

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.274/M/2023
Assessment Year: 2011-12**

M/s. Babulal Hajarimalji Jain, 47/49, 1 st Pathan Street, 4 th Kumbharwada, Mumbai – 400 004 PAN: AACPJ5406F	Vs.	Income Tax Officer 19(1)(2), 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shashank Mehta, A.R.
Revenue by : Shri Chetan M. Kacha, D.R.

Date of Hearing : 29 . 03 . 2023
Date of Pronouncement : 28 . 04 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Babulal Hajarimalji Jain (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.12.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter-alia that :-

“1. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of Ld. Assessing Officer in completing the reassessment proceedings without providing any opportunity of cross examination of the witnesses relied upon by the Assessing Officer and thus violating the law laid down by Honorable

Supreme Court in the case of Kishanchand Chellaram v. CIT (1980) 125 ITR 713 and Andaman Timber Industries v. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006.)

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of Ld. Assessing Officer in completing the reassessment proceedings without following the orders passed in the Appellant's own case in the preceding Assessment Years thereby violating the Principle of Consistency.

3. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs. 46,34,928/- being 12.5% of the alleged bogus purchases of Rs. 3,70,79,423/- merely on surmises and conjectures.

4. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is an individual running a proprietary concern in the name of M/s. Mayur Steel Industries being into the business of trading in ferrous and non ferrous metals. During the year under assessment on the basis of information received from Sales Tax Department and Directorate General of Income Tax (Investigation) [DGIT (Inv.)] that “some businessmen have indulged in acceptance of bogus purchase bills from bogus hawala bill providers and the assessee is one such beneficiaries of bogus purchase bills”, assessment was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short ‘the Act’). In response to the notice issued under section 148 of the Act the assessee opted to treat the return already filed as response to the notice under section 148 of the Act. Notices under section 142(1) and 143(2) along with questionnaires were issued. As per information received from DGIT (Inv.),

Mumbai the assessee has accepted entries in respect of bogus purchases from 7 entities as under:

Sr. No.	Name of the party	Amount (Rs.)
1	D. K. STEEL & ENGG. CO	14,65,927/-
2	MAHAVEER METAL CORPORATION	43,10,601/-
3	SHREE GURURAJ METAL CORP	15,89,770/-
4	DINESH STEEL INDIA	37,38,871/-
5	KANAK METAL CORPORATION	55,21,960/-
6	VINAYAK SALES CORPORATION	70,79,820/-
7	RAJESHWARI EMTAL INDUSTRIES	1,14,46,706/-
8	METALEX TUBE INDUSTRIES	19,25,768/-
	TOTAL	3,70,79,423/-

3. On failure of the assessee to produce aforesaid parties before the AO for verification and after declining the explanation filed by the assessee the AO proceeded to make the addition of Rs.46,34,928/- to the total income of the assessee being 12.5% of Rs.3,70,79,423/- i.e. unproved purchases and thereby framed the assessment under section 143(3) read with section 147 of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly the entire addition in this case has been made by the AO as well as Ld. CIT(A) on the basis of guess work and estimation on the basis of some alleged information received from Sales Tax Department of Maharashtra and from DGIT (Inv.), Mumbai that “the assessee has taken bogus purchase bills without having taken any delivery of the goods, without applying their mind. It is also not in dispute that the AO has also not examined the books of accounts of the assessee nor has reached a definite conclusion that the bills for purchasing the goods relied upon by the assessee are bogus but simply made the addition on the basis of information received from DGIT (Inv.) and from Sales Tax Department of Maharashtra. It is also not in dispute that in the earlier years the Ld. CIT(A)/Revenue has itself estimated the profit element on such bogus purchases @ 6.5% of the alleged bogus purchases.

7. In the backdrop of the aforesaid undisputed facts the Ld. A.R. for the assessee contended that during the earlier years the Revenue has itself determined the profit element in bogus purchases @ 6.5% and brought on record order passed by the Ld. CIT(A) in assessee’s own case for A.Y. 2009-10 available at page 15 to 25 of the paper book.

8. We have perused the order passed by the Ld. CIT(A) in the earlier years wherein profit percentage embedded in such purchases was restricted to 6.5% (i.e. 4% of VAT levied + 2.5% towards profit margin).

9. In A.Y. 2012-13 the Tribunal in assessee’s own case in ITA No.4677/M/2018 directed the Revenue to limit the addition to the

extent of gross profit rate on such purchases at the same rate as of other genuine purchases.

10. The Hon'ble High Court of Bombay in case of Pr. CIT vs. JK Surface Coatings Pvt. Ltd. in ITA No.1850 of 2017 order dated 28 October, 2021 upheld the view taken by the Tribunal that in such circumstances gross profit should be in the range of 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchases by returning following findings:

“4. Having considered the memo of Appeal and the Orders passed by AO / CIT(A) and the Order of ITAT, the only issue that comes up for consideration is with respect to the extent of ad-hoc disallowance to be sustained with respect to bogus purchases. The AO has observed 100% of the purchase value to be added to the income of Assessee, the CIT(A) has said it should be 15% and ITAT has said it should be 10%. First of all, this would be an issue which requires evidence to be led to determine what would be the actual profit margin in the business that Assessee was carrying on and the matter of calculations by the concerned authority. According to the Tribunal, in all such similar cases, it is ranged between 5% to 12.5% as reasonable estimation of profit element embedded in the bogus purchase when material consumption factor do not show abnormal deviation.

5. Whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal has concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.”

11. In view of what has been discussed above and following the order passed by the Hon'ble Bombay High Court (supra), we are of the considered view that in the light of the gross profit earned by the assessee in the earlier years on the basis of which profit element was fixed at 6.5% of the alleged bogus purchases, we direct the AO to charge the assessee at the gross profit rate @ 6.5% on bogus purchases of Rs.3,70,79,423/-.

12. Resultantly, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28.04.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 28.04.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.