

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 5313/MUM/2024
Assessment Year: 2010-11**

Income Tax Officer, 19(3)(1)
405, 4th Floor, Piramal Chambers,
Lalbaug
Mumbai-400012

Appellant

Vs.

Mahendra Hemraj Jain
10 Hindustan Building, 6th
Kumbharwada Lane, M.S.Ali
Road, Mumbai-400004
PAN NO. AAIPJ 7749 P
Respondent

Assessee by : Mr. Shyam Agarwal
Revenue by : Smt. Kavita P. Kaushik, Sr. DR

Date of Hearing : 23/04/2025
Date of pronouncement : 24/04/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 09.08.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2010-11, raising following grounds:

1. *“Whether on the facts and circumstances of the case and in law, Ed CIT(A) has erred in deleting the addition of Rs. 48,43,166/-made on account of bogus purchases from Hawala Traders/Parties, by ignoring*



the fact that the action of the Assessing Officer was based on credible information received from the Maharashtra. Sales Tax Department through DGIT (Inv.) Mumbai that the parties were declared as hawala traders/parties not doing any genuine purchase and sales and were involved in providing only accommodation entries of bogus purchases and the assessee has obtained such entries through bogus bills from three parties?"

2. Whether on the facts and circumstances of the case and in law, Ld CIT(A) has erred in deleting the addition of Rs. 48,43,166/- made on account of bogus purchases from three hawala Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh Steel Suppliers by ignoring the fact that these three parties were involved in providing accommodation entries of bogus purchases and it was found that the assessee was one, who has obtained accommodation entries through bogus bills from these three traders ?"

3. Whether on the facts and circumstances of the case and in law, Ld CITYA) has erred in deleting the addition of Rs. 48,43,166/- made on account of bogus purchases from three Hawala Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh Steel Suppliers by ignoring the fact that these three parties were found to be bogus and not genuine, as the notices u/s 133(6) of the I.T. Act sent by AO, were returned back and could not be served, as the address provided by the assessee does not exist on the given addresses, which proved that assessee had failed to establish the genuineness of the alleged three parties from whom alleged suspicious purchases was claimed to have been made during the year?"

4. Whether on the facts and circumstances of the case and in law, Ld CIT(A) has erred in deleting the addition of Rs. 48,43,166/- made on account of bogus purchases from three Hawala. Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh Steel Suppliers, by ignoring the fact that that the assessee could neither produce any delivery challans, transport bills/invoices nor could produce any details of the alleged three parties from whom purchases was claimed to have been made during the year?"

5. "Whether on the facts and circumstances of the case and in low, Ld CIT(A) has erred in deleting the addition of Rs. 48,43,166/- made on account of bogus purchases from three Hawala Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh Steel Suppliers, without



appreciating the decision of the Hon'ble Apex Court, in the case of N. K. PROTEINS LTD Vs. Dy. CIT (2016) 292 CTR (Guj.) 354, Dated. 16.01.2017, wherein the Hon'ble Court has held that, when the purchases are from bogus suppliers/hawala traders, the entire suspicious purchases are liable to be disallowed?"

6. Whether on the facts and in the circumstances of the case and in law, the order of the Ld. CIT(A) is perverse in not considering that the order of Hon'ble Supreme Court, in the case of N.K. PROTEINS LTD Vs. Dy. CIT (2016)292 CTR (Guj.) 354, Dated. 16.01.2017, which is on the similar issue of bogus purchases, was already the law of the land when the Ld. CIT(A) has pronounced its order on 09.08.2024?"

7. Whether on the facts and circumstances of the case and in law, Ld CIT(A) has erred in deleting the addition of Rs. 48,43,166/ made on account of bogus purchases from three Hawala Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh. Steel Suppliers, without considering the order in the case of Swetambar Steels Ltd., of the Hon'ble ITAT, Ahmadabad, wherein the Hon'ble IIAT had confirmed the disallowance of the bogus/suspicious purchases in entirety stating that the purchases shown from the respective parties were found non genuine and further, appeal against the decision of Hon'ble ITAT was not admitted by the Hon'ble Gujarat High Court and the assessee had also lost before the Hon'ble Supreme Court?

8. "Whether on the facts and circumstances of the case and in law, Ld CIT(A) has erred in deleting the addition of Rs. 48,43,166/- made on account of bogus purchases from three Hawala Traders/Parties namely, Asian Steel, Mukta Steel and Vishesh Steel Suppliers, without considering that after invocation of provisions of section 145(3) of the Act, the Assessing Officer acquired the mandate even to add the whole amount of purchases found as bogus to the total income of the assessee. One such case is Shri. Ganesh Rice Mills Vs. CIT 294 ITR 316 (All), wherein the entire amount of bogus purchases, from five parties, was disallowed and same was also upheld ?"

9. In this case, the tax effect involved is Rs. 28,69,060/-, which is below the prescribed limit as per CBDT's revised circular No. 05 of 2024 dated 15.03.2024, however, this case falls under the exception within the ambit of exceptional clause 3.1 (c) of the CBDT's Circular mentioned above, wherein is stated that the issues of accommodation entry for bogus purchases, the decision to file appeal/SLP shall be taken on merit



without regard to the tax effect and the monetary limit. Hence, the appeal u/s 253 of the Act, is being filed before Hon'ble ITAT.

10. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

A copy of the CIT(A)'s order was received on 09.08.2024 in this office of PCIT-19, Mumbai. The last date for filing appeal is 08.10.2024. The appeal should be filed IMMEDIATELY."

2. Briefly stated facts of the case are that in view of the information received of accommodation entries obtained by the assessee from 3 parties amounting to Rs. 48,43,166/-, assessment was reopened and addition was accordingly made in view of the non compliance on the part of the assessee. Before the Ld. CIT(A) the assessee filed additional evidences. Accordingly, the Ld. CIT(A) called for a remand report from the assessing officer but despite issue of reminder, no remand report was filed. The Ld. CIT(A) thereafter admitted the additional evidence and allowed the relief to the assessee.

3. Before u/s. Ld. Counsel for the assessee had file a paper book containing pg no. 1-267.

4. We have heard rival submissions of the parties and perused the relevant materials on record. The Ld. DR referred to grounds of the appeal and submitted that Ld. CIT(A) has ignored the facts that notices u/s 133(6) of the Act send to those 3 parties returned back. **Secondly** no evidence in support of the delivery of the good, transfer of goods was filed. **Thirdly** decision of Hon'ble Supreme



Court in the case of **N. K. PROTEINS LTD Vs. Dy. CIT (2016) 292 CTR (Guj.) 354** was not considered. **Fourthly**, decision of coordinate bench of the Tribunal in Ahmadabad bench in the case of **Swetambar Steels Ltd. (supra)**, was not considered. The Ld.DR further submitted that Ld. CIT(A) called for a remand report in the month of the February and thereafter, issues reminder in the month of March and April. He submitted that the relevant period was of being time barring cases, there might be a possibility that the assessing officer could not respond to the reminders of the Ld. CIT(A). Accordingly, she submitted that one more opportunity might be provided to the assessing officer for commenting on the additional evidence filed by the assessee and thereafter matter may be decided by the Ld. CIT(A) in accordance with law. The Ld. Counsel for the assessee had no objection to the above request of the Ld. DR.

6. In our opinion, the Ld. assessing officer should also be provided a fair opportunity for commenting on the additional evidence filed by the assessee in terms of rule 46A of the income Tax rules, 1962. Accordingly, we set aside the order of the Ld. CIT(A) on the issue and dispute and restore the matter back to him for deciding in accordance with law after providing fair and reasonable opportunities of being heard to both the parties. The grounds of the appeal of the Revenue are accordingly allowed for statistical purposes.



7. In the result, the appeal of the Revenue is allowed for the statistical purposes.

Order pronounced in the open Court on 24/04/2025.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/04/2025
Disha Raut, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai