IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 14 OF 2022

Pr. Commissioner Of Income Tax-3 Pune
3rd Floor, Income Tax Office ,
Pmt Bldg, Pune – 411037. ...Appellant

Versus

Ramelex Private Ltd
S. No. 282, Sr. No. 81/2,
Dangat Industrial Estate,
NDA Road, Shivane, Pune - 411023 ...Respondent

Mr. Vikas T. Khanchandani, for Appellant.

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

RESERVED ON: 19th September 2025
PRONOUNCED ON: 13th October 2025

JUDGMENT (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'), challenges the order dated 28th September 2020, passed by Income Tax Appellate Tribunal (hereinafter referred to 'ITAT'), rejecting the Revenue's appeal which was filed against an order dated 1st December 2016, passed by the Commissioner of Income Tax (Appeals) -4, Pune, (hereinafter referred to 'CIT(A)'). By the impugned order the ITAT has upheld the order passed by the CIT(A) and restricted the Gross Profit (GP) of the Respondent -Assessee to 15% calculating the GP amount on the alleged bogus purchases. The assessment year in question is A.Y. 2009-2010.

2. By the present appeal, the Revenue has raised the following of law:-

A. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in restricting GP to 15% and in turn calculating the GP on amount of bogus purchases?*

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in treating the purchases form M/s Entech Enterprises only at Rs. 11,63,175/- instead of considering the contentions put forth by the Revenue and considering the certificate of assessee's own VAT Auditor when MAH VAT department, had considered the party itself to the bogus?

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in accepting the bogus purchase parties to the mere providers of bills without actual purchase. In such a case the usage of banking channels/payments channels was merely for siphoning funds and whether the Hon'ble ITAT was justified in accepting it?

3. Briefly the facts are :-

a) The Respondent – Assessee is a Company engaged in the business of power sector in the transmission and distribution sector. The Assessee filed its Return of Income (hereinafter referred as 'ROI') on 8th October 2009, by declaring total income at Rs.7,65,59,790/- for the assessment year in question. The said ROI was processed under Section 143(1) of the Act on 17th March 2011. The assessment was re-opened by issuance of notice under Section 148 of the Act on 6th September 2013.

b) The reason for re-opening the assessment was as follows :

"The information has been received from DG investigation, Pune vide letter No. Pn/DGIT/Sales Tax Hawala/2012-13/1885. Dated 08/01/2013 showing Hawala transaction amounting to Rs.20574750/- for assessment year 2009-10, in respect of RAMELEX PVT LTD. As under :

Sr. No	Name of the party supplying Bogus Bills	PAN	Amount

1.	CENTURIAN SALES CORPORATION	AKTPP1250C	1037738
2.	NAVDEEP 1 RADING CORPN.	AAAPV4487A	968864
3.	DHRUV SALES CORPORATION	AHYPD6115E	153660
4.	BHAKTI ENTERPRISE	AVUPS4656H	316940
5.	SHREE NAKODAJI IMPEX	ABFPY2160B	2509286
6.	S M TRADING CO.	AAVPS1344J	939614
7.	FNTECH ENTERPRISE	APFAR1134F	11699702
8.	R. K. ISPAT	BIAPS2799R	1321190
9.	PURAB ENTERPRISES	BJYPS4594M	437762
10.	KG SALES CORPORATION	AAIFK73121	349440
11.	VICTOR TRADERS	AECPN3302A	621374
12.	SHUBHLAXMI SALES CORP.	AAVPS1333B	219180
	Total		20574750

These transactions relate to bogus bills, Non genuine bills utilized by the said company to inflate the expenses or reduce its total income.
In view of the information above, I have reason to believe that an income to the extent of Rs. 2,05, 74, 750/- for Assessment year 2009-10, has escaped assessment."

4. In pursuance of the re-opening notice, the Assessing Officer passed the Assessment Order on 19th March 2015 (hereinafter referred to 'Assessment Order'), under the provisions of Section 143(3) r.w.s. 147 of the Act, primarily relying on the information received from DG investigation, Pune vide letter No. Pn/DGIT/Sales Tax Hawala/2012-13/1885 dated 8th January 2013, alleging Hawala transactions amounting to Rs.2,05,74,750/- in respect of Respondent-Assessee. In such assessment proceedings, by way of their letter dated 12th March 2015, the Respondent-Assessee has taken the following clear stand. Contents of the letter are reproduced below:-

1) We have already submitted most of the desired information in our submission of 10th October 2014. We attach

herewith the copy of acknowledgment of said submission for your good selves' kind reference.

2) We also enclose herewith a certificate of Assessee Companies VAT auditor, who has carried out the VAT audit of the Assessee Company for FY 2008-2009. As per said certificate, there is typing error in regard with supplier Viz. Entech Enterprise, where the actual annual purchase amount is only Rs. 11,63,175/- as against wrongly stated as Rs. 1, 16,53,175/-. The total error is of Rs. 1, 04, 90,000/- We kindly request your goods elves to consider the said error, and reduce the so called Hawala Purchase amount by that much error amount.

3) The VAT assessment of the Assessee Company for the FY 2008-2009 is still under progress and not concluded by the VAT authorities. The so called Hawala purchases are not accepted by the Assessee Company. Hence, before conclusion of VAT assessment, confirming these so called Hawala Purchases and completing the income tax assessment will certainly create lot of hardship to the Assesses Company. Hence we kindly request your good selves to take the sympathetic view in this regard.

4) We enclose herewith the chart stating the gross profit earned by the Assesses Company in last three years. It can be seen that the turnover, Gross Profit as well as Net profit state an increasing trend in last three financial years. The GP of 45.16% and NP of 21.26% is certainly a high earning, if compared with the other assesses carrying out the similar business activity. The further addition to the income, on so called Hawala Purchases, will make the position unacceptable.

5) The Assesses Company has main customer viz. MESTCL / MSEDCL. Both these organizations are Maharashtra State Government undertakings. As such there are no doubts or issues as regard with sales made during FY 2008-2009."

5. The Assessing Officer however rejected the contentions of the Assessee and made an addition of Rs, 2,05,74,750/- on account of bogus purchase and added back the same to the Respondent-Assessee's total income. The Assessing officer added this income on the ground that none of the entry providers were located at their given address which indicated that these are not genuine

transactions and are purchases made by the Respondent-Assessee from unknown parties. He also held that the Respondent-Assessee could not produce the suppliers or the confirmation letters from the parties. He further held that the Respondent-Assessee could also not file the Stock reconcilliation statement etc. The Assessing Officer also separately initiated penalty proceeding under Section 271 (1)(c) of the Act for furnishing inaccurate particulars of income and concealing particulars of income. The officer therefore, assessed the income of the Respondent-Assessee to the tune of Rs. 9,71,34,540/-.

6. The Respondent-Assessee being aggrieved by the aforesaid Assessment Order filed an Appeal before the CIT(A) inter alia contending that the Assessing Officer had erred in facts and law in making an addition of Rs. 2,05,74,750/- alleging bogus purchases made by the Respondent-Assessee.

7. The Respondent-Assessee also contended that it had produced the relevant documents like copies of purchase bills, Ledger A/c, Proof of Bank Payment etc. to prove the genuineness of the transactions. The Respondent-Assessee also submitted that its VAT Departmental assessment on the basis on which the reopening was initiated was on going. Hence before reaching any conclusion, before the completion of the VAT assessments and making additions to the income of the Respondent-Assessee, merely on the information from Sales Tax Department would lead to hardship to the Respondent-Assessee. The Respondent-Assessee also contended that in so far as the alleged purchase of Rs. 1,16,53,175/- from one of the supplier namely M/s. Entech Enterprises was concerned, the Respondent-Assessee had only made a purchase of Rs. 11,63,175/- and not of an amount of

Rs.1,16,53,175/-. The Respondent-Assessee also contended that its sales cannot be denied and for the earlier assessment year i.e 2008-2009, the Respondent-Assessee had recorded same range of gross profits and net profit ratios i.e 45.16%/ 21.26%.

8. The Respondent-Assessee also further contended that the Asssessing Officer had not pointed out any defect or irregularity in the purchase invoices submitted by the Respondent-Assessee before him. It was therefore submitted that even though no irregularity was pointed out by the Assessing Officer in so far as the purchase invoices were concerned, the Assessing Officer treated the purchases made by the Respondent-Assessee as bogus by merely relying on the list as reflected on the website of the Sales Tax Department. The Respondent-Assessee also contended that all the payments were paid by account payee cheques and they were not provided an opportunity to cross-examine the alleged Hawala dealers. The Respondent-Assessee also contended that without prejudice to their submission on bogus purchases, if at all the addition had to be sustained the same should be made by adopting some appropriate ratio of Gross profit, since only the element embedded in the alleged bogus purchases would be subjected to tax and not the entire amount.

9. The CIT(A) considering the rival contentions by an order dated 1st December 2016, granted partial relief to the Respondent-Assessee and restricted the addition to Rs.15,12,713/- instead of Rs. 2,05,74,750/-. In coming to the said conclusion the CIT(A) relying on the certificate produced by the Respondent-Assesse from its VAT Auditor which confirmed that the real purchases from Entech Enterprises were to the tune of Rs. 11,63,175/- and not Rs.1,16,53,175/- made an

addition of 15% on the reduced amount of bogus purchases. The CIT(A) held as follows :

> 6.3.4 *The action of the AO to disallow 100% of the unverifiable purchases cannot be upheld and consequently impugned addition can't be sustained. The Assessing Officer has not denied that the material was not consumed by the assessee. It would, therefore, imply that the appellant had actually purchased the material in cash from the open market and only bill was taken from the aforesaid party. It is also not in dispute that the purchase amount had been paid to the alleged suppliers through banking channel / cash. What the appellant had actually earned in hawala transactions could not have exceeded 20% inclusive of various taxes and profits on cash transactions. In view of these facts, this is not a case where the entire cash has been siphoned off by debiting the bogus purchases. This is a case where at the most, the purchases/expenses might have been inflated. Therefore, relying upon the decision of Hon'ble Gujarat High Court, in the case of Simit P Seth (356 ITR 451), I direct the Assessing Officer to restrict the addition to Rs.15,12,713/- (i.e. 15% of Rs.1,00,84,750/-), instead of Rs.2,05,74,750/- made by him, being the total of such alleged bogus purchases.*
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> *6.3.5 Accordingly, the addition of Rs.15,12,713/- on this score is hereby confirmed and the appellant gets relief of Rs.2,05,74,750/-. Ground 2 as raised by the appellant is partly allowed.*

10. The revenue being aggrieved by the said order dated 1st December 2016 passed by the CIT(A) filed an appeal before the ITAT, which has been dismissed by the order dated 28th September 2020 (hereinafter referred as 'impugned order'. In dismissing the department's appeal. The ITAT upheld the CIT(A)'s findings in so far as it restricted the addition at 15% of the hawala purchases. The ITAT further held that in regard to the mistake in figures of transaction with M/s. Entech Enterprises was concerned the Respondent-Assessee had pointed out the mistake of purchases of Rs. 11,63,175/- made by the Assessee from M/s. Entech Enterprises and not Rs.1,16,53,175/- and hence held that the CIT(A) had rightly restricted the

amount to the correct purchase amount. The ITAT held that the Respondent-Assessee had submitted all the details in respect thereof. The ITAT further held that Respondent-Assessee had placed reliance on the various ITAT decisions restricting the addition on percentage method. The ITAT further held that in the present case also there was no dispute that the Respondent-Assessee offered the GP rate at 46.15% on actual trading and paid taxes thereon and therefore the same could not be applied regarding the hawala purchases. In the light of the reasons recorded by the CIT(A) together with the case laws relied upon by the Respondent-Assesses before the CIT(A), the ITAT held that there was no infirmity in the order of the CIT(A).

11. Mr. Khanchandani, learned counsel for the revenue has made the following submissions assailing the impugned order and submitted that the Assessing Officer's Order be upheld :-

i) That the Respondent-Assessee failed to prove the genuiness of the purchases and therefore, the additions made in the assessment order were justified.

ii) That the onus was on the Respondent-Assessee to prove the genuiness of the purchases and having failed to do so, the additions were justified.

iii) That with regard to treating the purchases from M/s. Entech enterprises only at Rs.11,63,175/- instead of Rs. 1,16,99,702/-. Both Ld.CIT(A) and Hon'ble ITAT ought to have considered that MAH VAT department, had considered the party itself to be bogus.

iv) That mere payment through the banking channel is not enough. If the seller is found to be non-existent than the alleged purchase transactions can be treated and added.

v) That once the entire purchaces are bogus, the additions made on the entire purchaces are bogus, additions made on the entire purchaces are to be added and not only the profit embedded in such purchses.

vi) That both the Ld.CIT(A) and Hon'ble ITAT have not considered the decision of the Gujrat High court in the case of N.K. industries Ltd. Vs Dy.CIT (2016) 72 taxman.com 289 (Gujrat) and its dismissal of SLP by the Hon'ble Supreme court in N.K proteins Vs. Dy.CIT (2017) 84 taxman.com 195/250 Taxman 22 (SC).

12. None appeared on behalf of the Respondent-Assessee. However, on the basis of the submissions made by Mr. Khanchandani, counsel of the revenue and on the basis of the orders of the lower authorities we proceed to decide the aforesaid appeal.

Analysis

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 cross-examine 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 Principal Commisioner of Income Tax v/s SVD Resins and Plastics Pvt. Ltd. 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. The following observations made by the Court in SVD Resins (supra)are relevant in the prsent context:-

> "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 purchases were 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 Assessing Officer on the basis of general information received by the Assessing Officer 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 Assessing Officer, 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 Assessing Officer 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 Assessing Officer, 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer 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.

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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-taxAuthorities 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." [emphasis Supplied]

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.

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

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