the Assessee within 30 days of the receipt of this order in the Revenue Department under "**other heads**" and without claiming any deduction/disallowance on the said amount. Thus, the case is accordingly remanded to the file of the Ld. Commissioner in the aforesaid terms, however, with liberty to the Assessee to seek recall of this order by establishing the genuine and bonafide cause for non-prosecution of this case.

**9.** In the result, the Revenue's appeal is allowed for statistical purposes in the aforesaid terms.

**Order pronounced in the open court on 11.12.2024.**

**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.