



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1015 OF 2018

The Pr. Commissioner of Income Tax-21 ...Appellant
Versus
Pravin U. Parmar (Jain) ...Respondent

Ms. Mamta Omle for Appellant.
Mr. Om Kandalkar for Respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 9 January 2025

PC.:-

1. Heard Ms. Mamta Omle for the Appellant and Mr. Om Kandalkar for the Respondent.
2. Ms. Mamta Omle submits that this appeal may be admitted on the substantial questions of law set out in paragraph 4 of the appeal memo. She submits that this was a case of bogus purchases, and the ITAT was not justified in restricting the addition only to the extent of 7%. Accordingly, she submits that substantial questions of law as framed in paragraph 4 of the appeal memo arise; therefore, this appeal may be admitted.
3. Mr. Om Kandalkar, learned counsel for the Respondent, defends the impugned ITAT order based on the reasoning reflected therein. He refers to paragraph 7 of the ITAT order and points out that there was no clear finding on the alleged bogus purchases. He submits that in similar circumstances, the Coordinate Benches of this Court in Income Tax Appeal Nos.1662 of 2018 and 1753 of 2018 declined to interfere.

4. The rival contentions now fall for our determination.
5. We have considered the rival contentions and perused the material on record.
6. In particular, we transcribe paragraph 7 of the ITAT's order, which indicates that there was no explicit material to conclude bogus purchases or, in any event, bogus purchases to the extent alleged by the Revenue. Paragraph 7 of the ITAT's order reads as follows: -

"7. We have considered the rival contentions and perused the material on record. As could be seen from the material on record, in the course of assessment proceedings, the AO had enquired into the purchases on random basis by issuing notice u/s. 133(6) to four parties as mentioned herein before. It is relevant to observe the notices issues u/s. 133(6) were returned un-served by the postal authorities. As it appears, thereafter the AO has not made any further enquiry by deputing his inspector or through any other mode. It is also relevant to observe, out of four parties, purchases from whom were treated as bogus, only one party viz. Shree Ganesh Trading appears in the list of bogus dealers maintained by the Sales Tax Authorities. As far as rest of the parties are concerned, there is no allegation against them by the Sales Tax Authorities. That being the case, it was incumbent on the part of the AO to conduct necessary inquiry for establishing the fact that the purchases from the concerned parties are bogus. Merely by issuance of notice u/s. 133(6), it cannot be established that the purchases made from the concerned parties are bogus. Even, as far as the purchases made from Shree Ganesh Trading, whose name allegedly appears in the list of bogus dealers of Sales Tax Authorities, no independent inquiry has been conducted by the AO. It is a fact on record, before the AO as well as the first appellate authority, assessee has produced not only its books of account but purchase and sale invoices, ledger accounts, bank statements to prove the genuineness of purchases. The assessee has also produced statement showing quantitative tally of purchases made, consumption made in manufacturing process as well as sale of finished products with reference to the purchase and sales invoices. On a careful reading of the assessment order, we have not found any defect or discrepancy pointed out by the AO in such quantitative tally. It is also a fact that the AO has not disputed the consumption of material or sales turnover declared by the assessee. In these circumstances, we are in agreement with the CIT(A) that the addition of the entire purchases by treating them as bogus cannot be made. At the same time, we are of the opinion that the assessee has failed to prove conclusively that the purchases were actually made from the concerned parties. Therefore, in the facts and circumstances, the CIT(A) was justified in holding that the profit element embedded in the purchases treated as bogus can be considered for addition. Having held so, it is necessary to

decide what should be the gross profit rate in such circumstances. As could be seen, the CIT(A) has applied gross profit rate of 10% on the alleged purchases. However, from the chart placed before us, we find that the gross profit rate shown by the assessee in the preceding assessment years are as under:

Comparative GP Chart Table

Year Ending 6 years	G/P Ratio	Accepted by the Assessing Office u/s.	Average G/P%
31.03.2006	6.79	143(3)	
31.03.2007	6.51	143(3)	
31.03.2008	5.97	143(3)	
31.03.2009	5.60	143(3)	
31.03.2010	6.65	143(3)	
31.03.2011	6.34	143(3)	
	37.86/6		6.31%

From the aforesaid chart, it is noticed that the gross profit rate shown by the assessee generally varies between 5.5% to about 7%. It is also noticed that the gross profit shown by the assessee in the preceding assessment years have been accepted by the AO in assessment completed u/s. 143(3) of the Act. Keeping in view the gross profit shown by the assessee in the preceding assessment years, we are of the considered opinion that addition made on account of bogus purchases should be restricted to an amount to be worked out by applying the gross profit rate of 7% (seven) of the alleged bogus purchases. The AO is directed to compute the addition accordingly and grant consequential relief to the assessee.”

7. In almost similar circumstances, two Co-ordinate Benches of this Court, by their orders dated 7 August 2024 and 15 October 2024 in Income Tax Appeal Nos.1662 of 2018 and 1753 of 2018, did not admit appeals raising similar questions. By adopting the reasoning in these orders, we decline to entertain this appeal. The issues raised turn on facts. Accordingly, they give rise to no substantial questions of law.

8. For the above reasons, we dismiss this appeal without any cost orders.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)