

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM**

ITA No. 5239/MUM/2015

(A.Y. 2011-12)

The Deputy Commissioner of Income Tax, CC.3(2), Central Range-3, Room No. 402, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Pragati Metal Works, 305, Prathamesh Tower, 'B' Wing, 3 rd Floor., Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel (W), Mumbai-400 013
Appellant	..	Respondent
PAN No. AAAFP2539D		

Revenue by : Rajat Mittal, DR

Assessee by : K Jalgar, AR

Date of hearing: 23-01-18 **Date of pronouncement :** 23-01-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-51, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-51/IT-110/14-15 dated 04-08-2015. The Assessment was framed by the Asst. Commissioner of Income Tax, CC 3(2), Mumbai (in short ACIT) for the assessment year 2011-12 vide order dated 20.03.2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) restricting the addition by applying profit rate at the rate of 30% to the bogus purchase. For this Revenue has raised following ground No. 1:-



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"1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the part relief on account of bogus purchases even though the assessee has not furnished requisite supportive evidences to prove genuineness of the purchases and that the notices issued to the purchase parties returned unserved."

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the assessee has made purchases from Balaji Traders amounting to ₹ 27,405/- and Ramanand Sales Pvt. Ltd. of ₹ 3,38,953/- in total of ₹ 3,66,358/-. The AO received information from DGIT investigation, Mumbai who in turn received information from sales tax Maharashtra, that assessee is one of the beneficiaries of hawala transaction/ bogus transaction carried out by a number of parties and these two parties are also in the list of hawala operators. Accordingly, the AO added the entire purchase as bogus amounting to ₹ 3,66,358/-. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 30% of the bogus purchases following earlier years decision by observing in Para 5.3 as under:-

"5.3 I have considered the assessment order in this regard and the appellant's submissions and gone through the appellate order passed by my learned predecessor in the case of the appellant for assessment year 2010-11, wherein the additions on account of such purchases has been estimated at 30% of the gross amount of purchases by observing as follows-

"5.4 I have very carefully considered the matter. Taking the totality of facts and circumstances into consideration, and also taking into consideration the fact that the appellant had produced delivery challans, tax invoices, stock records, and that only a single bill is involved, it is held that not the entire



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amount covered under purchase is to be added back but the profit element embedded therein is to be brought to tax so as to meet the ends of justice. It is estimated that the highest profit embedded therein would be 30% and the A. O. is directed to treat 30% of the purchases as income of the appellant for the relevant year. It is ordered accordingly.

I find considerable force in the argument of the appellant. Respectfully, following the said appellate order and the judgments cited by the appellant, I hereby estimate the amount of profit embedded in the purchases made from (a) Balaji Traders and (b) Rarnanand Sales Pvt. Ltd. at 30% of the gross value of purchases from these parties. Accordingly, the A.O. is directed to treat a sum of Rs 1,09,907 (being 30% of Rs 3,66,358) as income of the appellant in this regard and the appellant will get relief of Rs. 2,56,451/-."

4. After hearing both the sides and going through the facts of the case, we find that no infirmity in the order of CIT(A) in restricting the disallowance at 30% of the bogus purchases and, hence we confirm the same.

5. The next issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of interest expenses by the AO for non-deduction of TDS under section 194A of the Act by invoking the provisions of section 40a(ia) of the Act. For this Revenue has raised following ground No.2: -

"2. On the facts and in the circumstances of the case and in law, the UI CIT(A) erred in allowing the appeal of the assessee despite the non-deduction of TDS mandated u/s 194A of the Act on interest paid and is therefore liable to be disallowed u/s 40(a)(ia) of the Act"

6. We have heard the rival contentions and gone through the facts and circumstances of the case. The assessee claimed interest expenses amounting to ₹ 21,18,799/- paid to various parties. The details are as under: -



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Sr. No.	Name of Payee	Nature of Exp.	Amount paid/credited during the year
1.	<i>Cholamandalam DBS Finance Limited</i>	<i>Interest</i>	<i>17,71,921/-</i>
2.	<i>Kotak Mahindra Prime Limited</i>	<i>Interest</i>	<i>63,129/-</i>
3.	<i>Bajaj Finance Limited</i>	<i>Interest</i>	<i>2,38,747/-</i>
4.	<i>Bajaj Finance Limited</i>	<i>Interest</i>	<i>45,002/-</i>
	<i>Total</i>		<i>21,18,799/-</i>

7. As the assessee has not deducted TDS under section 194A of the Act, the AO disallowed by invoking the provisions of section 40a(ia) of the Act. We find that the CIT(A) deleted the disallowance on one of the reasoning that, *“the parties to whom the payments are made are well known public limited finance companies and have also given certificates stating that they have filed their returns of income and paid taxes on the incomes received by them. The appellant has not been treated as an assessee in default.”* Now before us, the assessee’s Counsel also filed the details of Form 26A of interest paid showing that the respective payees have accounted for the income and offered the same to tax in the case of a) Bajaj Finance Limited b) Cholamandalam I & F Co. Limited c) Kotak Mahindra Prime Limited. The details are given at pages 35 to 44 of assessee’s paper book. We have gone through the details and notice that the facts are correct. In view of the above, we find no infirmity in the order of CIT(A) deleting the disallowance of interest expenses, hence, this issue of Revenue’s appeal is dismissed.

8. Coming to the next issue in this appeal of Revenue is against the order of CIT(A) rejecting the books of accounts and deleting the alternate addition made to income. For this Revenue has raised following ground No. 3:-

“3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the assessee’s appeal regarding rejection of the books of account and deleting the alternate assessment of income at Rs. 40,00,0043/- without considering that the assessee did not produce the ledger account called for and hence the AU was justified in invoking section 145 of the Act.”



9. Brief facts are that the AO by making various disallowance computed total loss at ₹ 1,03,77,420/-. Subsequently, the AO also computed another set of income based on rejection of books of account. The AO rejected the books of account vide Para 8 as under:-

“8. *Rejection of books of accounts: -*

8.1 *Without prejudice to above, on perusal of the Profit & loss Account of the assessee of the year under consideration, it is seen that, the assessee has incurred the loss of Rs. 1,30,57,315/- against the profit of Rs. 34,38,278/- earned in the AN 2010-11.*

8.2 *On analysis for the reason of the loss, it is seen that there is significant increase in the following expenses during the year under consideration in comparison to last year:*

Nature of Expenses	Expenses during A.Y 2011-12	Expenses during A.Y 2010-11	Percentage increment
Financial Charges	77,14,805/-	5,38,955/-	1331.43%
Depreciation	72,72,614/-	3,54,577/-	1951.06 %
Administrative and Other Expenses	73,46,824/-	37,45,627/-	69.14 %

So far, increase in depreciation is concerned, it is justified that during the year under consideration the assessee has capitalized an immovable property, therefore, the depreciation expenses has increased by such a huge amount. But, it is not understood and justified, why the finance expenses increased by 1331.43%? To verify the application of money taken on loan during the year, a notice u/s 142(1) dated 16.02.2015 was issued and served to the assessee and assessee was requested to furnish the copy of (i) Bank Account Ledger and (ii) Cash Ledger account. But in response, the assessee did not furnish any of the ledger accounts called for.”



10. The AO also made first computation and thereafter, another computation of income vide Para 9.1 and 9.2 as under: -

“9.1 Subject to the above remarks and after discussion (as per Para no. 4 to 7) with the assessee's representative, total income of the assessee is computed as under:-

Particulars	₹	₹	₹
Total income as per computation statement		(-) 1,30,39,60/-	
Add: Additions of disallowance			
(i) As discussed in Para 4	1,15,414/-		
(ii) As discussed in para 5	21,18,799/-		
(iii) As discussed in Para 6	61,621/-		
(iv) As discussed in Para 7	3,66,358/-	26,62,192	(-) 1,03,77,418
Total Income			(-) 1,03,77,418
Total income rounded off			(-) 1,03,77,420

9.2 Without prejudice to the determination of income of the assessee in Para No. (9.1 above). the assessee's income is computed here under discussed in para no. 8:

Net Profit to Sales ratio of AY 2010-11

(i) Net profit of AY 2010-11 as per assessment order passed under section 143(3) of the Act dated 20-03-2015:	59,55,130/-
(ii) Sales of AY 2010-11	3,75,69,554/-
(iii) Net Profit to Sales Ratio	15.85%

Net Profit of AY 2011-12

(i) Sales	2,52,36,685/-
(ii) Net Profit to sales ratio of AY 2010-11	15.85%
(iii) Income of AY 2011-12	40,00,043”

11. The CIT(A) observed that there cannot be two computation of income in the normal assessment under section 143(3) of the Act. We find from the



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above that the AO has made two computation of income in one assessment order and that also alternatively and without prejudice to each other. According to us, this is not possible. We find that the CIT(A) deleted the addition by observing in Para 9.3 as of its order: -

“9.3 I have gone through the assessment order and considered the (submissions of the appellant. At the outset, it is to be noted that there cannot be determination of two incomes in one assessment order. The A.O. has made the alternative determination of income after assessing and quantifying the total income at loss of Rs. 1,03,77,420/-. It is noted that the assessee has been maintaining regular books of account; the books of account are subjected to audit; there are no adverse remarks or qualifications in the audit report; quantitative tally of stock is available; particulars of expenses are on record and no rejection of books results has been made in the past in the case of the appellant; there is favorable increase in the G.P. ratio of this year; and the A.O. has not brought on record any material for rejections of book results in toto. It is also to be noted that the A.O. has already made disallowance and additions in respect of unverifiable purchases by invoking the provisions of sec. 145 of the Act to the limited extent of such purchases. The appellant also drawn my attention to the judgment of Rajasthan High Court in Malani Ramjivan Jagannath vs. ACIT [316 JTR 120 (Raj)] wherein it is held - "when all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of account. We are, therefore, unable to sustain the order of the Tribunal." Considering the facts and circumstances the of the case, I am of the view that there cannot be 2 total incomes in one assessment order and also having regard to the fact that there is no ground for rejection of book results summarily, the alternative assessment of income at Rs.40,00,043/- is hereby deleted. The A.O. is directed to re-compute the total loss of the appellant in the light of



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this appellate order and allow carry forward of losses and depreciation as per law.”

12. When these facts were pointed out to the learned Sr. Departmental Representative, he could not argue anything on the same. First of all, we have gone through the reasoning's given by AO for disallowance of finance charges that the assessee has not furnished the bank account ledger or cash ledger account. We find from the various observations of the AO in the assessment order that the assessee has produced complete books of account and even details whatever called for by Assessing Officer. The AO has not pointed out any defects in the books of account and the books of account of the assessee have been audited and even there is no adverse remark in the audit report. The assessee has followed applicable accounting standards in preparing final accounts and computing the total income. In view of the above, we find no infirmity in the order of CIT(A) and hence, we confirm the same. This issue of Revenue's appeal is dismissed.

13. In the result, the appeal Revenue is dismissed.

Order pronounced in the open court on 23-01-2018.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 23-01-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI