

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

ITA No. 7172/MUM/2017

Assessment Year: 2010-11

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ITA No. 7173/MUM/2017

Assessment Year: 2011-12

M/s Glow Metal, A-5, Nandjyot Industrial Estate, Saki Naka, Andheri-Kurla Road, Mumbai - 400072 PAN: AAAFG3661K (Appellant)	Vs.	The ITO 26(1)(5), Pratykshakar Bhavan, C-10, Room No. 506, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 (Respondent)
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Assessee by : Shri M. Subramanian (AR)

Revenue by : Ms. N. Hemalatha (DR)

Date of Hearing: 09/04/2018

Date of Pronouncement: 25/04/2018

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against the two orders dated 24.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-38, Mumbai, for the assessment year 2010-11 and 2011-12, whereby the Ld. CIT (A) has dismissed the appeals filed by the assessee against the assessment orders passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act'). Since, both the appeal pertain to the same assessee, these appeals were clubbed, heard together and are being disposed of for the sake of convenience.

ITA No. 7172/MUM/2017 (Assessment Year: 2010-2011)

2. The brief facts of the case pertaining to the assessment year 2010-11 are that the assessee filed its return of income for the assessment year under consideration declaring the total income at Rs. 3,66,650/-. The said income

was reduced to Rs. 3,30,450/- in revised return. The return was processed u/s 143 (1) of the Act.

3. Subsequently, on the basis of information received from Sales Tax Department and Director General of Income Tax (Inv.) (DGIT), Mumbai that during the year relevant to the assessment year under consideration some businessmen including the present appellant/assessee had indulged in obtaining bogus purchase bills from bogus parties, the assessment was re-opened by issuing notice u/s 148 of the Act. In reply to the notice u/s 148, the assessee requested to treat the revised return as return of income in response to the said notice. Further, in response to notice u/s 143 (2) and 142 (1) of the Act, the authorized representative appeared before the AO and furnished the details including purchase invoice ledger account, delivery challan, copy of bank statements etc.

4. It was noticed that the assessee had shown purchase of Rs. 5,73,102/- from P.M. Steel Alloys and Shri Manibhadra Metal Corporation during the previous year. Since, the aforesaid entities were bogus parties as per the information, AO issued notices u/s 133 (6) of the Act to the aforesaid parties, however, the notices were received back un-served with the remarks left/unknown. The assessee also failed to produce the parties before the AO. However, contended that the purchases are genuine. The AO rejecting the contention of the assessee made addition of 25% of the bogus purchases to the income of the assessee holding that the assessee has failed to prove the genuineness of transaction.

5. The assessee had debited an amount of Rs. 90,000/- being interest expenses paid against unsecured loans. Accordingly, the AO asked to show cause as to why interest paid to Ms. Anita Mohandas and Ms. Girija Ramdas, related parties @ 18% should not be restricted to 12%. The assessee submitted copy of bank statements as a proof of payment made to these parties and copy of return of income filed by M/s Anita Mohandas. However, the AO holding that

the assessee has failed to justify the rate of interest paid to the related parties restricted the rate of interest to 12% and disallowed Rs. 54,000/- out of the total interest paid to Ms. Anita Mohandas and Ms. Girija Ramdas on the basis of reasonable market interest rate and disallowed and added the same to the income of the assessee.

6. It was further noticed that assessee had debited the total amount of Rs. 1,67,652/- on account of expenses on Motor Car, depreciation on motor car staff welfare, telephone charges and sundry expenses. The assessee was accordingly asked to explain as to why *ad hoc* expenses should not be disallowed, the assessee produced the ledger, however, the entries in the ledger were not supported by any bill or vouchers. Moreover, the assessee has not maintained the log books for the vehicles. So, the AO holding that these expenses also include personal expenses, disallowed 20% of the total expenses claimed and made addition of Rs. 32,007/- to the income of the assessee.

7. In the first appeal, the Ld. CIT (A) dismissed the appeal of the assessee and confirmed the additions made by the AO. The assessee is in appeal against the impugned order passed by the Ld. CIT (A).

8. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and in the circumstances of the case and in law, the proceedings initiated u/s 147 of the Act is invalid and bad in law.*
2. *“On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143 (3) r.w.s. 147 is invalid and bad in law.*
3. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in dismissing the appeal and that too without appreciating fully and properly the facts of the case.*

4. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the action of the A.O. in adding an amount of Rs. 1,43,245/- as disallowance out of purchase.'*
5. *"On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the A.O. in adding an amount of Rs. 54,000/- as on account of interest expenses'.*
6. *"On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of in adding an amount of Rs. 32,007/- as 'addition on account of various heads of expenses."*

9. Before us, the Ld. counsel for the assessee submitted that the assessee does not want to press ground No. 1 to 3 being general in nature. We accordingly dismiss ground no. 1 to 3 of the appeal as not pressed.

10. Ground No. 4 of the appeal pertains to addition of Rs. 1,43,245/-, which is 25% of the total amount of bogus purchases. The Ld. counsel for the assessee submitted before us that since the assessee has furnished the copy of invoices ledger account of the party bank statements and certificate from the banker regarding clearance of payment made to the supplier, the assessee has discharged the onus of establishing genuineness of transaction. The Ld. counsel further submitted that since the material was procured as and when required the assessee had not maintained stock register. Moreover, the assessee used the purchase material; therefore, not stock register was maintained.

11. On the other hand, the Ld. Departmental Representative (DR) submitted that since the assessee has failed to establish the genuineness of transaction, the Ld. CIT (A) has rightly confirmed the addition of 25% of the total amount of bogus purchases made by the AO. The Ld. DR further submitted that the

findings of the Ld. CIT (A) is based on the decision of the Hon'ble Gujarat High Court delivered in the case of CIT vs. Sanjay Oil Cakes 316 ITR 274 in which disallowance on account of bogus purchases in the case of manufacturer was sustained @ 25% of the total amount of bogus purchases.

12. We have perused the material on record in the light of the rival submissions. Enquiry conducted by the Sales Tax department had established that the parties, from whom the assessee had shown purchases, were bogus and they only used to issue bogus bills without supplying any material. Assessee also failed to secure the presence of the said parties during the assessment proceedings. The assessee also failed to produce any cogent evidence to prove the genuineness of the transaction. In view of the aforesaid facts we are of the considered view that the evidence on record is not sufficient to hold that the purchases in question were made from the said parties, rather the evidence on record suggest that the assessee had purchased the goods/ material from the parties other than the parties mentioned in the books of account. As has been held by the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Guj) in the case of bogus purchases it is necessary to ascertain the fact as to whether purchases were not made at all or purchases were made but from grey market. Once it is established that the purchases were actually made then only profit embedded in the same could be added in the income of the assessee. The Hon'ble High Court accordingly upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases. In the present case since, the AO has not rejected the sales made by the assessee during the previous year, there is no reason to hold that purchases were not made at all. Hence, following the ratio laid down by the Hon'ble Gujrat High Court in CIT vs. Simit P. Seth (supra) we partly allow this ground of appeal of the assessee and accordingly modify the order of the Ld. CIT (A) and restrict the addition to 12.5% of the total amount of bogus

purchases. AO is directed to make addition of 12.5% of the total amount of bogus purchases is made by the assessee during the previous year.

13. Vide Ground No. 5 the assessee has challenged the action of the Ld. CIT (A) in upholding the addition of Rs. 54,000/- on account of excess interest paid to the related parties on the borrowings. The Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly confirmed the addition made by the AO. The assessee had obtained unsecured loan from the related parties because the assessee was not in a position to take loan from the banks or other financial institutions. Accordingly, the assessee paid interest @ 18% per annum. The Ld. counsel further submitted that since the AO has not brought on record any material to show that the interest rate of 18% was excess as compared to the prevailing market rate, the Ld. CIT (A) has wrongly confirmed the addition. Hence, the order is liable to be set aside. The Ld. counsel further submitted that the assessee has also furnished the bank statement to prove the payment and also filed the copy of return of income filed by Ms. Anita Mohandas to established the genuineness of the transaction. So far as Ms. Girija Ramdas is concerned she did not file her return of income as her income was below taxable limit.

14. On the other hand, the Ld. DR submitted that since the assessee had deliberately kept sundry debtor in its balance sheet and has been paying the interest on unsecured loans for several years to the related parties to reduce its profit, the Ld. CIT (A) has rightly upheld the disallowance made by the Ld. CIT (A). Hence, there is no merit in the contention of the assessee.

15, We have heard the rival submissions and perused the material on record in the light of the rival contention. The AO has disallowed the expenses by restricting the interest @ 12% per annum on the ground that the interest paid

is excessive or unreasonable as compared to the prevailing market rate. We notice that in the said case, the assessee has submitted the statement of bank account to establish the genuineness of the transaction and also submitted the copy of return of income filed by one of the lenders in which the lender had mentioned the interest received from the assessee. On the other hand, the AO has not pointed out any instance to hold that 18% interest was excessive in view of the prevailing market rate. Since, the AO has not pointed out any evidence to establish that the interest rate paid was excessive, there is no justification of reducing the interest to 12%. Therefore, the Ld. CIT (A) ought to have deleted the addition. We, therefore, find merit in the argument of the Ld. counsel that the Ld. CIT (A) has wrongly confirmed the addition made by the AO. In our considered opinion, the finding of the Ld. CIT (A) is not based on any evidence on record. We therefore, set aside the findings of the Ld. CIT (A) and delete the addition and direct the AO to delete the addition of Rs. 54,000/- made on account of interest expenses.

16. Vide Ground No. 6 the assessee has challenged the findings of the Ld. CIT (A) in upholding the action of AO of making addition of Rs. 32,007/- which is 20% of the total amount of expenses claimed by the assessee. The Ld. counsel contended that Motor Car expenses, depreciation thereon, expenses on staff welfare, telephone expenses and sundry expenses claimed by the assessee, have been incurred exclusively for the purpose of the business therefore the Ld. CIT(A) ought to have deleted the addition made by the AO on account of ad-hoc disallowance of 20% made on the miscellaneous expenses claimed by the assessee.

17. On the other hand, the Ld. DR relying on the findings of the Ld. CIT(A) submitted that since the assessee has failed to produce any evidence in support of its claim, the Ld. CIT(A) has rightly confirmed the addition made by the AO.

18. We have perused the evidence on record in the light of the rival contentions of the parties. The Ld. CIT (A) has confirmed the addition on the ground that the assessee has failed to discharge the onus to prove the genuineness of such claim. The AO has pointed out that entries in the ledger are not supported by any bills or vouchers. The assessee had even not maintained the log book for the vehicles. The AO has further pointed out that in all these expenses personal element involved cannot be ruled out. Since, the assessee has failed to substantiate its claim by adducing corroborative evidence, the Ld. CIT (A) has rightly confirmed the disallowance to the extent of 20% on the expenses claimed. Hence, we do not find any infirmity in the findings of the Ld. CIT (A). We therefore uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the assessee.

ITA No. 7173/MUM/2017 (Assessment Year: 2011-2012)

19. In the present case, the assessee filed its return of income for the assessment year under consideration declaring the total income of Rs. 9,23,298/-, which was processed u/s 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department and DGIT (Inv.) that the assessee had obtained bogus bills from bogus dealer PM Steel Alloys during the previous year, the assessment was reopened u/s 147 of the Act and after verification, the AO determined the amount of bogus purchases shown by the assessee at Rs. 13,91,490/-. The AO after taking into consideration, the contention of the assessee in the light of the evidence on record made addition of Rs. 3,47,873/- i.e. 25% of the total amount of bogus purchases made by the assessee.

20. The AO also restricted the interest paid @ 18% to Ms. Girija Ramdas and Ms. Anita Mohandas, related parties, to 12% considering the reasonable market interest rate and made total addition of Rs. 54,000/-. Similarly, the AO

also made disallowance of 20% of the expenses claimed by the assessee as Motor Car expenses, depreciation thereon, expenses on staff welfare, telephone charges and sundry expenses amounting to Rs. 1,89,976/-. The AO further make addition of Rs. 600 as the assessee has debited the P&L Account on account of donation. Similarly, the AO made addition of Rs. 2,727/- as the assessee had debited P&L account an amount of Rs. 1,656/- under the head TDS paid, Rs. 95 under the head education cess and Rs. 976/- under the head service tax paid.

21. In the first appeal, the Ld. CIT (A) upheld the findings of the Ld. CIT (A) and confirmed the additions made by the AO.

22. Aggrieved by the order of Ld. CIT (Appeals), the assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and in the circumstances of the case and in law, the proceedings initiated u/s 147 of the Act is invalid and bad in law.*
2. *“On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143 (3) r.w.s. 147 is invalid and bad in law.*
3. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in dismissing the appeal and that too without appreciating fully and properly the facts of the case.*
4. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the action of the A.O. in adding an amount of Rs. 3,47,843/- as ‘disallowance out of purchase.’*
5. *“On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the A.O. in*

adding an amount of Rs. 54,000/- as on account of interest expenses’.

6. *“On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the A.O. in adding an amount of Rs. 37,995/- as out of expenses.*
7. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the action of the A.O. in adding an amount of Rs. 600/- as disallowance of donation’*
8. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the action of the A.O. in adding an amount of Rs. 2,277 as ‘disallowance out of expenses.’.*

23. Before us, the Ld. counsel for the assessee submitted that the assessee does not want to press ground no. 1 to 3 of its appeal. Accordingly, we dismiss ground no. 1 to 3 of the assessee’s appeal as not pressed.

24. Ground No. 4 of this appeal is identical to the ground no. 4 of the assessee’s own appeal for the A.Y. 2010-11 discussed above. Since, we have modified the findings of the Ld. CIT (A) and restricted the addition to 12.5% of the total amount of bogus purchases made by the assessee, consistent with our findings, we modify the order of the Ld. CIT (A) and restrict the addition to 12.5% of the Total amount of bogus purchases determined by the AO in this case also and direct the AO to make addition of 12.5% of the total amount of bogus purchases.

25. Ground No. 5 of this appeal is identical to the ground no. 5 of the assessee’s own appeal for the A.Y. 2010-11 discussed above. Since, the facts of the case are similar in both the cases, and since we have allowed the identical ground and decided the issue in favour of the assessee in the assessee’s own case aforesaid, we allow this ground of appeal of the

assessee and direct the AO to delete the addition confirmed by the Ld. CIT (A).

26. Ground No. 6 of this appeal is identical to the ground no. 6 of the assessee's own appeal for the A.Y. 2010-11 aforesaid. Since, the facts of both the cases are similar except the amount of expenses claimed by the assessee and since we have dismissed the identical ground of appeal of the assessee in the assessee's own case for the assessment year 2010-11 and decided the issue against the assessee, consistent with our findings, we dismissed this ground of appeal of the assessee for the same reasons.

27. Ground No 7 and 8 do not arise from the order of the Ld. CIT(A). We therefore, dismiss both the grounds being not maintainable.

In the result, appeals filed by the assessee for assessment years 2010-2011 and 2011-12 are partly allowed.

Order pronounced in the open court on 25th April, 2018.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 25/04/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai