

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
 MISS. PADMAVATHY.S, ACCOUNTANT MEMBER**

**ITA 3104/Mum/2023
 (Assessment Year: 2011-12)**

INCOME TAX OFFICER-19(1)(1) MUMBAI, 501, 5th Floor, Piramal Chambers, Parel, Mumbai-400 012	vs	Chandresh Chhaganlal Mehta Shop No.5, Varsha, Near Alankar Cinema, 2ndKhetwadi Lane, Mumba-400 004 AHHPM2825R
APPELLANT		RESPONDENT

Assesseeby : Shri Rajesh Chamaria
 Respondent by : Shri R.R. Makwana, JCIT

**ITA 3194/Mum/2023
 (Assessment Year :A.Y. 2011-12)**

INCOME TAX OFFICER, MUMBAI, Room No.216, 2nd Floor, Piramal Chambers, Lal Baug, Parel Mumbai-400 012	vs	Mustafa Zainuddin Nalawala 3-B, Annexe Building, Old Anjirwadi, Mazgaon, Mumbai-400 010 PAN : AAAPN5856B
APPELLANT		RESPONDENT

Assesseeby : Shri Sahil Fatehi
 Respondent by : Shri R.R. Makwana, JCIT

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Date of hearing : 22/04/2024
Date of pronouncement : 23/ 04/2024

ORDER

PERBENCH:

Both the appeals of the Revenue for different assessee were filed against the orders dated 07/07/2023 & 18/07/2023 of the National Faceless Appeal Centre, Delhi (NFAC)[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2011-12. The impugned orders were emanated from the order of the Ld. Income Tax Officer-(W) 19(1)(3), Mumbai and (W) 20(2)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) / 147 of the Act, date of order 14/12/2019 and 10/12/2018, respectively.

2. At the outset, both the appeals are of same nature of facts and having common issue. All the appeals are taken together, heard together and are being disposed of together. ITA No3104/Mum/2023 is taken as lead case.

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3. The assessee has taken the following grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CTA) has erred in restricting to addition made on account of bogus purchases to 12.59% of total bogus purchases ignoring the fact that the Sales Tax Department has proved beyond doubt that parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase."*

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2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying gross profit @12.5 % as against the 100% of total bogus purchases of Rs. 26,29,369/- by ignoring the fact that Sales Tax Department and subsequently, the DGIT(Inv.), Mumbai during their course of investigation found the alleged bogus parties to be providing only accommodation /bogus purchase bills."*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying gross profit @12.5 % as against the 100% of total bogus purchases of Rs. 26,29, 369/-by ignoring the fact that the assessee could neither produce the quantity tally of day to day purchases, Sales, Stocks and corresponding values nor could produce the parties for verification, in spite of opportunity provided by the Assessing Officer"*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer amounting to Rs. 26,29,369/- without appreciating the ratio of the decision of the Hon 'ble Supreme Court in the case of N.K. Proteins Ltd."*

4. The brief facts of the case are that the Ld.Assessing Officer has received information from DGIT(Inv) Wing, Mumbai about having received vital information from Sales-tax Department of Maharashtra amongst some dealers in MVAT 2002 purchases in the nature of the accommodation entry. As per the basis of information, the notice under section 147 was issued. Accordingly, the purchase of assessee from different parties amounting to Rs.26,29,369/- in impugned assessment year are bogus and treated as accommodation entries. The assessment was completed and the sellers identities are in question. The Ld.Assessing Officer had added back the entire purchases from different parties amounting to Rs.26,29,369/- to the total income. The aggrieved assessee, filed appeal before the Ld.CIT(A). On the basis of submission from the assessee, the Ld.CIT(A) has modified the assessment order and has restricted the @12.5% on the bogus purchases of the assessee. The assessee got the part relief from

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the order of Ld.CIT(A). Being aggrieved by the appeal order, the Revenue filed appeal before us stating that it is covered under exception provided in para 10(e) of CBDT circular No.3 of 2018 dated 11/07/20-18 as amended vide (F.No.279/Misc.142/2007-IT) dated 28/08/2018.

5. The Ld.Departmental Representative vehemently argued and relied on the order of Assessing Authority and prayed for addition of entire bogus purchases to the total income of the assessee. He relied on the assessment order para 3.1, which is reproduced as below:-

3.1 Information has been received from the DGIT (Inv.) Wing, Mumbai, about having received vital information initially from the Sales Tax Department of Maharashtra about some of the dealers under MVAT 2002 indulging in the practice of providing accommodation entries in the form of supplying the basis any of goods but providing accommodation entries only, based on their admission statements/deposition/affidavit has also been filed before the Sales Tax Authorities. It observed that the Sales Tax department has made a detailed the affairs of dealers who investigation in have been issuing bogus sales purchase bills and as a thereof, publicly result displayed on its website, a list of hundreds of admitted persons/dealers who have to having issued bogus sales/purchase bills to number of parties. As per the list of parties - forwarded by the by the DGIT (nv.), Mumbai, the above mentioned assessee was also one of the beneficiaries of such bogus bills. The details of availed of by the assessee for accommodation entries the period under consideration is given as under:

S.No.	Name of the Hawala Party	Financial Year	Bill Amount (Rs.)
1	ASIAN TUBE TRADING	2010-11	6,633/-
2	GLOBAL TRADE IMPEX	2010-11	4,66,440/-
3	ASIAN STEEL REMI TRADING	2010-11	12,069/-
4	SEEMENT TRADING	2010-11	4,05,600/-
5	AARCO ENTERPRISES	2010-11	11,08,991/-
6	REHBAR ENTERPRISES	2010-11	89,665/-
7	MUKTA STELL AND COMPANY	2010-11	3,27,132/-
		TOTAL	26,29,369/-

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Therefore, on the basis of evidence gathered on the non genuine that there is transactions, it is obvious suppression of primary facts in the return of income filed by the assessee and in turn has escaped assessment. In view of the above, the case was reopened by issuance of notice u/s 148 of the Act after recording reasons for reopening the assessment u/s 147 of the Act. A copy of reasons recorded was

The Ld.DR argued and fully relied on the order of the appellate authority.

6. The Ld.AR invited our attention to appellate order para 6.10, which is reproduced as under: -

6.10 In view of the above discussion and judicial precedents, it is held that while the purchases have not been proved to be genuine by the appellant, the sales in the books of accounts have not been doubted by the AO. Since, it cannot be the case that sales were made without any purchase. The appellant's alternate plea of taxing the gross profit at 12.5% of the alleged purchase seems reasonable.

6.11 Since, the appellant has not been able to show the direct nexus between the goods claimed to have been purchased and sales affected, it cannot be said that the net profit on sales affected in respect of these purchases, has already been offered to tax in the return of income. Accordingly, an addition of Rs. 3,28,671/- is sustained and the balance is directed to be deleted."

7. We heard the rival submissions and considered the documents available on the record. The assessee is a trader and purchased goods from different parties. The information received from the MVAT Authorities and on that basis the investigation was started. The assessee failed to substantiate the identity of the parties before the Ld.Assessing Officer. But the entire transaction was made through banking channel. On the other hand, the sales were also executed depending on the purchases of materials. In the transaction, the purchases and sales are interlinked transaction. The Ld.CIT(A) relied on the order of Hon'ble **Bombay High Court** in case of **PCIT vs S.V. Jiwani (2022) 145 taxmann.com**

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230(Bom) wherein involving similar set of facts and circumstances of the case, the Hon'ble jurisdictional High Court has upheld the decision of the Hon'ble ITAT, Mumbai Bench that addition to the extent of 12.5% of the bogus purchases is fair and reasonable. The Ld. Assessing Officer had not rejected the sales of assessee. So the calculation of addition @12.5% on bogus purchases is also acceptable for the assessee. We respectfully relied on the order of Hon'ble Jurisdictional High Court in the case of **S.V. Jiwani**(supra). The Ld.DR was unable to submit any contrary judgement against the submission of the assessee. In our considered view, we are not interfering in the appellate order. The impugned appeal order is upheld.

Accordingly, the grounds taken by the Revenue are dismissed.

8. The facts and circumstances being identical to ITA No.3104/Mum/2023, the decision arrived at therein applies mutatis mutandis to this appeal in ITA No.3194/Mum/2023 also.

10. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 23rd day of April, 2024.

Sd/-

(PADMAVATHY. S)
ACCOUNTANT MEMBER
Mumbai, दिनांक / Dated: 23/04/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

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Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt.Registrar), ITAT, Mumbai