IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 46 OF 2024

Pr Commissioner Of Income
Tax 2 Pune ...Appellant

Versus
Amcon Construction ...Respondent

Mr. Vikas T. Khanchandani , for Appellant.

Mr. Tanzil Padvekar, for Respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 13th MARCH 2026

ORDER (Per : Aarti Sathe, J):-

1. This Appeal has been filed by the Appellant/Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year (AY) 2011–12, challenging the order dated 10th November 2021 (hereinafter referred to as the "impugned order") passed by the Income Tax Appellate Tribunal, Pune (hereinafter referred to as the "ITAT").

2. By the said order, the ITAT partly allowed the appeal filed by the Respondent/Assessee against the order of the Commissioner of Income Tax (Appeals)-3, Pune (hereinafter referred to as "CIT(A)").

3. The ITAT, by the impugned order, restricted the addition made by the

CIT(A) in respect of alleged bogus purchases to 10%, as against the 25% disallowance sustained by the CIT(A), thereby granting partial relief to the Respondent/Assessee. The Assessment Year involved is AY 2011–2012.

4. T he Appellant/ Revenue has raised the following questions of law:

i. Whether on the facts and circumstances of the case and in law, the ITAT was justified in directing the Assessing Officer to restrict the disallowance to 10% of hawala purchases even though the Respondent/ Assessee could not produce primary evidences delivery Challans, weigh slips, octroi receipts of M/s Oriental Enterprises to prove the genuineness of the purchases?

ii. Whether on the facts and circumstances of the case and in law, the ITAT was justified in restricting the addition @ 10% of the bogus purchases, which is without any basis and justification?

iii. Whether on the facts and circumstances of the case and in law, the ITAT was justified in not considering the decision of Hon'ble Apex Court in the case *N K Proteins Ltd.*v.*Dy. CIT* [1] dated 16th January 2017, wherein it has been held that once the purchases are bogus, additions should be made on the entire purchases and not only the profit embedded in such purchases?

5. At the very outset, without narrating the factual conspectus of the present appeal, learned counsel appearing on behalf of the Respondent/Assessee, Mr. Padvekar, submitted that the questions of law raised in the present appeal are squarely covered by the decisions of this Court in the following cases:

i) *Principal Commissioner of Income-tax-1 vs. SVD Resins & Plastics (P.) Ltd.*[2]

1 SLP 769 of 2017
2 (2025) 474 ITR 151

ii) *CIT v. Ramelex (P) Ltd*[3]

iii) *Principal Commissioner of Income-tax vs. M/s. Paramshakti Distributors Pvt. Ltd.*[4]

6. Learned counsel appearing on behalf of the Appellant/ Revenue Mr. Vikas T. Khanchandani, however, opposed the aforesaid submissions made on behalf of the Respondent/ Assessee and contended that the order passed by the CIT(A) ought to be upheld and that the disallowance of 25% of the alleged bogus purchases made by the Assessing Officer and sustained by the CIT(A) deserves to be upheld.

7. We have perused the impugned order passed by the ITAT as well as the papers and proceedings on record. We are of the considered view that the questions of law raised by the Appellant/ Revenue are squarely covered by the decisions referred to hereinabove and relied upon by the Respondent/ Assessee. The ITAT, in the impugned order, has rightly followed the ratio laid down by this Court in *Principal Commissioner of Income-tax vs. M/s. Paramshakti Distributors Pvt. Ltd.* (supra), wherein this Court held that the view taken by the Tribunal restricting the addition in respect of bogus purchases to 10% of the total purchases is a reasonable and correct view, particularly when the purchases themselves were not entirely rejected and the corresponding sales were accepted by the Department. The relevant paragraphs of the aforesaid decision are reproduced below:

3 2025 SCC OnLine Bom 3862
4 ITXA No. 413 of 2017

> "2. The first question pertains to restricting the addition of Rs.23.16 Lakhs to Rs.2,21,600/- by the Tribunal. The Assessing Officer had made the said addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore, added to the assessee's income. The Tribunal, however, restricted to the said sum of Rs.2,21,600/-. The Tribunal recorded that the Assessing Officer has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases. The Revenue strongly disputes this proposition.
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> 3. Without elaboration, what the Tribunal by the impugned Judgment held is that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. We do not find any error in the view of the Tribunal. No question of law arises."

8. Further, this Court in the case of *SVD Resins* (supra) held that, in the absence of a cohesive and coordinated approach between the Assessing Officer and the Sales Tax Authorities, it would be difficult to arrive at a definitive conclusion that the purchases were bogus merely on the basis of general information, so as to discard such expenditure and add the same to the income of the Assessee.

9. In *SVD Resins* (supra), this Court restricted the disallowance to 12.5% of the gross profit, as had been done by the Tribunal, and upheld the order of the Tribunal insofar as the said issue was concerned. The Court further observed that merely on the basis of general information provided by the Sales Tax Authorities, the Assessing Officer could not conclude that the purchases made by the Assessee were bogus without conducting a proper and thorough inquiry. The relevant paragraphs of the decision in *SVD Resins* (supra) are reproduced below:

> "11. We may observe that in the facts of the present case, the basic premise on the part of the A.O. so as to form an opinion that the disputed

purchaseswere not having nexus with the corresponding sales, appears to be not correct. It is seen that what was available with the department was merely information received by it in pursuance of notices issued under Section 133(6) of the Act, as responded by some of the suppliers. However, an unimpeachable situation that such suppliers could be labeled to be not genuine qua the assessee or qua the transaction entered with the assessee by such suppliers, was not available on the record of the assessment proceedings. It is an admitted position that during the assessment proceedings, the assessee filed all necessary documents in support of the returns on which the ledger accounts were prepared, including confirmation of the supplies by the suppliers, purchase bills, delivery bank statements etc. to justify the genuineness of the purchases, however, such documents were doubted by the AO on the basis of general information received by the AO from the Sales Tax Department. In our opinion, to wholly reject these documents merely on a general information received from the Sales Tax Department, would not be a proper approach on the part of the AO, in the absence of strong documentary evidence, including a statement of the Sales Tax Department that qua the actual purchases as undertaken by the assessee from such suppliers the transactions are bogus. Such information, if
available, was required to be supplied to the assessee to invite the response on the same and thereafter take an appropriate decision. Unless such specific information was available on record, it is difficult to accept that the AO was correct in his approach to question such purchases, on such general information as may be available from the Sales Tax Department, in making the impugned additions. This for the reason that the same supplier could have acted differently so as to generate bogus purchases qua some parties, whereas this may not be the position qua the others. Thus, unless there is a case to case verification, it would be difficult to paint all transactions of such supplier to all the parties as bogus transactions.

12. In our opinion, a full addition could be made only on the basis of proper proof of bogus purchases being available as the law would recognise before the AO, of a nature which would unequivocally indicate that the transactions were wholly bogus. In the absence of such proof, by no stretch of imagination, a conclusion could be arrived, that the entire expenditure claimed by the petitioner qua such transactions need to be added, to be taxed in the hands of the assessee.

13. In a situation as this, the A.O. would be required to carefully consider all such materials to come to a conclusion that the transactions are found to be bogus. Such investigation or enquiry by the AO also cannot be an enquiry which would be contrary to the assessments already undertaken by the Sales Tax Authorities on the same transactions. This would create an anomalous situation on the sale-purchase transactions. Hence, in our opinion, wherever relevant any conclusion in regard to the transactions being bogus, needs to be arrived only after the A.O. consults the Sales Tax Department and a thorough enquiry in regard to such specific transactions being bogus, is also the conclusion of the Sales Tax Department. In a given case in the absence of a cohesive and coordinated approach of the A.O. with
the Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase / sales transactions being bogus merely

on the basis of general information so as to discard such expenditure and add the same to the assessee's income.

14. Any half hearted approach on the part of the AO to make additions on the issue of bogus purchases would not be conducive. It also cannot be on the basis of superficial inquiry being conducted in a manner not known to law in its attempt to weed out any evasion of tax on bogus transactions. The bogus transactions are in the nature of a camouflage and/or a dishonest attempt on the part of the assessee to avoid tax, resulting in addition to the assessee's income. It is for such reason, the approach of the AO is required to be well considered approach and in making such additions, he is expected to adhere to the lawful norms and well settled principles. After such scrutiny, the transactions are found to be bogus as the law would understand, in that event, they are required to be discarded by making an appropriate permissible addition.

15. Be that as it may, the orders passed by the CIT(A) in the present case are partly interfered in favour of the revenue as discussed by us hereinabove. In doing so the tribunal has observed that the CIT(A) was not correct in reducing the gross profit already returned by the assessee at 4.74% from 12%, as the gross profit returned by the assessee in relation to the sales made by the assessee, did not have bearing on the purchases of the assessee, qua the bills procured by the assessee, by making savings in VAT etc. It is on such premise the revenue's appeal has been allowed, by making a direction to the AO to assess the income from such transaction at 12.5% in each of the assessment years, on the purchases so made by the assessee.

16. The assessee has happily accepted such finding as this has benefited the assessee, looked from any angle. However, in a given case if the Income Tax Authorities are of the view that there are questionable and / or bogus purchases, in that event, it is the solemn obligation and duty of the Income Tax Authorities and more particularly of the A.O. to undertake all necessary enquiry including to procure all the information on such transactions from the other departments / authorities so as to ascertain the correct facts and bring such transactions to tax. If such approach is not adopted, it may also lead to assessee getting away with a bonanza of tax evasion and the real income would remain to be taxed on account of a defective approach being followed by the department.

17. The decision in Mohammad Haji Adam & Company (supra) as relied on behalf of assessee is also quite apposite in the context in hand. In this decision, the Court observed that the findings which were arrived by the CIT(A) as also by the tribunal would suggest that the department did not dispute the assessee's sales, as there there was no discrepancy between the purchases as shown by the the assessee and the sales declared. This was held to be an acceptable position, in dismissing the revenue's appeal on the ground that no substantial question of law had arisen for consideration of the Court.

18. In the light of the above discussion, these appeals would not give rise to a substantial question of law. The appeals are accordingly dismissed. No costs."

(emphasis supplied)

10. This Court further, in the case of *Principal Commissioner of Income-tax vs. Ramelex* (supra), held that the only ground on which the addition on account of alleged bogus purchases was made in the hands of the Assessee was the information received by the Assessing Officer from the Sales Tax Department. The assessment of the Assessee was primarily reopened on the basis of the aforesaid information. However, the said information was never furnished to the Assessee by the Assessing Officer. Further, there was nothing on record to indicate that the Assessee had accepted such material or that any independent investigation was carried out by the Assessing Officer to establish that the purchases in question were bogus.

11. It was also noted that the VAT assessment of the Assessee for the Financial Year 2008–09, corresponding to AY 2009–10, which was the relevant assessment year in those proceedings, was pending adjudication. In such circumstances, merely relying upon the information received from the Sales Tax Department, without granting an opportunity to the Assessee to cross-examine the alleged hawala dealers, could not justify the conclusion that the purchases were entirely bogus. Accordingly, the Court upheld the view taken by the Tribunal in restricting the addition to 15% of the disputed purchases. The relevant paragraphs of the aforesaid decision in *Principal Commissioner of Income-tax vs. Ramelex* (supra) are reproduced below.

> "13. It is clear from the order of the CIT(A) as also from the order of the ITAT that the only ground on which the addition of Rs.2,05,74,750/- was made as bogus purchases in the hands of the Respondent-Assessee, was on the basis of information received by the Assessing Officer from the Sales Tax Department. The assessment of the Respondent-Assessee was primarily re-

opened on the basis of the aforesaid information. This information on the basis of which the addition of bogus purchases was to be made in the hands of the Respondent-Assessee was never furnished by the Assessing Officer to the Respondent -Assessee and further there is nothing on record to indicate that the Respondent-Assessee had accepted such material or the investigation as undertaken by the Assessing Officer accepting their purchases to be bogus. Further in the course of the assessment proceedings, the Respondent-Assessee had categorically submitted that it had not accepted the so called hawala purchases. The VAT assesments for the Respondent-Assessee company for the financial year 2008-2009 corresponding to assessment year 2009-2010, which is the relevant assessment year in the present appeal were pending adjudication and hence before conclusion of the VAT assessment confirming the so called hawala purchases and adding the same to the income of Respondent-Assessee was an inappropriate and unacceptable position adopted by the revenue.

14. Further, we are of the view that when the VAT assessment was pending adjudication, merely relying on the information of the Sales Tax Department without granting an opportunity to the Respondent-Assessee to even crossexamine the hawala purchasers to confirm the purchases from them violated the basic facts of law amenating to unfairness and breach of the principles of natural justice in making the addition of Rs.2,05,74,750/- as bogus purchases in hands of the Respondent-Assessee. Further this court has also taken a view in the case of Pr. CIT v. SVD Resins and Plastics (P.) Ltd. [2024] 166 taxmann.com 242/[2025] 474 ITR 151/[2024] 300 Taxman 503 (Bombay) to which one of us (G.S Kulkarni, J) is a member that, the information derived by the Assessing Officer from the Sales Tax Department without the same being furnished to the assessee and not proved was not a sound approach adopted by the Department.

15. Further it is seen from the orders of the CIT(A) and ITAT that the Respondent assessee had given detailed explanation regarding the alleged Hawala purchasers and also submitted that they had documents like copies of purchase bills, ledger account and proof of all Bank payments. The Respondnet-assesse also submitted that all the payments were made by account payee cheques, thereby justifying genuineness of the transaction and further there was no defect pointed out in the invoices which were furnished before the assessing officer at the time of assessment proceedings.

16. The Assessee also submitted that there was no opportunity granted to the Respondent-Assessee to cross-examine the Hawala purchasers and hence the addition made by the assessing officer was not justified. In our view, both the CIT(A) and the ITAT have examined all the facts in so far as the alleged bogus purchases are concerned and also that the Respondent- Assessee had discharged the onus of proving the genuineness of the purchases made from the respective purchase and also submitted the certificate from the VAT Auditor in respect of the transaction from M/s. Entech Enterprises, to the tune of Rs. 11,63,175/- as opposed to Rs.1,16,53,175/-. Both the authorities i.e. CIT(A) and ITAT have reached their conclusion, on the basis of the facts and the material on record.

> **17. It is our view the CIT(A) and ITAT on appreciation of the facts have recorded concurrent factual finding in respect of the bogus purchases and have rightly restricted the additions @ 15% of Hawala purchases. Even otherwise in our view, all these issues are findings of facts, which do not give rise to any substantial question of law which requires interference or considerations in the present Appeal. In view thereof, Revenue's Appeal is accordingly dismissed as no substantial question of law arises in this Appeal. No Costs."**
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> (emphasis supplied)

12. We are therefore of the view that, in the facts of the present case as well, the information regarding alleged Hawala entry providers was forwarded by the Sales Tax Department, and on the basis of such information the purchases in question were treated as bogus and added to the income of the Respondent/ Assessee.

13. The facts in the present case stand on a similar footing as those in the cases of *Principal Commissioner of Income-tax vs. M/s. Paramshakti Distributors Pvt. Ltd.* (supra), *SVD Resins* (supra), and *Principal Commissioner of Income-tax vs. Ramalex (P.) Ltd.* (supra). We are therefore of the view that the aforesaid decisions squarely cover the questions of law raised by the Appellant/ Revenue in the present appeal.

14. The ITAT, upon appreciation of the facts on record, has rightly restricted the addition to 10% of the alleged bogus purchases, representing the profit element embedded therein.

15. In any event, the issues involved are essentially findings of fact, which do not give rise to any substantial question of law requiring interference or consideration in the present appeal under Section 260A of the Act.

16. In view thereof, the appeal filed by the Appellant/ Revenue is dismissed, as no substantial question of law arises for consideration. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)