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

BEFORE SHRI B.R. BASKARAN, AM &
SHRI N. K. CHOUDHRY, JM

I.T.A. No. 995/Mum/2019
Assessment Year: 2009-10)

I.T.A. No. 996/Mum/2019
Assessment Year: 2010-11)

Shri Uttamchand P. Jain 6, Maheshwari Society, PM Road, Kankuwadi, Vile Parle (E), Mumbai-400057. PAN No. **ACRPJ0320M**	Vs.	**ITO-19(3)(5),** Matru Mandir, Tardeo, Mumbai-400007.
Appellant)	:	**Respondent**)

Appellant/Assessee by	:	Shri S.L. Jain
Respondent/Department by	:	Shri Surendra Kumar Meena
Date of Hearing	:	16.08.2023
Date of Pronouncement	:	29.08.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred these appeals against the common order dated 15.11.2018 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-53, Mumbai {in short 'Ld. Commissioner)'} under section 250 of the Income Tax Act 1961 (in short 'the Act').

2. As the issues and facts involved in the instant appeals are exactly similar except variations in amounts, hence, for the sake of brevity, we are inclined to dispose of these appeals by this Composite order and ITA No. 995/Mum/2019 as a lead case.

3. The Assessee claimed to be in the business of trading in Ferrous and Non-ferrous metals under the name and style of proprietary-ship concern M/s Mangldeep Industries and declared its total income at Rs. 1,70,717/- by filing its return of income on dated 29.09.2009, which was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, the case of the Assessee was re-opened under section 147 of the Act after recording the reasons and consequently the notice under section 148 of the Act dated 08.03.2014 was issued, in response to which the Assessee vide letter dated 27.03.2014 requested the AO to treat the return originally filed as in response to the said notice under section 148 of the Act.

3.1 Infact, on receiving the information from the DGIT (Inv.) Wing, Mumbai who acted on the information from the Sales Tax Department, Government of Maharashtra to the effect that as per their admission in statements/depositions/affidavits filed before the Sales Tax Authorities it is revealed that some of the dealers under MVAT 2002 indulging in the practice of providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing accommodation entries only. As per list of parties forwarded by the DDIT (Inv.), the Assessee was also one of the beneficiaries of such bogus bills. The details of accommodation entries availed by the Assessee for the period under consideration is given as under:

Sr.No.	***Name of hawala parties***	***Fin. Year***	***Amount***
1.	*Veer Industries*	*2008-09*	*2673349*
2.	*Manibhadra Trading Co.*	*2008*	*800633*
3.	*Manav Impex*	*2008*	*441390*
4.	*Ratandeep Tubes*	*2008*	*509340*
5.	*Mahavir Conpn.*	*2008*	*856414*
6.	*Viraj Metal Corpn*	*2008*	*1593400*
7.	*Great International*	*2008*	*1364510*

8	*Shree Ganesh Steel*	*2008*	*485425*
9.	*Prime Steel Impex*	*2008*	*281304*
10.	*Marcon Enterprises*	*2008*	*1496500*
	TOTAL		***10502274***

3.2 On the basis of said information, the case of the Assessee was re-opened and the Assessee was show-caused as to why purchases shown to have made from the aforesaid dealers, should not be treated as non-genuine purchases and added to the Assessee's income. The Assessee in response to the show-cause/notices/letters, furnished various details such as copies of Ledger A/c along with copies of purchase invoices of the specific parties, copies of bank statements evidencing payments made through banking channel by issuing account payee cheques in respect of the above parties highlighting the relevant entries and details qua purchases made from the said parties. The AO in order to verity the genuineness of the above purchases, issued notices under section 133(6) of the Act to the said parties at the addresses provided by the Assessee through registered post, however, the notices sent could not be served and retuned back unserved by the postal authorities with the remarks "Not Known" or "No such address" or "Left", etc. Therefore by considering the details furnished by the Assessee and the material available on record and the above said fact qua non-service of notices to the parties from whom the Assessee made purchase, the AO ultimately rejected the books of accounts of the Assessee u/s 145(3) of the IT Act and held the purchases made by the Assessee as bogus, by observing as under:

> *"5.5. The submission / details furnished by the assessee as also the materials available on record have been carefully perused and considered. From the above discussions, the followings facts emerge-*
>
> *(i) The Sale Tax Department has conducted independent enquires in each of the 'non genuine' parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only. The parties are issuing bills without delivering any goods and services.*

(ii) Independent enquiries / investigations have been carried out by this office under the I.T. Act and the assessee has been duly confronted with the same. Evidently, the assessee had adopted a modus operandi to reduce his true profits by inflating his expenses including purchase expenses by taking accommodation entries from such parties.

(iii) The assesse was asked to produce the said 'non genuine dealers' for examination, but the assesse failed to do so. Thus, in the books of accounts of the assesse, the purchases to the extent made from the above said parties remained unverifiable and hence I arrive at a conclusion that the purchases shown by the assesse in the books of accounts are inflated and bogus purchases are debited to trading account to suppress the true profits to be disclosed to the department.

(iv) The assesse could not file the vital documents such as delivery challans, transport receipts, octroi receipt for payment of Octroi duty, receipt of weighbridge for weighing of goods, excise gate pass, goods inward register maintained at godown/warehouse/storage house etc. Whatever documents placed on record is not capable of sustenance. The items shown to have purchased from the said parties are of such in nature that they require separate transportation. Hence the mode of transportation is not explained properly.

(v) The onus was upon the assessee to establish the genuineness of purchases made by the assesse.

(vi) Mere filing of evidences in support of purchases and payment through account payee cheque cannot be conclusive in a case where genuineness of transaction is in doubt. Payment by account payce cheques are not sacrosanct.

(vii) The Sales Tax Department certified that the aforesaid parties are 'non genuine operators' after conducting independent enquiries. It is evident that the assessee did not make any effort to controvert the finding recorded by the DGIT (Inv.) and it made no efforts to produce the seller parties.

(viii) If all the evidences point to the fact that no actual goods were supplied by the above parties, then the argument of assessee that it purchased goods in good faith is not tenable.

Thus, from the above analysis of the facts, it is crystal clear that the purchases made by the assessee from the above parties and claimed as expenses in his profit and loss account are not genuine. Since the purchases to

> *that extent remain unverifiable and cannot be accepted, the books of accounts are rejected as provided in Section 145(3) of the IT Act."*

3.3 The AO ultimately by following the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth (2013) reported in 356 ITR 451 (Guj.) wherein it was held "that entire purchase price cannot be added but only profit element embedded in such purchase can be added" made the disallowance @ 12.5% of the purchase of Rs. 105,02,274/-" added an amount of Rs. 13,12,783/- in the total income of the Assessee as profit earned from such purchases.

4. The Ld. Commissioner in appeal, on more or less on the same reasoning as given by the AO, affirmed the said addition, against which the Assessee is in appeal before us.

5. We have given thoughtful consideration to the peculiar facts and circumstances of the case. Before us, the Assessee placed reliance upon the following judgments:

1. *Shri Pravin Shivlal Shah Vs. ITO (ITA Nos. 1379 & 1380/Ahd/2016)*
2. *Shri Ashok Champalal Bokadia Vs. ITO (ITA Nos. 5035 & 5036/Mum/2018)*
3. *CIT Vs. M/s Odeon Builders Pvt. Ltd. [Civil Appeal Nos. 9604 & 9605 of 2018 (SC)]*
4. *The PCIT Vs. Ms. Mohommad Haji Adam & Co. [Income Tax Appeal No. 1004 of 2016 (Bom HC)]*

6. It is not in controversy here that the notices sent to the parties from whom the Assessee has made the purchases were not served at the addresses provided by the Assessee and even otherwise the Assessee has also failed to produce the said parties before the authorities below and except filing its own copies of Ledger Accounts, Bank statements and purchase invoices of the specific parties, the Assessee failed to substantiate the purchases by producing the vital documents as observed by the AO, delivery challens, transport receipts, octroi receipts for payment of octroi duty, receipt of weighbridge for weighing of goods, gate pass, goods inward and outward register, maintained at godown/werehouse/storage house etc. Even otherwise as the items shown to have purchased from the said parties are of such in nature that they requires separate transportation but still the Assessee failed to demonstrate mode of transportation as well and therefore, the Assessee failed to establish its purchases by substantive material/evidence, hence, we are inclined not to interfere in the conclusion drawn by the authorities below in establishing the purchases as bogus.

7. Coming to the second aspect of the case, as it is settled law that entire amount of bogus purchases cannot be added as addition but only profit element embedded in such purchases can only be added and therefore, authorities below consciously not added the entire amount of bogus purchases in the income of the Assessee, but infact added the profit element estimated at 12.5% of the gross bogus purchases, in the income of the Assessee.

The judgments relied upon by the Assessee also dealt with the identical issue and upheld the making of addition qua profit element only and therefore, for the just decision of the case and for the ends of justice and litigation, by following the judgment passed by the Jurisdictional Tribunal in the case of Shri Ashok Champalal Bokadia Vs. ITO (supra) which is out of four judgments/cases as relied upon by the Assessee, more peculiar and similar to the facts and issues and determination involved in this case, wherein on similar circumstances, the Hon'ble Bench, restricted the addition qua alleged bogus purchases @ 5% in place of 12.5% as estimated by the Revenue/Department, hence, we are inclined to restrict the addition @ 5% of the alleged bogus purchases amount of Rs. 105,02,274/-. Consequently, the appeal filed by the Assessee is partly allowed.

8. Coming to ITA No. 996/Mum/2019, in view of our judgment in ITA No. 995/Mum/2019, this appeal on the same terms is also allowed.

9. In the result, both the appeals filed by the Assessee stands partly allowed.

Order pronounced in the open court on 29-08-2023.

Sd/-	***Sd/-***
(**B.R. BASKARAN**)	**(N. K. CHOUDHRY)**
Accountant Member	**Judicial Member**

Dated: 29/08/2023
SK, Sr.PS.

<u>Copy of the Order forwarded to</u> :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai