

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "J(SMC)" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 1774/Mum/2025  
Assessment Year : 2009-10

Deputy Commissioner of Income Tax-5(2)(1), 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	vs.	Icon Infotech Pvt. Ltd., 2, 1 <sup>st</sup> Floor, Rubunissa Manzil, Opp: Grant Road Station, Grant Road (W), Mumbai-400007. PAN : AAACI7604K
(Appellant)		(Respondent)

For Assessee :	NONE
For Revenue :	Shri Asif Karmali, Sr.DR

Date of Hearing :	22-04-2025
Date of Pronouncement :	25-04-2025

**ORDER**

**PER VIKRAM SINGH YADAV, A.M :**

This is an appeal filed by the Revenue against the order of the Ld.Addl/JCIT(A)-1, Ludhiana [‘Ld.CIT(A)’], dated 16-01-2025, pertaining to Assessment Year (AY) 2009-10, wherein the Revenue has taken the following grounds of appeal:

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition amounting to Rs. 1,27,004/-, being 12.50% of Rs. 10,16,028/- to 13.88% of Rs. 10,16,028/- on account of alleged bogus purchase made from suspicious dealers Le. M/s. Cedilla Technologies without appreciating the facts that the assessee*

*has not been able to establish the genuineness of the purchase made from M/s. Cedilla Technologies Ltd*

*2."The appellant prays that the order of the CIT(A) on the grounds be set aside and That of the Assessing Officer be restored."*

*3."The appellant craves leaves to add, amend or alter all or any of the grounds of appeal."*

2. Briefly the facts of the case are that the assessee company filed its return of income on 27-09-2013 declaring total income at Rs.22,54,085/-. During the course of assessment proceedings, the AO had received a list of suspicious dealers prepared by the MVAT department of the Maharashtra Government. On the basis of the information received in the form of the list, the AO treated the entire purchases made by the assessee from one of such dealers - Cedilla Technologies, as bogus purchase and passed the assessment order u/s 143(3) of the Income Tax Act, 1961 ('the Act') on 27-02-2015 for the AY. 2009-10 by completing the assessment at income of Rs.23,96,110/-, after making addition of Rs.1,41,025/-, applying GP ratio @ 13.88 on account of bogus purchase of Rs. 10,16,028/- to tax the income embedded in the bogus purchase transaction.

3. Aggrieved by the said order passed by the AO, the assessee preferred an appeal before the Ld. CIT(A) wherein partial relief has been provided to the assessee and against which, the Revenue has preferred the present appeal.

4. During the course of hearing, the Ld. DR submitted that the Ld.CIT(A) has disposed off appeal of the assessee, relying on the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the AY.2011-12, wherein the Co-ordinate Bench of the Tribunal had upheld the decision of the Ld.CIT(A), sustaining the addition to the extent of 12.50% of

purchases. Accordingly, in the instant case, following the said decision, the Ld. CIT(A) directed the AO to re-calculate income applying the GP rate @ 12.50% instead of GP rate @ 13.88 on the purchases treated as bogus amounting to Rs.10,16,028/ (i.e. Rs. 1,27,004/-being 12.50% of Rs. 10,16,028/-).

5. It was submitted by the Ld.DR that the Revenue is aggrieved by the said action of the Ld. CIT(A), which is not acceptable on merit as the assessee could not substantiate its claim of purchases made and reported transactions with suspicious dealer i.e. M/s. Cedilla Technologies which was as per list of suspicious dealers prepared by the MVAT department of Maharashtra Government. The Ld. DR submitted that in such purchases, where there are corresponding sales, rate of purchase of items is not verifiable, therefore, profit earned on such suspicious purchases has been rightly adopted by AO at 13.88% of Rs. 10,16,028/- being Rs. 1,41,025/- and added to the total income of the assessee. This fact has been accepted and upheld by the Ld. CIT(A). Therefore, it is very clear that the Ld. CIT(A) erred in relying on the decision of the Hon'ble ITAT in its own case for the AY.2011-12 and sustained the addition to the extent of 12.50% of purchases and directed the AO to re-calculate income applying the GP rate @ 12.50% and given relief of Rs. 14,021/-.

6. It was further submitted that even though the tax effect involved in this case is below the monetary limit as prescribed by the Board vide Circular No. 09/2024. However, the case falls under exception clause of para 3.1(e) of the CBDT Circular No.5/2024 (F.No.279/Misc.142/2007-ITJ(pt.) dated 15/03/2024 and therefore, this appeal is being filed before the Tribunal on merits of the case.

7. None appeared on behalf of the assessee nor any adjournment application was moved.

8. We have heard the Ld. DR and perused the material available on record. The Ld. CIT(A) after considering the findings of the AO as well as the submissions made by the assessee, has given the following findings, which reads as under:

*“6.1 Ground No. 1: The appellant has raised the issue of addition of Rs. 1,41,025/- made by the AO on account of applying G.P. ratio @ 13.88 on alleged bogus purchases of Rs. 10,16,028/- for the year under consideration. During the appellate proceedings, the appellant has submitted that the goods which are the subject matter of the assessment order have been received by the appellant against tax invoices issued by M/s Cedilla Technologies and have been paid for the same via account payee cheque.*

*6.2 On the perusal of the assessment order, it is noted that AO made addition by applying G.P. rate @ 13.88% on the bogus purchase from the suspicious dealers as per list of suspicious dealers prepared by the MVAT department of Maharashtra Government and the appellant reported transactions with these suspicious dealers i.e. M/s Cedilla Technologies. During the appellate proceedings for the A.Y. 2013-14, the appellant has submitted that decision of Hon'ble ITAT, "J" Bench, Mumbai in its own case for the A.Y. 2011-12 wherein the same issue has been decided by the Hon'ble ITAT. The AO treated the purchase of Rs. 16,08,915/- as bogus and disallowed the same. The ld. CIT(A) sustained the addition to the extent of 12.50% of the value of purchases. Further, the Hon'ble ITAT, "J" Bench, Mumbai has upheld the decision of Ld.CIT(A) sustaining the addition to the extent of 12.50% of purchases.*

*6.3 In view of the above discussion and reliance is placed on the Hon'ble ITAT, "J" Bench, Mumbai in the appellant's own case on the said issue, the AO is directed to re-calculate income applying the G.P rate @ 12.50% on the purchases treated as bogus amounting to Rs. 10,16,028/- (i.e. Rs. 1,27,004/- being 12.50% of Rs. 10,16,028/-). Therefore, the appellant is allowed relief of Rs. 14,021/- and addition of Rs. 1,27,004/- is upheld. Thus, ground number 1 of the appellant is hereby partly allowed.”*

9. We, therefore, find that the fact that there are bogus purchases to the tune of Rs. 10,16,028/- has been upheld by the Ld.CIT(A) and the same is

not under dispute. The only limited issue to be adjudicated is the quantum of the amount which should be the subject matter of disallowance. The AO has disallowed a sum of Rs.1,41,025/- by applying GP rate of 13.88% on the alleged bogus purchases of Rs. 10,16,028/-; whereas the Ld.CIT(A) has applied the GP ratio of 12.50%, following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the A.Y. 2011-12. Nothing has been brought on record as to why the decision of the Co-ordinate Bench of the Tribunal, which has been followed by the Ld.CIT(A) should not be applied in the facts of the present case. In other words, how the facts of the instant case are distinguishable vis-à-vis the facts which were considered by the Co-ordinate Bench of the Tribunal in assessee's own case for the A.Y 2011-12. Therefore, in absence of any material on record, distinguishing the facts of the case vis-à-vis for the A.Y. 2011-12, we do not see any infirmity in the order so passed by the Ld.CIT(A), who has followed the decision of the Co-ordinate Bench of the Tribunal in assessee's own case.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25-04-2025

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Sd/-  
[VIKRAM SINGH YADAV]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 25-04-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai