

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND RAM LAL NEGI, JM**

ITA No. 4952/Mum/2019  
(Assessment Year: 2010-11)

Rajesh C. Sheth 10, Giri Vihar, Sevaram Lalvani Road, Mulund (W), Mumbai-400 080	Vs.	ITO-29(3)(1) Kautilya Bhawan, ‘G’ Block BKC, Bandra Mumbai-400 051
PAN/GIR No. AALPS6553M		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	None
<b>Respondent by</b>	:	Shri Bharat Andhale - DR
<b>Date of Hearing</b>	:	10/03/2021
<b>Date of Pronouncement</b>	:	01 /06/2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-40, Mumbai (‘Id.CIT(A) for short) dated 02.05.2019 and pertains to the assessment year (A.Y.) 2010-11.

2. The grounds of appeal read as under:

1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in
  - (a) arriving at the conclusion that purchases made of Rs. 3895686/-from parties mentioned in assessment order are non-genuine
  - (b) confirming estimation of profit element @ 6.03% on alleged non genuine purchases of Rs.3895686/-
  - (c) confirming addition of Rs. 243910/- on above basis made by the Assessing Officer to the total income of the appellant.On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in and failed to appreciate that the assessment made under section 143(3) rws 147 of the Act is without jurisdiction, bad in law and contrary to the provisions of the Act in as much as the learned Assessing Officer failed to issue notice under section 143(2) of the Act prior to making assessment u/s 143(3) rws 147 of the Act.
- On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in and failed to appreciate that
  - (a) the learned Assessing Officer failed to provide copy of reason, recorded by him before issuing notice under section 148 of the Act, which the appellant has asked for, which makes assessment order without jurisdiction, null and void
  - (b) Proceeding initiated under section 147 /148 of the Act is on the basis of reason to suspect and not on reason to believe.

(c) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act

(d) The initiation of proceeding under section 147 of the Act and issuance of notice under section 148 is without jurisdiction, bad in law and contrary to the provisions of the Act and liable to be cancelled / annulled

4. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act by the learned Assessing Officer which is without jurisdiction, illegal, bad-in-law, ultra vires and without allowing reasonable opportunity of the hearing, without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appelland and without providing cross examination of persons whose statements are relied upon, is liable to be annulled.

5. On the facts and in the circumstances of the case and in law the learned Commissioner of Income tax (Appeals) failed to adjudicating Grounds of Appeal No.2, No. 3, No. 4, No. 5 and Additional Grounds of Appeal raised before him. The learned Commissioner of Income tax (Appeals) should have adjudicated these grounds of appeals before passing order under section 250 of the Act.

6. The learned assessing officer erred in charging interest under section 234A, 234B, 234C and 234D of the Act.

3. Although, the assessee has raised various grounds, the issue raised is that Ld.CIT(A) erred in confirming the addition of bogus purchase of Rs.243910/- without dealing with the issues and grounds raised before him.

4. Brief facts of the case are that assessing officer in this case upon information from sales tax department that assessee is indulging into bogus purchases made disallowance of 6.03% of the bogus purchase.

5. The Ld.CIT(A) noted the following facts.

The AO made an addition of Rs, 2,34,910/- on account of bogus purchases being 6.03% of Rs.38,95,686/- profit embedded in the alleged bogus purchases from the 8 parties amounting to Rs. 38,95,686/-.

The AO on receipt of information from DGIT(INV), Mumbai that the assessee made purchases from alleged bogus parties as under ;

No	Name of party	Amount
1	Om Corporation	42,792
2	Unique Enterprises	3,73,838
3	K K Enterprises	14, 343
4	Palak Enterprises	28,28,863
5	Pravesh Entrprises	1,37,475
6	Roop International	43,200

7	Pacasso Merc. Pvt Ltd	51,975
8	Arihant corp	4,03,200
	Total	38,95,686/-

The AO reopened the assessment u/s. 148 and made the addition @6.03% of the alleged bogus purchases being the gross profit adopted by the assessee himself. The AO issued notice u/s. 133(6) to the above parties. None of them appeared nor responded to the notices issued by the AO nor could the assessee produce the parties for verification. In the absence of details from the above parties, the AO 6.03% as GP on the alleged bogus purchases and accordingly, added to the income of the appellant.

6. Thereafter, Ld.CIT(A) summarily dismissed the assessee's appeal without dealing with any of the issues raised by the assessee. The order of the Ld.CIT(A) is as under:-

“ The AR of the appellant filed his objections on reopening the assessment and also filed additional ground during the course of appellate proceedings. However, the same are dismissed as the AO in possession of information received from DGIT(INV), the AO is bound to verify the details by reopening the assessment. Accordingly, the AO issued notice u/s 148 and made the addition on the profit embedded in the corresponding sales to the purchases made from hawala dealer/bogus purchase parties.”

7. We have heard the Ld. Departmental Representative. None appeared on behalf of the assessee.

8. We find that it is settled law that even an administrative order has to be consistent with the rules of natural justice. We fail to understand, how the aforesaid cryptic order deals with the issue of challenge to reopening and merits of addition raised by the assessee in the various grounds before the Ld.CIT(A). Such a cryptic order is in fact liable to be dismissed, for being inconsistent with the rules of natural justice. Moreover, it makes it amply clear that Ld.CIT(A) has failed to discharge the statutory duty cast upon him by performing perfunctorily. However, in the interest of justice, we are remitting this issue to the file of Ld.CIT(A). Ld.CIT(A) is directed to consider the issue on merits and pass a proper and speaking order after giving the assessee proper opportunity of being heard.

9. In the result, this appeal by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 1.6.2021.*

Sd/-  
(Ram Lal Negi)  
Judicial Member

Sd/-  
(Shamim Yahya)  
Accountant Member

Mumbai; Dated : 24.05.2021

Thirumalesh, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai