

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.374/Jodh/2019  
Assessment Year: 2011-12**

Dinesh Kumar Jain, C/o Ashok Kumar Bansal, CA, Agarwal Colony, Balotra. [PAN:AEUPJ5128E] <b>(Appellant)</b>	Vs.	Income Tax Officer, Balotra.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Amit Kothari, CA.
<b>Respondent by</b>	Ms. Nidhi Nair, JCIT DR

<b>Date of Hearing</b>	13.10.2023
<b>Date of Pronouncement</b>	16.10.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jodhpur, [in brevity the 'CIT (A)'], order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2011-12. The impugned order was emanated from the order of the Id. Income Tax Officer Ward-Balotra, [in brevity 'the AO'] order passed u/s 143(3) r.w.s.147of the Act.

2. The assessee has taken the following ground:

*“1. On the facts and circumstances of the case and in law the Commissioner of Income Tax Appeal is contrary to provision of law, contrary to all cannons of natural justice and is also contrary to facts, material and evidence existing on records.*

*2. The Commissioner of Income Tax Appeal has grossly erred in rejecting the ground of assessee that the Assessing Officer was right in issue of notice U/s 148 whereas the validity of issuing notice u/s 148 is liable to be quashed.*

*3. The Appellant prays that the commissioner of income tax appeal is grossly erred in sustaining the addition of Rs. 1,01,2747- i.e. 4.5% of purchases made from the some specified dealer treating the them as bogus supplier. Whereas Assessee has made the genuine transaction of goods, payment & receipts are rotated through cheques or DD. The Assessee has actually purchased the goods. The assessee's concern has maintained quantitative details.*

*4. The Commissioner of Income Tax (Appeal) grossly erred in disallowing the 4.5% of purchases in the light of decision of Balaji Textile Industries (P) Ltd. V/s ITO(49LTD177). Whereas all the purchases are made by assessee are duly accounted in regular books and payment of same are also made through banking channel.*

*3. The appellant craves leaves to add, alter, modify or delete any of the grounds of appeal on or before its hearing before your honour.”*

3. Brief fact of the case is that the assessee's case was reopened u/s 148 related to purchase from party M/s Nakoda Marble amount to Rs.22,50,543/-. After examination of the information, it reveals that the part is defaulter under

VAT Act (Value Added Tax Act). So, the entire purchased was treated as bogus by the ld. AO and added back the @ 12.5% on the disputed purchase amount to Rs.22,50,543/- which works out amount to Rs.2,81,318/- was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). After considering the assessee's submission, the ld. CIT(A) restricted the disallowance on disputed purchase @ 4.5% which works out amount to Rs.1,01,274/-. Being aggrieved assessee filed an appeal before us by challenging the disallowance @ 4.5% on the disputed purchase amount to Rs.22,50,543/-.

4. The ld. AR for the assessee submitted the written submissions which are kept in the record. The ld. AR in argument had not pressed the ground nos. 1 and 2. Only ground nos. 3 and 4 are argued by the ld. AR during the hearing. The ld. AR placed that the purchased was duly accepted and not treated as bogus. The assessee already taken this purchase in the books of accounts and declared the gross profit (GP) and net profit (NP) during impugned assessment year. So, further calculation @ 4.5% addition on the same purchase is arbitrary and bad in law.

4.1 The ld. AR invited our attention in the observation of the ld. CIT(A). The relevant para 3.4 of the said order is reproduced as below:

*“3.4. From the above judicial pronouncements and various other judicial precedents as relied upon by the appellant in his written submissions, I find that facts of the above referred decisions are almost similar to the facts of the*

*present case and therefore, the ratio of judgments of the above referred cases are applicable in the present case. In the instant case, the sales have been fully accepted by the Assessing Officer, material is actually received and purchases are supported by corresponding sales. The Assessing Officer's; action of adding the purchases was based on the information provided by the DGIT(lnv.), Mumbai. The details produced during the appellate proceedings fortify the claim of the appellant that the purchases are not bogus and merely because the supplier has done something illegal, the goods purchased by the assessee cannot be doubted. In fact, the Assessing Officer failed to record any independent findings to prove that the purchases were bogus and he acted on the basis of information received by him. On the contrary, the Assessing Officer accepted the sales as genuine and when the sales are being considered as genuine then how the purchases could be doubted without establishing the same as bogus.”*

4.2 The Id. AR further invited our attention in the written submission page nos. 15 to 18. The relevant submission is reproduced as below:

*“Your honour, it may kindly be noted that the appellant has submitted the following documents before the AO and Id. CIT(A) which proves that the assessee had adequately discharged the burden of proving the genuineness of the purchases made from all those suppliers, but these details were totally brushed aside by the CIT(A) as there are no separate discussion on these details furnished by the appellant in CIT(A)'s appellate order.*

- i. *Copy of A/c of the supplier.*
  - ii. *Copy of sales invoices issued by all these suppliers which Inter alia shows that all those firms are duly registered under the VAT laws. The VAT reg. No., etc are duly mentioned.*
  - iii. *Confirmation of some of the suppliers containing their PAN No., etc.*
  - iv. *Chart showing corresponding sales of "each lot purchased from the alleged bogus suppliers. There is a direct nexus between such purchases and corresponding sales, as is evident from this chart. Thus corresponding sales of those very material purchased from the alleged bogus suppliers has already been showed as income.*
  - v. *Copy of sales invoices issued by the assessee to those customers.*
  - vi. *Copies of all the aforesaid documents relating to all the alleged bogus purchases have been submitted party wise in the Separate paper books submitted in both the years under consideration.*
- All the aforesaid facts, material and evidence produced by the appellant amply proved that the initial burden to show that the purchases made by the assessee has been adequately discharged. Thereafter the burden/ onus lies on the revenue to prove that the apparent is not the true state of affairs. Such burden has to be discharged by the revenue by bringing on record some positive material and evidence in rebuttal of the voluminous evidence of contemporary period submitted by the assessee. Your honour, the AO and CIT(A) have completely failed to discharge such burden. In view of this, the appellant has discharged his onus of proving the genuineness of the said transactions. It has been held in*

*various decisions that when the assessee has discharged his primary onus, no addition can be made unless the AO proves the documents to be not genuine. Reliance is placed on the following decision:*

*a) **ITO v. Eagle Impex (ITA no 5697/Mum/2010 (AY. 2003-04) Bench "H" Dt. 22-02- 2013(Unreported): "In appeal CIT (A) following the ratio of Ahmedabad Tribunal in Vijay Proteins Ltd v. ACIT (1996) 58 ITD 428 (Ahd)(Trib) disallowed only 25% of purchases. Assessee and department filed appeal to the Tribunal. Tribunal held that the assessee has discharged the primary onus which laid upon the assessee, though the assessee failed to put up the any appearance of the parties before the AO. It was upon the AO to prove that the documents are not genuine. AO never stated that the documents were bogus. Addition confirmed by the CIT (A) was also deleted and the appeal of assessee was allowed."***

*b) **Jagdamba Trading Company vs ITO, 107 TTJ 398, ITAT (Jodhpur) Certain purchases made by the assessee could not be considered as bogus merely on the basis of seller's deposition before the Sales Tax Department that no sales were made during the relevant year, as it was not proved that the amount paid by the assessee through cheque for purchases was returned and deposited in its account and no opportunity of cross-examination was given to the assessee.***

*c) **Shri Rama Multi Tech Ltd. vs ACIT, ITAT (Ahmedabad), 92 TTJ 568 On the basis of information received from the sales tax department, the AO had held that the assessee had shown bogus purchases. In its return, the assessee had filed tax audit reports u/s 44AB of the Income Tax Act 1961 that gave quantitative details of raw materials purchased and payments made by way of***

*crossed cheques. Thus, as the falsification of purchases was not proved against the assessee, no disallowance was made on account of the alleged bogus purchases.*

*d) ITO vs Permanand, 107 TTJ 395, ITAT (Jodhpur) An addition to the assessee's income merely on the basis of observations made by the Sales Tax Department that the purchases made by him from certain parties were bogus was not sustainable, as the payments were made through crossed cheques and the sale of those goods was properly vouched.*

*e) Sanchita Marine Products (P) Ltd. vs DCIT, 2007 15 SOT 280, the ITAT (Mumbai) It was held that "The assessee was purchasing fish from small time fishermen, who were highly mobile depending on availability of fish. The purchases made were reconciled with quantity of sales. The fishermen, who received payments from the assessee by cheques, withdrew the cost immediately. It was a reality of everyday life, since the fishermen needed money. The purchases could not be said to be bogus merely for want of confirmations from vendors."*

*f) ITO v/s Kanchwala Gems (122 TTJ 854) - ITAT Jaipur Bench "The Hon'ble ITAT vide judgment dated 30-06-2008 has held that by furnishing necessary information supported with documents like bills issued against the purchases by the four parties bearing details of the goods supplied including rates, RST/CST numbers, their PAN, making of payment through account payee cheques and entire purchases having been exported in the same shape, size and weight duly verified by customs authorities, assessee had established genuineness of purchases and in the absence of any positive material showing*

*the purchases to be bogus, accounts could not be rejected and no addition could have been made on that account."*

*g) **Rajesh Soni v/s ACIT (100 TTJ 892) - ITAT Ahmedabad Bench** "The Hon'ble ITAT vide judgement dated 28-11-2005 has held that purchases made by assessee having been properly recorded in books of account and supported by authenticated purchase bills/vouchers, for which payments were made through banking channels, and sales against these purchases are not doubted, addition under section 69 was not justified merely because suppliers could not be located and were not produced for examination."*

(Emphasis added)

5. The Id. DR vehemently argued and relied on the order of the revenue authorities.

6. We heard the rival submission and consider the documents available in the record. The assessee has completed his onus by submitting the relevant documents and the VAT registration, PAN, Bank and the Bills which are also annexed in **APB 32 to 40**.

6.1 The assessee completed the onus to prove that the purchase is genuine. The revenue was unable to substantiate that the purchase is bogus. The assessee has completed the onus by submitting the documents about genuineness of purchase. The said purchase of the assessee is already declared in books of accounts and the transaction is covered the Income tax payment on net profit. When there is no question about the genuineness of the purchased this addition of 4.5% ad hoc is attributed the double taxation. The issue was already decided



by the Coordinate Benches in the case of **Permanand** (supra), **Kanchwala Gems**(supra), and **Jagdamba Trading Co.** (supra). In our considered view, the disallowance @ 4.5% of the purchase is not correct and is arbitrary. So, the addition amount of Rs.1,01,274/-, restricted by the ld. CIT(A) is quashed.

7. In the result, the appeal of the assessee bearing **ITA No. 374/Jodh/2019** is allowed.

**Order pronounced in the open court on 16.10.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The DR, I.T.A.T.

True Copy  
By order