

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

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 4871/Mum/2024  
(Assessment Year: 2011-12)**

Madhav Desai Ground Floor, Room No. 1 39/41, Prankuti Bldg 4 <sup>th</sup> Kumbharwada, Mumbai	Vs.	ITO, Ward – 28(2)(1) Piramal Chambers, Parel, Mumbai.
PAN/GIR No. AJJPD5013E		
(Applicant)		(Respondent)

Assessee by	Shri Akshay
Revenue by	Ms. Madhura M. Nayak Sr. DR

Date of Hearing	06.05.2025
Date of Pronouncement	27.05.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order 29.07.2024 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2011-12.

2. **Ground no 1** raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the reopening of assessment u/s 147 of the Act.

3. In this regard, from the records Bench noticed that no such ground was ever taken before Ld. CIT(A). Therefore the order of Ld. CIT(A) cannot be challenged upon or found faulty unless additional ground is raised before the Bench. Hence this ground raised by the assessee stands dismissed.

4. **Ground No 2 & 3** raised by the assessee are interconnected and interrelated and relates to challenging the order of Ld. CIT(A) in confirming the addition made by AO @12.5% of bogus purchases.

5. I have heard the counsels for both the parties, perused the material placed on record, judgements cited before me and also the orders passed by the revenue authorities.

6. From the record Bench found that the case of the assessee was reopened on the basis of information received from DGIT(Inv), Mumbai. From the investigation, it was found that the assessee had indulged in making bogus purchases amounting to Rs.26,94,526/- from four parties. Therefore, after providing opportunity of hearing to the assessee and relying upon the judgement in the case of **CIT(A) Vs. Smith P Sheth 356 ITR 451, (Gujarat )** made additions @ 12.5% of the total purchases to the total income of the assessee.

7. Although Ld. CIT(A) sought remand report, but upheld the additions and the operative portion of the order of Ld.CIT(A) is reproduced here in below:

*In this case, the AO was seen having possession of information and evidence in form of affidavit cum declaration of four proprietors admitting to have indulged in providing accommodation entries in lieu of commission. The four bogus concerns of these persons which were found transacting as purchaser to the assessee/appellant were:*

<i>Dev Deep Steel</i>	<i>Rs. 25,29,634/-</i>
<i>Unicorn Enterprises</i>	<i>Rs. 55,692/-</i>
<i>Liberty Trading corp</i>	<i>Rs. 54,600/-</i>
<i>Atlas International</i>	<i>Rs. 54,600/-</i>
<i>Total:</i>	<i>Rs. 26,94,526/-</i>

*Ld.AO gave finding that above four firms were appearing as sundry creditors in b/s of the assessee and year end outstanding payable to these as under:*

<i>Dev Deep Steel</i>	<i>Rs. 25,29,634/-</i>
<i>Unicorn Enterprises</i>	<i>Rs. 55,692/-</i>
<i>Liberty Trading corp</i>	<i>Rs. 54,600/-</i>
<i>Atlas International</i>	<i>Rs. 54,600/-</i>
<i>Total:</i>	<i>Rs. 26,94,396/-</i>

*AO was seen asking appellant to produce bills of transportation, hamali charges bill, stock book and cash book in support of above transactions. For want of any explanation, AO seen proceeded with best judgment assessment based on the information in hand. AO relied upon the ratio discussed in CIT vs. Simit P Sheth 355 ITR 451 (Guj. HC), made ad-hoc*

*disallowance @12.5% of these purchases shown from alleged bogus firms of Rs. 26,94,526/- and made addition of Rs. 3,36,815/- on this account.*

*AO further seen proceeded with addition u/s 41(1) for want of any evidence of payment in succeeding years made to these alleged bogus creditors aggregating Rs. 25,74,396/-.*

*AO is seen issuing the summons to these entities In the remand back proceedings, which were not found complied. The field inquiry is also seen discussed in the remand report wherein the locality was found unfamiliar with these 04 firms in question. In remand proceedings, these circumstances were also seen brought to the knowledge of the appellant. The AO during remand proceedings gave another opportunity to the appellant to produce the stock register, copies of bills of transportation, hamali charges paid, cash book, details of octroi etc in order to prove the genuineness of the purchases and the parties. AO in remand report is seen making conclusion that mere reliance could not be made upon the submitted computer generated ledgers and purchase bills since the necessary evidence in form of transportation bills, octroi, LBT paid, hamali charges, delivery challans, stock register were not produced.*

*This appeal has considered the facts and circumstances of the case in hand. It is evident from the admittance made in sworn affidavit by the proprietors of the four concerns in question that these were working for certain commission element against the bogus purchase bills issued to the interested parties. Since the appellant has reported purchases from these and shown these as creditors in books, the onus to prove the genuineness of the transactions enjoyed with these firms is heavy upon the appellant. From the discussion made in the remand report, it is seen that despite sufficient opportunities, the appellant was not found discharging the onus cast upon it. The compliance to the summons were not ensured by the appellant from these four firms or their concerned manager/operators at remand stage. The purchase bills provided could not be considered proving the genuineness of the transactions since the proprietors of 04 alleged bogus concerns were themselves admitting of issuing these on papers only without any actual delivery of underlying*

*goods. The appellant hasn't produced any such tangible material before this appeal also which could draw inclination towards the authenticity of the purchases in question.*

*AO has not disputed the sales made by the appellant and the ad-hoc disallowance @ 12.5% was charged for arranging these bogus bills of purchases from these bogus concerns. On similar issue, there is recent judgment of Hon'ble Bombay HC in PCIT v. Ashwin Purshotam Bajaj [2023] 155 taxmann.com 478 wherein the profit element in these accommodation entries are to be added to the income. The estimation of rate of profit must necessarily vary with the nature of business and no uniform yardstick can be adopted. Therefore, in considered opinion of this appeal, the action of AO in applying the rate near VAT incidence on these is found just and appropriate.*

*The addition of Rs. 3,36,815/- is confirmed and the ground no. 1 is dismissed.*

8. After having gone through the facts of the present case and hearing the parties at length, I found that time and again opportunities were granted to the assessee to produce the relevant documents, but at every stage assessee failed to produce the transportation bills, octroi, LBT paid, hamali charges, delivery challans, stock register etc. And thus assessee failed to discharge its 'onus to prove' the genuineness of the transactions and 'delivery of the goods'. Therefore purchases could not be authenticated.

9. No new facts, circumstances or documents have been placed before me during the course of proceedings in orders to controvert or rebut the lawful findings so recorded by CIT(A). Therefore I find no reasons to interfere

into or to deviate from the well reasoned finding recorded by Ld.CIT(A) even the judgements cited and relied upon by the assessee or not at all applicable upon the facts and circumstances of the present case. Therefore, these grounds raised by the assessee stands dismissed.

10. **Ground No 4**, this ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the additions being made on account of cessation of liability u/s 41(1) of the Act.

11. After having heard the counsels for both the parties and perusal of the documents placed on record and also the facts of the present case I found that as per revenue the assessee has failed to prove with documentary evidences regarding making of payment to the creditors in subsequent years. Whereas, on the contrary, assessee specifically pleaded that copies of ledger account for the subsequent years were produced before Ld. CIT(A), but the same were not considered by the appellate authority.

12. Be that as it may, without going into the merits of the allegations and counter allegations of the parties, I am of the view that matter needs to be restored back to the file of Ld. CIT(A) to provide one more opportunity to the assessee to produce the relevant documents to prove that such payments were made in successive years and then to decide this issue afresh. In case assessee prove that the

sum in question has been paid to the creditors in the subsequent years, then in my view the theory of Cessation of liability stands unsustainable.

13. In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 27.05.2025.

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 27/05/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai