

**IN THE INCOME TAX APPELLATE TRIBUNAL), 'A' BENCH
MUMBAI**

BEFORE SHRI RAJESH KUMAR, AM

&

SHRI RAM LAL NEGI, JM

**ITA No.3904/Mum/2019
(Assessment Year :2010-11)**

Assistant Commissioner of Income Tax-20(1) Room No.113, 1 st Floor Piramal Chambers Lalbaug, Mumbai – 400 012	Vs.	Shri Anil Jagdishchandra Ahuja 1406, Tower-C Ashok Towers Dr.S.S Rao Road, Parel (E) Mumbai – 400 012
PAN/GIR No AAABPA1016B		
(Appellant)	..	(Respondent)

**CO No 75/Mum/2020
(Arising out of ITA No.3904/Mum/2019)
(Assessment Year :2010-11)**

Shri Anil Jagdishchandra Ahuja 1406, Tower-C Ashok Towers Dr.S.S. Rao Road, Parel (E) Mumbai – 400 012	Vs.	Assistant Commissioner of Income Tax-20(1) Room No.113, 1 st Floor Piramal Chambers Lalbaug, Mumbai – 400 012
PAN/GIR No.AAABPA1016B		
(Appellant)	..	(Respondent)

Revenue by	Shri Brajendra Kumar
Assessee by	Shri Vimal Punmiya
Date of Hearing	30/12/2020
Date of Pronouncement	02/03/2021

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The aforesaid appeal has been filed by the revenue and Cross Objection filed by the assessee against the impugned order dated 13/03/2019, passed by the CIT(A)- 32, Mumbai, for the assessment year 2010-11.

2. The Revenue in its appeal has challenged the order of Id. CIT(A) on the ground that Id. CIT(A) has wrongly deleted the addition made by the AO on account of bogus purchases to the tune of Rs.87.5% of the bogus purchases whereas the assessee by way of cross objection has challenged the partly sustenance of addition of 12.5% of the bogus purchases by Id. CIT(A).

3. The facts in brief are that the assessee has filed return of income on 15/10/2010 declaring total income at Rs.52,16,260/-. The case was reopened under section 147 of the Act by issuing notice u/s.148 on 08/03/2017 after the AO received information from DGIT(Inv.) Mumbai that assessee is a beneficiary of bogus hawala entries. During the course of assessment proceedings, the assessee was called upon to prove the genuineness of the purchases which was complied by the assessee by furnishing the copies of bill, vouchers, evidences of payments being made

through banking channels by way of cross cheques, details of purchase with corresponding sales. The AO also issued notices u/s.133(6) of the Act to the suppliers, however, no response was received or the notices remain unserved. As a result, the AO added the entire bogus purchases of Rs.53,58,291/- made from two parties to the income of the assessee by treating the same as non-genuine by framing assessment u/s.143(3) r.w.s. 147 of the Act.

4. In the appellate proceedings, the Id.CIT(A) partly allowed the appeal of the assessee by deleting the addition to the extent of 87.5% by observing that the profit element embedded in the bogus purchases has to be assessed and therefore, the entire purchases cannot be brought to tax thereby partly sustaining the addition at 12.5%. The Id. CIT(A) while passing the order distinguished the decisions relied upon by the Id. AO.

5. We have heard rival submissions and perused the materials available on record. We find that in this case undisputedly, the assessee had made purchases from hawala dealers to the tune of Rs. 53,58,291/- which were added by the AO to the income of the assessee by alleging the same as non-genuine for the reasons that assessee could not offer any plausible explanation. However, the Id. CIT(A) partly deleted the addition to the tune of 87.50% thereby partly sustaining the addition at 12.5%. In this case, we note that assessee has produced bills and vouchers, proof of identity and payments through account payee cheques, co-relation between purchases and sales and stock tally etc. The

Id. CIT(A) had rightly drawn the presumption that only profit element embedded in the purchases are to be taxed. In this case, we note that the GP of the assessee from A.Y.2008-09 to 2012-13 ranges between 17.27% to 19.60%. Pertinent to state that the assessee is engaged in the business of re-selling and installing air control and pollution control equipments and assessee has offered GP which is quite satisfactory ranging from 17.27% to 19.60% during the above period. Under these circumstances, we note that to make an addition @12.5% over and above the GP rate disclosed by the assessee in the books of accounts would be unfair and unreasonable. In this case, we are of the view that it would serve the ends of justice if the GP rate of 5% is applied on account of bogus purchases over and above the GP disclosed in the books of accounts. Accordingly, we modify the findings of of Id. CIT(A) on this issue and direct the AO to apply the rate of profit @ 5% on the bogus purchases.

7. In the result, the appeal of the Revenue is dismissed and Cross Objection of the assessee is partly allowed.

Order pronounced on 02/03/2021 by way of proper mentioning in the notice board.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai; Dated 02/03/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

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