

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 3415/Del/2023  
निर्धारणवर्ष/Assessment Year: 2010-11**

DCIT, Circle-1(1), 5 <sup>th</sup> Floor, HSIIDC Building, Udyog Vihar, Phase-5, Gurgaon, Haryana.	<b>बनाम Vs.</b>	ARO EQUIPMENTS PRIVATE LIMITED Plot No.300, ARO Tower, Udyog Vihar, Phase-2, Gurgaon, Haryana.
		PAN No.AACCA8471G
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

Assessee by	Shri Kunal Aggarwal, Adv.
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	29.05.2025
उद्घोषणाकीतारीख/Pronouncement on	25.06.2025

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Revenue against the order of the Ld. CIT(Appeals)-NFAC, Delhi dated 05.06.2023 for the AY 2010-11 in restricting the gross profit to 16.5% on the alleged bogus purchases added by the AO while completing the assessment.

2. Brief facts are that the assessee company which is engaged in the business of trading of industrial tools, filed its return of income on 14.10.2010 declaring income of Rs.56,25,620/-. The return was processed u/s 143(1) of the Act and subsequently the assessment was reopened u/s 147 of the Act based on AIR Information that the assessee has entered into some suspicious transactions of purchase from two parties. The reassessment was completed u/s 143(3) r.w.s. 147 of the Act on 11.12.2017 determining the total income of the assessee at Rs.7,39,00,240/- as against income of Rs.56,25,620/- declared by the assessee in its return. The AO while completing the assessment treated purchases of Rs.5,44,37,896/- and Rs.1,38,36,724/- made by the assessee from Shri Ravi Gupta, Prop. Shiv Sai Traders and Shiv Shanker Enterprises and M/s Bhawani Trading Co. respectively as bogus purchases. The AO rejected the books of account of the assessee and estimated the gross profit and made additions accordingly. On appeal the Ld. CIT(A) adopted average gross profit for 5 years at 16.5% and restricted the gross profit on purchases to 16.5% as against the entire purchases which were treated as bogus by the AO.

3. The Ld. DR strongly placed reliance on the orders of the AO and the Ld. Counsel for the assessee placed reliance on the orders of the Ld. CIT(A). Ld. Counsel for the assessee also made submissions as under:

1. *“1. The Appellant is engaged exclusively in the trading of Garage tools and equipment.*
2. *The Appellant was alleged to have engaged in bogus purchases during the Assessment Year (AY) 2010-11, leading to the reopening of the case u/s 148. Subsequently, the Learned Assessing Officer (Ld. AO), without identifying any discrepancies in the books of account, sales, or stock, rejected the books of account u/s 145(3) of the Income Tax Act, 1961, and proceeded to make an addition of Rs.6,82,74,622/- at 100% of the alleged bogus purchases. (Copy of the assessment order attached at pages No. 1 to 6 of the paper book - A)*
3. *Aggrieved, the Appellant filed an appeal before the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)], who restricted the addition to 16.5%, amounting to Rs.1,12,66,962/- (Rs.6,82,74,622 x 16.5%). (Copy of the CIT(A) order attached at pages No. 7 to 18 of the paper book -A)*
4. *The Department is now in appeal before this Hon’ble Tribunal, contending that the Appellant is a manufacturer, and challenging the findings of the Ld.CIT(A).*
5. *In response to the grounds raised by the Department, the Appellant respectfully submits as follows:*
  - a. *The Appellant is solely a trader in Garage tools and equipment.*
  - b. *The Appellant’s registration with the Sales Tax authorities explicitly categorizes it as a Trader. (Copy of ST-3, registration certificate, issued by the VAT Department attached at pages No. 19 to 20 of the paper book -A)*

- c. *The VAT authorities, after conducting an assessment for AY 2010-11, confirmed that the Appellant is a Trader. (Copy of the VAT assessment order attached at pages No. 21 to 24 of the paper book -A)*
  - d. *The Appellant's audited financial statements do not include a manufacturing account, as there was no machinery or equipment listed in its Fixed Assets. Manufacturing activities are not possible in the absence of such assets. (Copy of the Audited Financials attached at pages No. 25 to 38 of the paper book -A)*
6. *It is respectfully submitted that the Ld. CIT(A) has rightly considered the facts and circumstances of the case and appropriately restricted the addition to 16.5%. The Department's claim that the Appellant is a manufacturer is entirely unfounded and contrary to the evidence on record.*

*Prayer:*

*In view of the above, the Appellant humbly prays that this Hon'ble Tribunal may:*

1. *Kindly dismiss the appeal filed by the Department.*
  2. *Uphold the reasoned order passed by the Ld. CIT(A);*
  3. *Grant any other relief as deemed fit and proper in the interest of justice."*
4. Heard rival submissions, perused the orders of the authorities below. The Ld.CIT(A) considered the entire submissions, evidences furnished by the assessee and estimated the average gross profit on the said purchases at 16.5% and directed the AO to adopt the said

percentage as income of the assessee from the said purchases instead of treating entire purchases as bogus observing as under:

**“6. FINDINGS & DECISION**

*6.1 I have gone through the order of the learned AO, submission by the appellant and all the grounds of appeal raised by the appellant have been disposed of here under-*

*Ground 1 to 5*

*The Learned AO has carried out addition of Rs.5.44Crore on accounts of bogus purchases made from two parties and Rs.1.38 crores by disallowing payment made to such parties. In this regard the appellant has raised multiple ground of appeal which are disposed off collectively as under:*

*6.2 Based on information received from DIT (investigation) Faridabad the learned AO was in possession of information pertaining to suspicious transaction in case of the appellant. As per said information the learned AO reopened the assessment and upheld that the appellant had made purchases of Rs.4,93,84,725 from M/s Shiv Shankar Enterprises and Rs.40,53,174 from M/s Shiv Sai Traders are bogus purchases and therefore the same were disallowed. The learned AO observed that the appellant has made payment of Rs.1,38,36,724 to M/s Shiv Shankar Enterprises, the said payment was also treated towards bogus purchases and being added back to total income of the appellant.*

*6.3 The very basic question in the underlined case is about genuineness of the purchases made by the appellant. The appellant filed supporting documents containing ledger extracts of parties, vat returns, excise returns, Payment details, bank statement reflecting such payment details, copy of invoices, purchase register, stock register, bank statements, audited books of accounts.*

6.4 *The learned AO has not questioned the sales made by the appellant and has accepted the sales amount as appearing in the financial statements. He has also not provided any adverse finding on inventory appearing in the books of account of the appellant.*

6.5 *In absence of visibility on correctness of the amount paid/ payable to creditors, the possibility of purchasing the goods from grey market at lower rates and recording the same at inflated price in books of accounts cannot be ruled out.*

6.6 *However, if the entire purchases are disallowed, the corresponding sales also need to be ignored but the AO has not done so. Therefore, this leaves with unjustified adjustment in case of the appellant.*

6.7 *Many high courts and tribunals have dealt with this issue of bogus purchases in greater details and have upheld that certain gross profit shall be added to total income instead of adding entire purchases (especially when corresponding sales are not challenged).*

6.8 *There is plethora of judicial precedents on this very issue and I have placed reliance on following cases:*

*The Hon'ble Gujarat High Court in the case of Commissioner of Income-tax vs. Simit P. Sheth reported in [2013] 38 taxmann.com 385 (Gujarat) has held as under:-*

*In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.*

7. *That being the position, not the entire purchase price but only the profit element embedded in such*

*purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.)Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58ITD 428 (Ahd.) came to be approved.*

*8. If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).*

*9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.*

*Nickunj Eximp Enterprises Pvt. Ltd Vs CIT [Bombay HC WRIT PETITION NO.2860 OF 2012]*

*In the underlined writ petition, Bombay HC upheld addition based on GP ratio*

- 1. The Hon'ble Bombay High Court in the case of PCIT vs. Pinaki D. Panani vide order dated January*

*18, 2020 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. As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated.*

*2. 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. The AO is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases.*

*3. PCIT vs. Jakharia Fabric (P) Ltd. (2020) 429 ITR 323 (Bom-HC) dated 10/02/2020  
In the underlined case, Hon'ble HC upheld the decision of IT AT for restricting adjustment to the tune of estimated profit element involved in bogus purchase.*

*6.9 The appellant has also submitted a chart depicting GP earned by it in 5 years.*

*The average GP for such 5 years works out to 16.5%.*

*6.10 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 by Honorable High Courts and ITATs, I am of the view that the addition shall be restricted to 16.5% of amount disallowed by AO as an additional taxable income, without giving any benefit of expenses towards the same.*

*It would be appropriate to apply this cross profit ratio of 16.5% on both i.e., amount of purchases and payment made to these parties.*

*6.11 Accordingly, the appeal of the Appellant for AY 2010-11 is partly allowed."*

5. On careful consideration of the order of the Ld. CIT(A), we do not see any valid reason to disturb the reasoning and findings of the Ld. CIT(A) in estimating the gross profit rate at 16.5% and directing the AO to adopt this percentage on the purchases treated as bogus instead of treating the entire purchases as bogus purchases. Thus, we sustain the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

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

Order pronounced in the open court on 25/06/2025

**Sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 25.06.2025

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**