IN THE INCOME TAX APPELLATE TRIBUNAL "K(SMC)" BENCH MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3883/MUM/2024
Assessment Year: 2008-09

Rahul M Dalmia 12-A, 5th Floor, Raj Milan, Dixit Road, Vile Parle East, 400057. **PAN: AABPD4501G**	Vs.	ITO Ward 25(3)(3) Mumbai-400051.
(Appellant)		**(Respondent)**

Present for:

Assessee : Shri. Bhupendra Shah, CA
Revenue : Shri. Kiran Unavekar, Sr. DR

Date of Hearing : 25.03.2025
Date of Pronouncement : 29.05.2025

<u>O R D E R</u>

<u>PER GIRISH AGRAWAL, ACCOUNTANT MEMBER</u>:

This appeal filed by the assessee is against the order of ADDL/JCIT (A)-4, Kolkata, vide order no. ITBA/APL/S/250/2024-25/1066557784(1) dated 09/07/2024 passed against the assessment order by Income Tax Officer - 25(3)(3), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 10.02.2016 for Assessment Year 2008-09.

2. Grounds taken by the assessee are reproduced as under:

"1. In the facts and circumstances of the case and in law, the learned A.O. erred in passing order u/s 143(3) merely on the basis of borrowed satisfaction, presumption and surmises.

2. In the facts and circumstances of the case and in law, the learned A.O. erred in passing order u/s 143(3) by issuing reopening notice on 19/03/2015.

3. In the facts and circumstances of the case and in law, the learned A.O. erred adding Rs. 10,93,845 i.e. 25% of the total purchases of Rs. 43,75,381/ on account of bogus purchases from M/s Arun Paper & Iron Trader.

4. In the facts and circumstances of the case and in law, the learned A.O. erred in making above additions by overlooking the submissions made such as copies of purchase bills, inward and outward quantitative stock, ledger account of Arun Paper & Iron Traders.

5. In the facts and circumstances of the case and in law, the learned A.O. erred in making above additions by not considering the reply submitted by Arun paper & Iron Trader on 10/04/2018 against the summons issued u/s 131 of the Act issued on 02/04/2018 wherein Mr Arun. Agarwal, Proprietor of M/s Arun paper & Iron Trader has submitted all the documents as requested by the Ld AO and also the Income Tax Assessment Order for AY 2007-08 & AY 2008-09 and als has clearly mentioned that they are not declared Havala or Bogus by either Sales Tax Department or Income Tax Department. Further they have mentioned that Income Tax Department itself has considered the sales of M/s Arun paper & Iron Trader as genuine sales in Assessment Order passed u/s 148. Therefore we do not understand that how he purchases made by the appellant done against the sales of M/s Arun paper & Iron trader is not genuine.

6. In the facts and circumstances of the case and in law, the learned A.O. erred in making above additions also by disregarding the case of appellants' wife which is similar to that of appellant's case. Anuradha Dalmia (Wife of appellant) case was also in scrutiny for A.Y. 2009-10 and addition was made on account of the same grounds only i.e purchase of papers from M/s Arun Paper & Iron Traders. In that case Mr Arun Agarwal, proprietor of M/s Arun Paper & Iron Traders was questioned and also his oath was taken on 16/03/2015 & 22/03/2015 in records wherein he answered all the questions and also stated that M/s Arun Paper & Iron Traders has done genuine business with her as well as appellant. After considering the various facts CIT Appeal 39 stated that addition made by AO in case of your appellant's wife is incorrect and directed to delete the same. Aggrieved by the order passed by CIT (A), Revenue filed an appeal with ITAT and the same was deleted by ITAT and order was drawn in favour of Smt Anuradha Dalmia.

7. In the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234 &initiating penalty u/s 271[1][c].

[B] Relief Prayed:
The appellant therefore prays as follows:-

1. To quash the order passed u/s 143(3).
2. To delete the addition of Rs. 10,93,845 i.e. 25% of the total purchases of Rs. 43,75,381/- from M/s Arun Paper & Iron Trader.
3. To delete interest u/s 234 & initiation of penalty u/s 271[1]|c)

[C] General: -
- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed in time and the same may be allowed in full.*

- *A Detailed paper book along with case laws will be submitted at the time of hearing."*

3. Brief facts of the case as culled out from records are that assessee trades in craft papers and dyes and chemicals, having a propriety concern in the name of Packaging Paper Corporation and Perfect Sale Agency. Assessee filed his return of income on 29.08.2008 reporting total income at Rs.2,36,290/-. Case of the assessee was reopened u/s.147 of the Act on the grounds that assessee was engaged in the practice of implanting bogus purchases by taking accommodation entries. Based on information received by the Ld.AO, assessee had availed bogus purchase bills from M/s. Arun Paper and Iron Traders amounting to Rs.43,75,381/-. Assessee was asked to furnish details regarding purchases made from M/s. Arun Paper and Iron Traders. In response, assessee had submitted copies of purchase bills, copies of ledger account, sales inward and outward quantitative stock details. In this respect, written submission made by the assessee vide letter dated 05.01.2016, is placed on record in the paper book at page no.50. Relevant supporting documents as stated above also froms part of the paper book along with this letter. Ld.AO also called for details of delivery challans to demonstrate actual delivery of the goods purchased.

4. According to the assessee, goods purchased by him are at landed price i.e. price at factory which include transportation cost and the said transport service was provided and arranged by way the vendor by of local tempo. Assessee also stated that the payments to the vendor have been made by account payee cheque which establishes genuineness of purchase. Further, Ld.AO required the assessee to produce the vendor, in absence of which he took the adverse view that assessee has brought down its profitability by involving in the bogus purchase transaction. Thus, he completed the assessment by making an addition of

Rs.10,93,845/- by taking 25% of the alleged bogus purchases of Rs.43,75,381/- from vendor M/s. Arun Paper and Iron Traders.

5. Aggrieved, assessee went in appeal before the Ld. CIT(A). In the course of First Appellate Proceedings, assessee furnished certain additional evidences for which a remand report was called for, from the Ld.AO. The same was furnished by the Ld.AO vide report dated 19.07.2018 and is reproduced in the First Appellate Order. In the remand proceeding, Ld.AO issued a summon u/s.131 of the Act on the vendor M/s. Arun Paper and Iron Traders calling for various details and documents along with his personal appearance. Against the said summon, it is noted in para 5 of the remand report that Shri. Arun Agarwal proprietor of M/s. Arun Paper and Iron Traders appeared before the Ld.AO and filed the following details:

"1) Copy of ITR, along with all annexures.

2) Balance Sheet and Profit and Loss A/c.

3) PAN Card Copy

4) Ledger confirmation of AY 2007-08 and 2008-09

5) Sales Tax Assessment order FY 2006-07 and 2007.08

6) Audit report in Form 704

7) We had only one work place i.e.119, Mahavir Indi. Estate, Andheri East, Mumbai Whereas after closure of business our correspondence address is as mentioned on the letter head.

8) In point no. 8 of the said letter it has also stated that "I would like get it to get your notice that we have not been declared HAVALA or BOGUS by either Sales Tax Department or Income Tax Department. Therefore, no Affidavit was requested to be submitted to any of the department. Further your own Income Tax Department has considered sales of M's. Arun Paper & Iron Traders as genuine in our assessment order u/s.148. Thus, we do not understand that how the purchase done against our Sales is not genuine".

9) Copy of all Invoice for AY 2007-08 and 2008-09.

10) Copy of Delivery proof in form of delivery Challan for year AY 2007-08 and 2008-09

11) Income Tax Assessment Order for AY 2007-08 & 2008-09."

6. In para 6 of the remand report, Ld.AO noted that Shri. Arun Agarwal was requested to appear before his office vide order sheet entry dated 10.04.2018, for recording statement on oath, but he failed to do so. This observation made by the Ld.AO is contrary to the recoding of fact made by him in para 5 where it is noted that he had appeared and filed the above listed documents and details. Assessee was provided opportunity to file the rejoinder. Assessee strongly submitted that case of Shri. Arun Agarwal was also reopened for AY 2007-08 and AY 2008-09 for similar reason that he had entered into bogus purchase transactions with certain concerns. In the reassessment proceedings of Shri. Arun Agarwal, the order was passed, dated 11.03.2015, by the office of ITO 24(1)(2), Mumbai, whereby disallowance was made on account of bogus purchases in his assessment by taking 12.5% of the alleged total bogus purchase of Rs.10,09,11,493/- from two parties viz. Foram Traders/Apple Industries and VSK Enterprises. There was nothing alleged on the sales made by Shri. Arun Agarwal to the assessee in his assessment. It was also submitted that the aforesaid two dealers of M/s. Arun Paper and Iron Traders for whom the additions were made by adopting 12.5% by the Ld.AO in the assessment of Shri. Arun Agarwal with which assessee had nothing to do.

7. Before the Ld.CIT(A), assessee again submitted the following documents:

a. Copies of bills of M/s Arun Paper & Iron Traders along with the copy of delivery challans.

b. Copy of Ledger A/c confirmation of M/s Arun Paper & Iron Traders in the books of assessee for F.Y. 2007-08.

c. Month wise as well as date wise inward and outward quantitative stock details for the full year i.e. F.Y. 2007-08 which included the details of Arun Paper & Iron Traders.

d. Details of purchases from each party and corresponding sales to each party along with details such as date, bill number, quantity, amount, etc.

7.1. Assessee also brought to the notice of the Ld.CIT(A) that case of his spouse, Smt. Anuradha Dalmia was taken up for scrutiny for AY 2009-10 and addition was made on account of identical ground. i.e. purchase of papers from M/s. Arun Paper and Iron Traders. In her case, proprietor Shri. Arun Agarwal was questioned and his statement on oath was recorded by the concerned Ld.AO on 16.03.2015 and 23.03.2015 wherein, he had answered all the questions raised by the concerned Ld. AO. In the said statement recorded during the course of assessment of spouse of the assessee, Shri. Arun Agarwal categorically stated that he has done genuine business with her as well as with the assessee. Contents of statement of Shri. Arun Agarwal recorded u/s.131 of the Act in the course of assessment proceedings of spouse of the assessee, as reproduced in her assessment order placed in the paper books at page no.64 are extracted below for is of reference:

*"**Q1.** Please identify yourself and confirm that oath has been administered to you and also that you have been made aware of consequences of giving false statement or concealing material facts.*
***Ans.** I am Shri Arun Kumar Agarwal, aged 35 years, S/o Shri Ramavtar Agarwal residing at 2502, 25th Floor, building No. T-38, Royal Resort Apartment, Shastri Nagar, Andheri (W), Mumbai 400 053. I confirm that oath has been administered to me and I have been made aware of consequences of giving a false statement on oath.*

***Q.2** Please explain your nature of business since 01.04.2005 to till date. Please provide your PAN.*
***Ans:** We used to trade in craft paper in my proprietary concern M/s Arun Paper and Iron traders. We used to procure order from various customers and brokers and further place the same to our respective suppliers and brokers. This business was running till January 2012. After that I am salaried employee. My PAN is ADKPA5263C.*

***Q3.** What is the Source of your income now in F.Y. 2014-15 and what was it in F.Y. 2006-07 to F.Y. 2009-10.*
***Ans.** In F.Y. 2014-15, I am a salaried person getting salary from M/s Sunshine Peptech Put. Ltd. Co. having address at 375, Abitgarh Village, Wada, Thane, Maharashtra. However, my source of income during F.Y. 2006-07 to F.Y. 2009-*

10 and upto December 2011 was my income from my proprietary concern M/s Arun Paper and Iron Traders and I was a director of M/s Bigwin Paper Distributors Pvt. Ltd.

Q4. *I am showing you copies of two statement recorded by ADIT (Inv.) dated 06/12/2012 & 07/12/2012. Please confirm that the statement was given by you on oath.*
Ans. *Yes. I confirm that the statement was given by me on oath."*

7.2. In the case of assessment of spouse of the assessee, addition of 25% of the alleged bogus purchases was made for which assessee went in appeal before the Ld.CIT(A) who deleted the same. Revenue filed an appear before the Tribunal in ITA No.4533/Mum/2019, order dated 05.04.2021. In the said order by the Co-ordinate Bench in para 3, it is noted that Ld.CIT(A) had sought a remand report from the Ld.AO and in the said remand proceedings, Shri. Arun Agarwal, proprietor of M/s. Arun Paper and Iron Traders and confirmed the sale of goods to the assessee (Smt. Anuradha Dalmia) and supported the same by ledger and bank statement. Co-ordinate Bench further observed that addition on account of bogus purchases from the same supplier was made in AY 2009-10. In the proceeding for AY 2009-10 Shri. Arun Agarwal had appeared before the Ld.AO and this statement was recorded wherein he confirm supply of material to the assessee in FY 2008-09, 2009-10 and 2010-11. Thus, after considering the documentary evidence on records and the statement of the supplier, addition on account of bogus purchases in AY 2009-10 was deleted by Ld.CIT(A). Co-ordinate Bench on this fact observed that in the impugned assessment year i.e. 2010-11 also, nature of transaction and supplier's goods remained the same. Assessee (Smt. Anuradha Dalmia) had discharged her onus in proving the genuineness of the purchases and the supplier of goods by placing on record relevant documentary evidence and confirmation from the supplier. Appeal by the revenue was dismissed and the addition so made was deleted. Based on the elaborate submissions by the assessee fortified by the decision of Co-ordinate Bench in the case of spouse of the assessee on identical fact pattern as well as assessment carried out in the case of vendor of M/s. Arun Paper and Iron Traders, assesses strongly claims for deletion of addition made.

8. Ld.CIT(A) made certain observations which are taken a note off. We observe that Ld.CIT(A) noted that assessee did not produce the party in the course of assessment proceedings. We also note that Ld.CIT(A) observed that assessee failed to produce stock register and supporting documents in support of delivery and receipts of goods. He also noted that vendor failed to appear before the Ld.AO in response to summon issued u/s.131 of the Act, in the remand proceedings. Ld.CIT(A) has also recorded its surprise about dealer having surrendered this sale tax registration. On the reliance placed by the assessee on the decision of Co-ordinate Bench in the case of spouse of the assessee i.e. Smt. Anuradha Dalmia which is on identical fact pattern wherein addition so made was deleted, Ld. CIT(A) observed that assessee has not furnished a copy of the order and therefore, could not take cognisance of the same. Ld.CIT(A) made certain observations to distinguish the order of Co-ordinate Bench in the case of Smt. Anuradha Dalmia by observing that Shri. Arun Agarwal had appeared before the Ld.AO and had confirmed the sale of goods to the assessee on statement under oath supported by ledger and bank statement. However, in the case of the assessee, Shri. Arun Agarwal has failed to furnish any statement under oath and supporting documents to verify the transactions.

8.1. We fail to understand when the vendor has appeared in person before the Ld.AO in the assessment proceeding and has also confirmed the transaction in the case of the spouse of the assessee as well as in the case of assessee, in the remand proceedings, Ld.AO himself has taken note of the fact of appearance of Shri. Arun Agarwal who has furnish the required documentary evidences then, how many times would department need the statement to be recorded of the person for the same transaction, in different assessment proceedings, when a view by the higher appellate forum has already been taken. Such a pedantic approach adopted by Ld.CIT(A) should be avoided. Ld. CIT(A) also notes that addition is made only 25% of the bogus purchase and thus Ld. AO has generously allowed 75%, there by admitting the fact that entire purchase is not bogus and there may be some purchase without document from other parties to the extent of 75% debited in the books of accounts. Ld. CIT(A) has sustained the addition and dismissed the appeal against which assessee is in appeal before the Tribunal.

9. We have heard both the sides and perused the material on record. We have also given our thoughtful consideration to the submissions made before us, orders of the authorities below as well as judicial precedents relied upon by both the parties. At the outset, we note that Ld.AO has made the addition by taking 25% of the total alleged bogus purchases of Rs.43,75,381/- made from one supplier M/s. Arun Paper and Iron Traders, of which the proprietor is Shri. Arun Agarwal. We note that Ld.AO had called for details and explanation for which assessee had made due compliance vide his letter dated 05.01.2016, along with supporting documentary evidences. It is also a fact on record that in the remand proceedings taken up at the direction of Ld. CIT(A), Shri. Arun Agarwal proprietor of M/s. Arun Paper and Iron Traders had appeared before the Ld. AO and furnished the details which are already listed above.

9.1. Contrary to these facts, Ld. AO in the same remand report has noted that Shri. Arun Agarwal failed to appear before him to record his statement on oath. We fail to understand when Shri. Arun Agarwal had appeared and furnished all the required documents and evidences, what prevented the Ld.AO to record his statement on oath in the same appearance. Furthermore, Shri. Arun Agarwal had appeared in the assessment proceedings of spouse of the assessee whose statement was recorded u/s. 131 of the Act, part of which is reproduce in the order of the spouse of the assessee i.e. Smt. Anuradha Dalmia. It is to be noted that case of Smt. Anuradha Dalmia is on identical fact pattern as that of the assessee, wherein similar addition has been made against alleged bogus purchase from the same vendor. In the case spouse of the assessee, matter reached up to the Tribunal stage wherein the Co-ordinate Bench had taken note of appearance of Shri. Arun Agarwal along with his confirmation of the transaction, supported by documentary evidence, based on which relief was granted to the assessee by upholding the order of the Ld. CIT(A).

9.2. We also note that case of the vendor i.e. Shri. Arun Agarwal was taken up for scrutiny assessment, again on the same premise of entering into accommodation entries by arranging bogus purchases by him as recorded in his books of accounts. In his assessment, allegation was on he making bogus purchase entry from two parties for which addition was made by the Ld.AO by adopting 12.5% of the total amount of alleged bogus purchase transaction. There is no whisper about the sales made by Shri. Arun Agarwal to the assessee in his assessment which implies that the same was accepted in his assessment.

9.3. Also, Ld. Counsel for the assessee had brought on record, decision of Co-ordinate Bench in the case of Bigwin Paper Distributors Pvt. Ltd. vs. ITO for AY 2010-11 and AY 2011-12 in ITA No.5296 & 5297/Mum/2016, order dated 07.03.2017. Shri. Arun Agarwal is a director in Bigwin Paper Distributors Pvt. Ltd., fact of which is already noted in the statement recorded while completing assessment of spouse of the assessee, extract of which are already reproduced above. In answer to question 3, Shri. Arun Agarwal has stated that he is a director of Bigwin Paper Distributors Pvt. Ltd. In this case also, similar issue had come up before the Tribunal wherein it was categorically observed in para 9 of the said order about statement of Shri. Arun Agarwal who is the director of the assessee, wherein he had admitted that goods were received through the broker. Co-ordinate Bench deleted the addition made in hands of the assessee company and allowed the appeal.

9.4. On the contention of the revenue that stock movement details were not adequately furnished by the assessee, it is noted that copies of the delivery challans are placed on record and assessee had demonstrated that it had purchased the goods from Arun Paper and Iron Traders at landed price which included transportation cost and was the responsibility of supplier. The vendor supplied the goods by way of local tempo. Further, assessee has furnished stock register, detailing the movement of goods as accounted by him in his books of accounts, supported by purchase bills and delivery challans for which payments were made through proper banking channels. In this contest it is important to note that Shri. Arun Agarwal has also furnished the relevant documentary evidences, confirming the said transaction with the assessee which was done so in the remand proceedings, at the direction on Ld. CIT(A). We have also taken note of the pedantic approach adopted by Ld. CIT(A) for distinguishing the decision of Co-ordinate Bench in the case of spouse of the assessee which stands on identical fact pattern as that of the assessee by observing that Shri. Arun Agarwal did not appear for the purpose of recording of his statement on oath which otherwise was done in the case of spouse of the assessee.

10. For the reliance placed by Ld. SR DR on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Kanak Impex (India) Ltd [2025] 172 taxmann.com 283 (Bom) calling for addition of 100% of the alleged bogus purchases as against 25% made by the Ld.AO and confirmed by Ld. CIT(A), we have perused this aforesaid judgment. Observe that in para 4, Hon'ble Court noted the factual position that assessee did not appear before the Ld.AO during the course of assessment proceedings and failed to prove the genuineness of the purchase. The said assessment was completed ex-parte u/s. 144 r.w.s 147 of the Act. Hon'ble Court also observed in para 17 about the non-appearance of assessee before the Ld.AO for which there is no justification. Again, it noted in para 29 that the assessee chose not to attend the reassessment proceedings even though the notices were sent by post, email and affixture. Accordingly, in para 13, Hon'ble Court concluded that assessee having not joined the reassessment proceedings, the contention raised by the assessee are to be rejected. Observation of the Hon'ble Court while rejecting the contention of the assessee are:

> *"30. We fail to understand that the respondent-assessee having consciously and intentionally decided not to join the investigation, cannot now contend that the appellant-revenue should have given them all the details before making the addition. In our view, such a conduct of the respondent-assessee cannot be accepted. It was incumbent upon the respondent-assessee to have joined the re-assessment proceedings, discharge the initial onus of proving the purchases and seek details, if any."*

10.1. Hon'ble Court while referring to the decision of Mohammad Haji Adam & Co. [2019] 203 taxmann.com 459 (Bom) noted that in this case, assessee had participated in the assessment proceedings, Ld.CIT(A) compared the purchases and sales statement and there was a finding that purchases cannot be rejected since there was correlation between the purchases and sales. Based on the above observations and conclusion drawn by Hon'ble Court, the present facts of the case do not warrant its application as it is evidently demonstrated that assessee has diligently participated in the assessment proceedings as well as at the first appellate stage wherein remand proceedings were directed at the instant of Ld. CIT(A). Furthermore, the vendor Shri. Arun Agarwal had appeared in the remand proceedings, furnishing all the documentary evidences and confirming the transaction.

11. Considering the facts on record and the detailed discussion made above on the facts and circumstance of the case along with judicial precedents, we hold that addition of Rs.10,93,845/- i.e. 25% of the total purchases of Rs.43,75,381/- made form M/s. Arun Paper and Iron Traders is not called for and is thus, deleted. Accordingly, grounds raised by the assessee in this respect are allowed.

12. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 29th May, 2025

Sd/-	Sd/-
(Pawan Singh)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 29th May, 2025

Divya R. Nandgaonkar
Stenographer

Copy to:
1 The Appellant
2 The Respondent
3 DR, ITAT, Mumbai
4 Guard File
5 CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai