

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4277/MUM/2024
(A.Y. 2010-11)**

Manek Metal Industries 1, Jyoti Studio Compound, Kennedy Bridge, Nana Chowk, Mumbai, Grant Road S.O, Mumbai-400007	v/s. बनाम	ITO, W-19(2)(3), Mumbai Maharashtra.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAFM0609F		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	S. L. Jain
Revenue by :	R. R. Makwana

Date of Hearing	07.11.2024
Date of Pronouncement	20.12.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 26.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2010-11.

2. Grounds of appeal filed by the assessee are as under:

”1) On the facts of the case and circumstances of the case, the learned officer, has erred in law in issuing notice under section 147/148 for Reopening of the assessments of the Assessee for said Assessment year unjustified and illegal.

2) On the facts of the case and circumstances of the case, the learned Assessing officer has erred in law in disallowing 25% of genuine Purchases of Rs. 60,21,459/- which is unjustified and Arbitrary. Your honour will appreciate to know COMPARATIVE G.P. RATIO was as under:

FY	Gross Profit Ratio	GP/Sales
2008-09	28.76%	18722840/65111067
2009-10	26.15%	12473020/47705400
2010-11	22.62%	13758175/60811665

That, by disallowing Rs. 60,21,459/-, the assessing officer has computed the GP% at 51.15% (21.15% + 25% addition) which is far greater than the GP% of the earlier years. The Average G.P of 3 years comes to 25.51 % i.e (28.76 + 26.15 + 22.62)/3 and current year G.P is 22.62% which is slit lower then Average G.P of 3 years.

3) The appellant is engaged in the business of Export of Utensils and Return for AY 2010-11 was originally filed u/s 139(1) on 11/08/2010 declaring the Total income of Rs 5,75,740/-. The Income Tax Return was processed u/s 143(1) of the Income-tax Act, 1961 at the returned income. Thereafter statutory notice u/s 142(1) were issued from time to time and duly replied by the appellant.

4) Further, the Learned Assessing Officer while framing the assessment has disallowed purchases @ 25% of the purchases made from various parties aggregating to Rs. 2,40,85,834/-

5) While making the disallowance in respect of purchases made from five Genuine parties, the Learned Assessing Officer has placed reliance on statements of various parties on the basis of which it has been alleged that said purchases are without actual delivery of goods. As observed by the Ld. Assessing Officer, modus operandi alleged to be adopted by the appellant is that the genuine bills carry receipt stamp, whereas non genuine bills do not bear receipt stamp and are alleged to be bogus.

6) In response assessee vide its reply has submitted detailed submissions along with reply copies of purchase bills, weight slips, border crossing slips, confirmation of accounts, transport of purchases made. It was also submitted that the Learned Assessing Officer placing heavy reliance on the statements recorded of the third party in the back of the appellant without affording any opportunity(s) to the appellant to cross examine the same.

7) The Learned Assessing Officer failed to take due cognizance of the documents submitted to substantiate the purchases from all the above parties including purchase bills, transport bills, Vat, stock record and summarily brushed aside the facts and submissions. Thus, arbitrarily disallowed a sum of Rs. 60,21,459/- being 25% of total purchase of Rs 2,40,85,834/- from the Five parties has mentioned in the assessment order u/s 37 by allegedly treating the same as sum of Rs 60,21,459/- being bogus purchase an profit element.

8) Action of the Learned Assessing Officer is arbitrary, unjustified, against law and facts and hence this appeal.



9) That assessment order dated 07/03/2016 is against law and facts in as much as the Learned Assessing Officer was not justified to compute the total income of the appellant at Rs. 65,97,200/- as against returned income of Rs. 5,75,740/- u/s 143(3) r.w.s. 147.

10) That the action of the Learned Assessing Officer is not justified in law and in fact in allegedly treating the purchases from the following parties as bogus and disallowing the same u/s 37

Sr No.	Name of Hawala Parties	Amount
1.	Sandoz Steel	21,42,083
2.	Ratandeep Impex	10,91,751
3.	P M Steel Alloys	43,99,726
4.	Manish Industrial corporation	69,33,238
5.	Dhanera Metal corporation	95,19,036
	Total	2,40,85,834/-

11) That We Learned Assessing Officer in law in placing heavily reliance on the statements of some persons without affording any opportunity to cross examine the said persons by the assessee despite a specific request to the assessing officer from the appellant, making the same as unreliable in the eyes of law.

12) It is respectfully submitted that during the course of assessment proceedings, all the Purchase bills, supporting vouchers confirmations, bank statements, etc. were duly submitted

13) No incriminating material was found during the course of search so as to suggest that the appellant was engaged in taking purchase bills without actual delivery of goods, except some statements of third persons who were not offered for cross examination to the appellant.

14) It is submitted that as per the humble understanding of the appellant, in order to categorise & consider a purchase to be genuine and duly accounted for, following ingredients are to be cumulatively satisfied

SR No.	Requirement	Compliance/Appellant's Submission
1.	Expenditure is duly vouched copies of bill,	It is respectfully submitted that all the bills pertaining to the purchases made from the said entity(ies) are available with the appellant. The same are already forming part of seized records and not only this, copies of transport receipts wherever available, weight bridge slips, border crossing slips as available were also submitted during the course of assessment proceedings, It is worth mentioning here that the Ld. Assessing Officer has not pin pointed any defect or even remotely suggested any shortcoming in the said documents. It is only on the basis of some third



		<p>party statements, with a preset mind that Ld. Assessing officer has resorted to the said additions. She has also made some reference to transport bills, a rebuttal to which has been separately made in para 2.3.8 below.</p>
2	<p>Accounted for in the books of accounts The purchases and treatment in Trading account has been made as per accepted accounting standards and best practices</p>	<p>It is most respectfully submitted that all the purchases made from the said entity(ies) have been duly considered and necessary effect thereof has been taken in the trading and profit and its loss account for the year under consideration.</p> <p>Therefore, its effect in purchase and corresponding effect in sales or closing stock has already been duly considered. Your Honours will appreciate that sale of material could not have been completed without actual material being utilised. Also, said materials after manufacturing has been exported, and Assessee got duty drawback benefit from the government implying that there were genuine purchases and eventually it was possible to export the goods</p> <p>Also, GP Comparative statement for above said parties was also submitted to CIT Appeal during Appeal processing and GP ratio was higher and purchase rate was also lower than the other parties copy of the same is enclosed herewith.</p> <p>Further, books have undergone rigours of audit under the Income Tax Act and there has been no defect pointed out by statutory auditors in the said reports.</p>
3.	<p>Sales Tax/VAT/ Returns Submissions Sales return- has Tax been return due have been paid</p>	<p>Copies of sales tax returns along with the Audit Report for the year under consideration were duly submitted to the Ld. Assessing Officer to substantiate that taxes under appropriate indirect tax regimes have also been paid by the assessee company. Vat department has also issued the Refund after the scrutinising the purchases since the export is tax free while the VAT is charged on the Purchase of raw material</p>
4	<p>Payments Banking through modes Payment has been made through banking modes</p>	<p>In this regard, it is respectfully submitted that all the payments in respect of the said purchases made by the appellant are through banking modes and there is not even an iota of evidence or discussion which has been brought on record to even remotely suggest that there was any exchange of cash</p>



		<p><i>between the parties evidencing that said purchases are bogus or an instance wherein Assessing Officer has observed that there was exchange of cash. Further, copies of bank account statements for the year under consideration were filed in the office of Ld. Assessing officer and no defect has been pointed out. Should Your Honour require copies of bank statements, the appellant shall submit in the course of proceedings.</i></p>
5.	<p><i>Account Confirmation Copies accounts are duly confirmed from the suppliers</i></p>	<p><i>In this respect, confirmed copies of accounts from the said concerns of were also submitted in the office of the Ld. Assessing Officer and are enclosed for Your Honours kind perusal.</i></p> <p><i>Your Honours will appreciate that the said accounts are duly reconciled with the ledger accounts as appearing in the books of appellant company.</i></p> <p><i>Thus, it can be submitted that even the other parties i.e., the suppliers agree to have made the sales to the appellant, thus making the reliance on the statements even less reliable</i></p>

15) *In this regard Your Honours kind attention is invited to following judicial pronouncement wherein the Hon'ble Apex Court has held that on discharge of initial onus and substantiating the purchases through bills, supporting documents, sales tax returns, etc., no disallowance can be made.*

16) *Honourable Supreme Court in the case of CIT v. Odeon Builders (P.) Ltd. reported at 418 ITR 315 (SC), wherein their lordships while dismissing the revenue's appeal and relying upon the order of CIT(A), held as under:*

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/-, is directed to be deleted."

Therefore, on the basis of reading of finding of the Hon'ble Apex Court above, it can be said that where appellant substantiates the purchases through documentation like purchase bills, transport bills, comparative purchase chart and comparative GP ratio etc. the same cannot be treated to be as non-



genuine especially in a case where there is no corroborating material on record to even remotely suggest that the said purchases were bogus, except some bald statement of third persons, and the appellant and his statement is relied upon without affording an opportunity of cross examination despite a specific request of the appellant during the course of assessment proceedings.

17) It is submitted that additions have been made only on the basis of a statement recorded on oath of a third person(s) being relied upon as witnesses in this case, without bringing on record any tangible / conganet material which even remotely suggest that mere exchange of bills took place between appellant company and the said entity to support such statements. Not only this, there is no material or evidence to substantiate the same and is nothing but a mere allegation.

18) It is reiterated that the Learned Assessing Officer has nowhere, in her order, pointed out or doubt the genuineness of bills/supporting documents submitted by the appellant. It is, thus, vehemently submitted that without pointing out any defect in the primary evidences filed (copies of purchase boils, copies of transport receipts copies of sale tax challans, etc.) the Learned Assessing Officer could not make the addition on the basis of secondary/circumstantial evidences, especially while framing assessment of the Act.

The Appellant prefer an Appeal against the order of LD AO who made the addition of Rs 60,21,459/- being 25% addition of Total Purchases of R 2,40,85,834/- from the Five parties. An CIT (A) has rejected the same therefore we are in appeal before your honour

NO DEFECT POINTED OUT IN SALES/STOCK/BOOKS OF ACCOUNTS

1. In this respect, it is submitted that during the course of assessment proceedings purchase bills, vouchers, Tax Audit Report, VAT Audit Report, etc. as called for by the Ld. Assessing Officer were duly submitted by the appellant company. Moreover, copies of respective ledger accounts were also submitted. Further, the Ld. AO while framing assessment has accepted the sales made and no defect has been pointed out in stock records.

2. While computing the assessed income, Ld. Assessing Officer has started computing the same, as first line item, from "Returned Income (emphasis on the Returned Income). Implying, that Ld. Assessing Officer considered the return of income as submitted by the Appellant, wherein the purchases made, which have been challenged by her, have already been considered and also sale have been accepted, income on which has already been offered to tax.

3. And even otherwise, without prejudice, when the purchases have already been reflected in the books of account, if at all additions was to be made to income, it is only the profit part embedded in that can be brought to tax:-

4. Reliance in this regard is placed on Order of the Hon'ble Bombay High Court in the case of PCIT v. Batliboi Environmental Engineering Ltd., reported in 446 ITR 238 (Bombay), wherein the Hon'ble Court has held that:

"4. As regards first question, the Tribunal has upheld the finding and conclusion of the Commissioner of Income tax (Appeals) whereby the



Commissioner (Appeals) directed the Assessing Officer to disallow 12.5% bogus purchases and to add 12.5% of the amount of purchases as income of the Appellant. The argument advanced is that the bogus purchases ought to have been disallowed in totality. The learned counsel for the parties have placed before us the decisions of the Division Bench in the Cases of Pr. CIT v. Mohammad Haji Adam & Co. (2019) 103 taxmann com 459 (Bom.) and Pr. CIT v. Paramshakti Distributors (P.) Lin [ET Appeal No. 413 of 2017, dated 15-7-2010) wherein the Division Bench has observed that if the factum of sales has been accepted by the Department then even if it is established that there were bogus purchases, It is not necessary that entire amount should be added to the income of the Assessee as there cannot be a sale without purchase. The facts of the present case are identical wherein the sales have been accepted. Therefore, in light of the aforesaid decisions first question of law does not survive for consideration."

5. Thus, it is submitted that the Ld. AO has duly accepted sales, stock records, Tax Audit Report and VAT Audit Report submitted and has only doubted and made additions with respect to purchases made which is arbitrary and against facts.

6. Reliance is place in the following Judicial pronouncement

- a) Kishanchand Chelaram 125 ITR 71 Se
- b) Ramila Pravin Shals IANO 5246 Mum/2013/ Beach Mumbai
- c) M/s. Nangalia Fabrics Private LiniciTe Tax Appeal No. 089 of 210.
- d) The Hon. IT.A.I Mumbai Case of Ramila Pravin Shah (ITA524 Mum (2013)
- e) The Hon. ITAT Mumbai in case of DCIT GVs Shri. Rajiv Kalanthi (ITA No. 672/Mum/2012)
- The Hon'ble ITAT Mumbai in case of Ramashkumaraco VACIT 21 (1) ITA No. 2950 / Mum/2014 setting aside the order Hon'ble CIT (A)
- g) Mr. Pratik Gupta V/s. DCIT ITA No. ITA No. 3861/Mum/2018.

The above all pronouncement not considered by the Assessing officer and the Hon'ble commissioner of (Appeals) Not Justified.

7. It is a covered matter as per the case of CIEX Biochem Private Limited ITA No. 4040/ Mum / 2016 Assessment year 2008-09. ITA No. 4041/mum/2016 (Assessment year 2009-10) IT No. 4042/ Mum /2016 Assessment year 2010-11.

On page No. 12 of ITAT Order It is observed as under

- ▶ that initial onus caste upon the assessee has been fulfilled by submitting copies of bills, supporting, bank statements, confirmations, VAT returns, etc.
- ▶ that no incriminating document has been unearthed during the course of search to suggest that purchases were non genuine.
- ▶ that entire additions are based on statements of third persons which do not have any bearing on the business of the appellant
- ▶ the same have been used against the appellant without affording any opportunity of cross examination. that no defect has been pointed out in maintenance of documents.



► *maintenance of books, stock records, trading account etc. that without prejudice, if at all additions are to be sustained, it is only the profit element that can be added and not the entire purchases.”*

3. Ground No. 1 relates to reopening of assessment u/s 147 which has not been pressed by the Ld. AR. In ground Nos. 2 to 18, the sole substantive issue relates to disallowance of 25% of purchases amounting to Rs. 2,40,85,834/- treated as bogus by the Ld. AO and confirmed by the Ld. CIT(A).

4. The brief facts of the case are that the assessee, who is engaged in the business of manufacturing and exporting utensils and kitchenware, filed its return declaring income of Rs. 5,75,740/- on 11.08.2010. The return was processed 143(1) of the Act and a notice u/s 148 was issued on 27.02.2015. Thereafter, on receipt of information about non-genuine purchases from hawala parties by the assessee, the case was reopened u/s 147 of the Act. Based on the information received from Sales Tax Department, Maharashtra regarding non-genuine transactions with hawala dealers, Ld. AO held the purchases made from five different parties amounting to Rs. 2,40,85,834/- as bogus, even though the purchase invoices of the specified parties along with copies of bank statements evidencing payments were furnished by the assessee. In order to verify the genuineness of purchases, notices were issued u/s 133(6) to these parties but these were returned back unserved. Thereafter, Ld. AO asked the assessee to produce parties to establish the genuineness of purchases. However, the assessee failed to produce these parties. Ld. AO, accordingly, proceeded to reject the books of accounts by invoking provisions to section



145(3) of the Act and estimated the profit from non-genuine purchases @25%. The assessment was completed vide order dated 07.03.2016 u/s 143(3) r.w.s 147 of the Act after making addition of Rs. 60,21,459/- on this account.

5. Aggrieved with the order, the assessee filed an appeal before Ld. CIT(A). However, Ld. CIT(A) dismissed the appeal of the assessee with following observations:

6.3.4 Further, appellant has relied on various case laws in support of his contention. The issue of bogus purchases has been examined by the Hon'ble Supreme Court in the case of N.K. Proteins Ltd. Vs DCIT [2017] 84 Taxmann 195 (SC). The Hon'ble Supreme Court has upheld that order of Hon'ble Gujarat High Court in case of N.K. Industries Vs DCIT [2016] Taxmann 289 (Gujarat) in which the Hon'ble Gujarat High Court that in case of bogus purchases entire amount of bogus purchases should be added to the total income of the appellant. The said para of the order of Hon'ble Gujarat High Court is as under:

"6. The Tribunal in the case of Vijay Proteins Ltd. (supra) has observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25% of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s Indian Woollen Carpet Factory (supra) or Vijay Proteins Ltd. (supra) In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs. 2,92,93,288/- and taxing only 25% of these bogus claim goes against the principles of Sections 68 and 69C of the Income Tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs. 2,92,93,288/- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs. 73,23,322/-."

From the above judgement, the ratio in respect of bogus purchases has been decided by the Hon'ble Supreme Court that entire amount of bogus purchases are to be added to the income of the assessee. Therefore, the case laws relied by the appellant are irrelevant and not applicable to the present case.

Although as decided by the Hon'ble Apex Court, entire bogus purchases of Rs. 2,40,85,834/- ought to have been added to the income of the appellant. However, the AO in his order after rejecting books of accounts had stated that only profit element of the bogus purchases should be added to the income of the appellant. The AO added 25% of the bogus purchases to the income of the appellant. Hon'ble High Court in the case of Vijay Proteins Ltd. Vs CIT [2015] 59 taxmann 44 (Gujarat) has also held confirmed the addition of 25% of the bogus purchases

6.3.5 Considering the above legal and factual facts of the case, addition made by Ao is confirmed. Accordingly, Ground No.1 & 4 of the appeal is dismissed."



6. We have heard the rival submissions and perused the material placed before us. Ld. AR has vehemently argued that the assessee had discharged the initial onus cast upon it by submitting copies of the bills, bank statements, confirmations etc. in support of its claim of purchases made from these five parties. Since no defect has been pointed out in the maintenance of books, stock records, trading accounts etc. by the Ld. AO, the addition, if at all, should only be restricted to the profit element. Ld. AR has further placed reliance on the decision of the co-ordinate bench in the case of *CJEX Biochem Pvt. Ltd. v/s. ACIT in ITA No. 4040/Mum/2016 & others* wherein GP rate of 12.5% has been upheld, in the same line of business as that of the assessee, with the following observations:

“8.The aforesaid purchases shown by the assessee also includes the purchases made from these alleged Hawala parties. In order to prove the delivery of purchased items along with the reconciliation of quantitative details of the purchases, the assessee had filed a chart giving particulars of purchase invoices, quantity purchased, amount paid for the purchase, corresponding sales made to the parties along with invoice number and quantity along with the details of closing stock To corroborate the same, the assessee had filed the copy of purchase invoices, ledger account, bank statement showing details of payment, delivery challans, etc. Thus, here in this case there cannot be any iota of doubt that purchases has not been made. Even the Ld. CIT(A) has given categorical finding that, the consumption / sales in the present case cannot be doubted which finding has not been rebutted or disputed by the Department. The only issue for consideration is, whether the assessee under the facts and circumstances of the case has tried to inflate the purchase price so as to suppress the True profit. From the perusal of the trading account and other details, it is seen that, assessee has shown average GP rate of more than 12.5% in these assessment years. If the quantity of purchases and corresponding sale has not been then balancing figure of gross profit also cannot be inflated once the trading account and trading results of the assessee have not been rejected. Here in this case the Assessing Officer or the Ld. CIT(A) has not rejected the books of account albeit the Ld. CIT(A) has accepted the entire sales as well as closing stock. Once that is so, then profit element of the corresponding purchases already stands factored in the gross profit shown by the assessee. The trading account cannot be disturbed so as to inflate the gross profit unless it is shown that overall gross profit shown by the assessee is not in consonance with the comparable cases or in the assessee's line of business, gross profit rates is much higher. Accordingly, we are of the opinion that even if we agree that the



assessee has taken the accommodation bill for the purchases but on the facts of the present case no extra profit can be attributed or added because, already high gross profit rate has been shown by the assessee which factors into the profit element of such purchases as it is undisputed that so far as the quantity of purchases are concerned same cannot be disputed. Accordingly, we do not find any reason to make any further Gross Profit addition over and above what has been disclosed by the assessee. On the aforesaid reasoning the addition sustained by the Ld. CIT(A) on account of extra gross profit of 12.5% on alleged purchases is hereby deleted.”

7. On the other hand, Ld. DR strongly relied on the orders of the lower authorities.

8. In the present case, the assessee has declared GP. Rate of 26.15% during the year as compared to 28.76% in AY 2009-10 and 22.62% in AY 2010-11. If addition of Rs. 60,21,490/- made by the AO is included then the GP rate would far exceed the average GP rate shown by the assessee as well as prevalent GP rate in this line of business.

9. In view of above facts and respectfully following the decision of the co-ordinate bench, we hereby delete the addition made by the Ld. AO over and above the gross profit already disclosed by the assessee.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.12.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 20.12.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

