

**IN THE INCOME-TAX APPELLATE TRIBUNAL “K(SMC)”
BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 1838/MUM/2024
(A.Y. 2009-10)**

Shivshankar Agarwal, 204-A, Corporate Centre, Andheri Kurla Road, Andheri (East), Mumbai - 400 059, Maharashtra	v/s. बनाम	Income Tax Officer, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400050, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACWPA8043M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Ashok Bansal & Shri Ajay Daga, ARs
Respondent by :	Shri Kiran Unavekar (Sr. DR)

Date of Hearing	24.04.2025
Date of Pronouncement	22.05.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 12.02.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal/ADDL/JCIT(A)-1 Coimbatore [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 22.12.2016 as passed by the Income Tax Officer, 25(1)(3), Mumbai for the Assessment Year [A.Y.] 2009-10.



2. The assessee is an individual carrying on business as proprietor of a concern engaged in the business of dealing in iron and steel. He filed return of income for the year originally on 30.9.2009 declaring total income of Rs. 5,950/-. Subsequently, the income was assessed at Rs.1,80,500/- vide order u/s 143(3) dt.26.12.2011. Later, based on certain inputs from the Investigation wing of the Department, reassessment proceedings were undertaken and income was assessed u/s 143(3)/147 of the Act by making addition of Rs.14,85,571/-, being 12.50% of the purchases of Rs. 1,18,84,565/- made from the alleged non-genuine parties as inflated purchases/cost saved in buying from unaccounted sources to the income.

3. In **ground nos. 1 to 3**, the assessee has claimed that the Ld. CIT(A) erred in holding that the notice u/s 148 of the Act was issued and served upon the assessee and also in holding that the jurisdiction u/s 147 of the Act was rightly assumed by the Ld. AO as also in holding that the notice u/s 143(2) of the Act was issued in accordance with law.

3.1 The ld.CIT(A) has adjudicated the above issues and observed that the notice was served by affixture and the assessee had not questioned it and had co-operated in the assessment proceedings. Regarding invalid assumption of jurisdiction pursuant to reasons



recorded, it is observed by him that the assessee had requested for the copy of the reasons recorded and the AO had supplied it on 01.12.2016. The assessee raised objections by letter dated 05.12.2016 and the AO has dismissed this by a speaking order dated 06.12.2016. The AO received certain information and had sufficient reason to believe that the information was correct and he issued notice u/s 148 of the Act as he had reasons to believe that income had escaped assessment. In the original assessment, this information was not available with the AO and hence the re-opening of the assessment with a new information supported by external evidences is a valid reason for re-opening the assessment. He finally held that Courts/Tribunal have upheld the validity of the notice u/s 148 on similar grounds. The notice issued was considered by him to be legal and valid. Further, the issue of notice u/s 143(2) was held to be correct and as per law.

4. Before us, the ld.AR has reiterated the same contentions as made before the appellate authority while the ld.DR has supported the orders of authorities below. We find that the reassessment is based on certain incriminating information received from external sources that the assessee was one of the beneficiaries of bogus purchases. At the time of original assessment, there being no such information the assessment was done as a normal scrutiny case. There is no case of any change of



opinion in existence as claimed by the assessee. Further, it cannot be considered to be a case of full and true disclosure of income either. In so far as the validity of the order on the grounds of service of notice etc are concerned, it is evident from the assessment proceedings recorded in the assessment order that the notice was duly served through electronically as well as by affixture. Moreover, the assessee made due compliance of the notice by requesting to consider the originally filed return as response to notice u/s 148 of the Act. Reasons recorded were duly supplied to the assessee and his objection were duly considered but rejected by the AO. It appears that the above issues were never agitated before the AO during reassessment proceedings. Considering all these facts on record, we do not find any infirmity in the order of the Id.CIT(A) dismissing the grounds in this regard. Accordingly, **ground no.1 to 3 relating to validity of the reassessment proceedings are dismissed.**

5. In **ground nos. 4 and 5**, the assessee has contended that the Id.CIT(A) erred in confirming the disallowance made by the AO of Rs. 14,85,571/-, being 12.50% of the alleged bogus purchases. He also erred in dismissing, without prejudice submissions made before him with regard to restricting the addition limited to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases based on



the jurisdiction high court decision in the case of Pr. CIT vs. Mohammed Haji Adam & Co.

6. We find that based on the information of taking entries of bogus purchases bills, the AO found that purchases totalling to Rs.1,18,84,565/- from certain parties had confessed before the Sales tax Department that they had actually not sold any material to the assessee but issued bogus bills only. The assessee in response to a show cause notice issued to him submitted that the transactions entered with the said parties were not bogus and in support thereof furnished the evidence such as ledger account of the said parties in the books of the appellant and relevant bank statements evidencing payments made to suppliers duly highlighted which also gave name of the payees. The AO observed that the assessee neither produced these alleged supplier nor furnished their addresses. Even the Inspector deputed by him to serve notices could not find these concerns on addresses mentioned in the bills. Based on the analysis of entire modus operandi as per para 8.2 to 8.3 on pages-8/10 of the order and also taking into account several decisions of various courts and tribunals, she worked out inflation of purchase price/cost save in buying from unaccounted sources to the tune of Rs 14,85,571/-, being 12.50% of non genuine purchase of Rs 1,18,84,565/-which was added to the income.



7. In the appellate proceedings, the assessee argued that the AO though referred to the confession alleged to have been given by the supplier parties in the reasons recorded, copy of the confession had not been forwarded to him before proceeding to draw an adverse inference against him. It was also submitted that the AO was duty bound to offer assessee an opportunity to cross-examine the parties in as much as she was relying upon the alleged statement/confession given by supplier parties. It was further stated that in view of the details furnished in respect of purchases made from the supplier parties, the same by no stretch of imagination could be considered as bogus and she could not draw adverse inference merely on the basis of statement/confession of supplier parties. The AO held that the assessee had inflated the purchase price/cost saved in buying from unaccounted sources to the tune of Rs.14,85,571/-, being 12.50% of the purchases totalling Rs. 1,18,84,565/- made from the alleged non-genuine parties and disallowed Rs. 14,85,571/- and added back to total income of the assessee. It was submitted that the disallowance so made is without any basis and not supported by any material to justify the same. In drawing the adverse inference, the AO neither confronted the result of her alleged enquiry u/s 133(6) of the Act nor did she required to produce the parties. In any event, she did not appreciate that it was not incumbent upon the



assessee to produce the parties in as much as she was relying upon the statement of the parties and, therefore, they were the witness of the department. She was also duty bound to confront the said statements to the assessee for rebuttal.

7.1 The Id.CIT(A) observed that the AO in the enquiry had given a finding that names of the suppliers were appearing in the list of hawala dealers provided by the Sales Tax Department, Govt. of Maharashtra. The documents made available to her such as deposition, statements, affidavits and enquiry reports proved that these bogus suppliers were merely providing bogus bills of purchase for a small amount of commission. The assessee could not prove their whereabouts. He therefore, upheld the findings of the AOP that these purchases were bogus.

7.2 In so far as the estimation of income is concerned, the Id.CIT(A) observed that the only question now to be looked into is whether the additional GP ratio applied @12.50% on alleged bogus purchases is excess or not. Based on analysis of purchases reflected in copies of accounts of the alleged bogus suppliers in its own books of accounts the Id.CIT(A) observed that the assessee got the benefit of bogus creditors of Rs 1,18,20,309/- as on 29.01.2009 and the books of



the assessee had bogus creditors of Rs 61,28,449/- as on 31.03.2009. The assessee had to explain the source of bogus creditors in the books of account and the addition made by the AO could be considered as a source of it. Therefore, the addition made by the AO was considered justified and was upheld.

8. Before us, the ld.AR has submitted that the AO was not justified in applying the rate of 12.5% on ad hoc basis without any trade /industry comparison. The gross profit rate disclosed by the assessee 4.73% in AY 2007-08 , 5.11% in AY 2008-09 and 5.76% in AY 2009-10. Reliance has also been placed on certain decisions wherein similar additions were either deleted or the percentage adopted was 2% only.

9. Having noticed that the assessee failed to discharge the onus of proving the purchases, we find that the assessee is in possession of purchase invoices and payments are through banking channels. Therefore, if at all the purchases are found to be bogus we note that the sales turnover has not been disputed by the Revenue. Therefore, the addition could be made only on the profit element embedded in these non genuine purchases. We find that the AO has concluded that purchases are made from parties other than those who are mentioned in the books of account. This being so, the decision not the entire purchase



price but only the profit element in such purchases can be added to the income of the assessee has been rightly done. These parties are undisputedly listed as hawala dealers by Maharashtra Sales Tax department and on enquiries conducted them, it was proved that these parties are hawala dealers issuing bogus accommodation bills without supplying any material. The assessee is beneficiary of these accommodation entries. The sales are, however not doubted by Revenue. Under these circumstances, only profit element embedded in such bogus purchases need to be brought to tax as income of the assessee which definitely involves guess work. The ratio of decision of Hon'ble Supreme Court in the case of **Kachwala Gems v. JCIT reported in (2007) 288 ITR 10(SC)** is applicable. The Hon'ble Bombay High Court in the case of **PCIT vs. Pinaki D. Panani in ITXA/1543/2017, dtd:08/01/2020, (Bom)(HC)** has held that even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed. The Hon'ble Bombay High Court in the case of **Usha Exports vs. ACIT** vide order dated December 21, 2019 has held that in case of bogus purchases where sales are accepted, the addition can be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. **PCIT vs. Jakharia Fabric (P) Ltd. (2020) 429 ITR 323 (Bom-**



HC) dated 10.02.2020 where hon'ble court upheld the decision of ITAT for restricting adjustment to the tune of estimated profit element involved in bogus purchase.

9.1 Therefore, the only issue before us is the fair profit rate out of the bogus purchases which needs to be added back to the income of the assessee. The Id.CIT(A) affirmed 12.5% as applied by the AO. We notice that the assessee has claimed that the gross profit rate disclosed by the assessee is **4.73% in AY 2007-08, 5.11% in AY 2008-09 and 5.76% in AY 2009-10. The average gross profit rate comes to 5.2%**. Therefore, it would be justified to restrict addition to the tune of certain gross profit. Considering totality of the case and relying on jurisdictional High Court's judgment and various other judicial pronouncements, we are of the considered view that the addition should be restricted to 5.2% of bogus purchases of Rs. 1,18,84,565/- as an additional taxable income, without giving any benefit of expenses towards the same. The **ground no.4 and 5** are therefore, partly allowed.



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

Order pronounced in the open court on 22.05.2025.

Sd/-

NARENDER KUMAR CHOUDHRY
(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR
(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 22.05.2025
Lubhna Shaikh / Steno

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.

