

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” Bench, Mumbai
Before Shri Rajesh Kumar, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 438/Mum/2020
(Assessment Year: 2011-12)**

Madhav Steel
1001, Dr. Deshmukh Bldg,
Deshmukh Lane
Mumbai – 400 004

Assistant Commissioner of Income-tax
Mumbai.

Vs.

PAN AAHFM4869Q

(Appellant)

(Respondent)

Appellant by : None
Respondent by : Shri Tharian Oomen, D.R

Date of Hearing : 27.07.2021
Date of Pronouncement : 28.07.2021

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-7, Mumbai, dated 11.11.2019, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 08.03.2016 for A.Y 2011-12. The assessee has assailed the impugned order on the following effective grounds before us:

- "1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in :
 - (a). arriving at the conclusion that purchases made of Rs. 3,89,55,914/- from parties mentioned in assessment order are not genuine and not made from them but from other sources.

(b). Confirming estimation of profit element @12.5% on alleged non genuine purchases of Rs. 3,89,55,914/- which is over and above the gross profit declared @3.85% in books of accounts.

(c). Confirming addition of Rs. 48,69,489/- made by the Assessing Officer to the total income of the appellant.

2. The CIT(A) failed to appreciate that the A.O did not carry out any independent enquiry himself and did not point out any defect in the evidence furnished by the Appellant. Therefore, the addition is liable to be deleted.
3. The CIT(A) failed to appreciate that the A.O had not provided the Appellant any material on which he placed his reliance in making the impugned addition thereby violating the principles of natural justice. The CIT(A) ought to have provided such material to the Appellant before adjudicating on the impugned addition. Therefore, the addition is unjustified.”

2. Briefly stated, the assessee firm which is engaged in the business of trading in ferrous and non-ferrous metals had filed its return of income for A.Y. 2011-12 on 20.08.2011, declaring an income of Rs. 21,98,640/-. The return of income was initially processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received by the A.O from the Investigation Wing, Mumbai, that the assessee as a beneficiary had procured bogus purchase bills without actual delivery of goods, its case was reopened under Sec. 147of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases amounting to Rs. 3,89,55,914/- from the following four tainted parties:

Sr. No.	Name of party	Amount
1.	SHREE SUDHA STEEL PVT. LTD.	Rs. 1,71,13,616/-
2.	ROLEX TRADING COMPANY	Rs. 83,56,759/-
3.	STELCO STEEL INDUSTRIES	Rs. 97,62,017/-
4.	MANIBHADRA METAL INDUSTRIES	Rs. 37,23,522/-
Total		Rs. 3,89,55,914/-

In order to verify the genuineness and veracity of the aforesaid purchase transactions the A.O called upon the assessee to place on record supporting documentary evidence viz. copy of bank statements; copy of ledger accounts; copy of delivery challans; proof of transportation; copy of bank statement; note on tally between sales and purchases; and note on stock. Also, the A.O in

order to verify the authenticity of the aforesaid purchase transactions directed the assessee to produce the aforementioned parties for necessary examination. In response thereto, though the assessee produced the ledger accounts and bank statements indicating entry of payments made to the aforementioned parties, but it failed to produce the abovementioned parties before him. As stated by the A.O, the notices issued by him u/s 133(6) of the Act revealed that the assessee had not made genuine purchases from the aforementioned parties. It was observed by the A.O that the assessee despite specific directions had failed to furnish the details of transportation of the material that was claimed to have been purchased from the aforementioned parties. Further, it was noticed by the A.O that the assessee had also not furnished the confirmations of the aforesaid supplier parties. Accordingly, the A.O on the basis of his independent enquiries, findings of the Sales tax department and details submitted by the assessee, therein concluded that the assessee had failed to discharge the onus that was cast on it as regards proving the authenticity of the purchase transactions in question. Accordingly, the A.O being of the view that the books of accounts of the assessee were not reliable, therefore, rejected the same under Sec. 145(3) of the Act. At the same time, the A.O taking cognizance of the fact that the assessee had furnished complete quantitative disposal of materials, thus, held a conviction that the addition in respect of the aforesaid unverified purchases could only be restricted to the extent of the profit that the assessee would have made from purchasing the said goods at a discounted value from the unidentified dealers operating in the open/grey market. On the basis of his aforesaid deliberations the A.O disallowed 12.5% of the aggregate value of the impugned purchases of Rs. 3,89,55,914/- and made a consequential disallowance of Rs. 48,69,489/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A), but with no success.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of the appeal, has however, failed to put up an appearance before us, therefore, as per Rule 24 of the Appellate Tribunal Rules, 1963, we are constrained to proceed with and dispose off the appeal after hearing the respondent revenue and perusing the orders of the lower authorities.

6. As is discernible from the grounds of appeal, it is the claim of the assessee that as it had duly substantiated the genuineness and veracity of the purchases made from the aforementioned four parties, therefore, the lower authorities were in error in making/sustaining an addition of 12.5% of the aggregate value of the impugned purchases. It is further the claim of the assessee that the lower authorities had failed to point out any defect in the evidence that was furnished by it in support of its claim of having made genuine purchases from the aforementioned parties in question. Further, it is the grievance of the assessee that the A.O had not provided to it the material by drawing support from which its purchases from the aforementioned parties were held to be bogus. Alternatively, it is the claim of the assessee that the disallowance of 12.5% of the aggregate value of the impugned purchases was highly exorbitant and the same was liable to sustained to the extent of its gross profit rate of 3.85% declared in its books of accounts.

7. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that as the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforesaid tainted parties, therefore, the lower authorities had rightly made/sustained addition to the extent of 12.5% of the aggregate value of the impugned purchase transactions.

8. We have heard the Id. Departmental representative (for short "D.R"), perused the orders of the lower authorities and the material available on record. On a perusal of the orders of the lower authorities, we find that the

assessee had failed to substantiate the authenticity of the impugned purchases that were claimed to have been made from the aforementioned parties on the basis of clinching documentary evidence. As observed by us hereinabove, the assessee despite specific directions of the A.O had failed to substantiate the authenticity of the impugned purchase transactions on the basis of the specific documentary evidence that was called for in the course of the assessment proceedings, viz. confirmations of the supplier parties in question, as well as the details of transportation of material that was claimed to have been purchased from the aforementioned parties such as transportation receipts, delivery challans etc. Further, the assessee despite specific directions had failed to produce the aforementioned parties for necessary examination before the A.O. On the other hand, as stated by the A.O, the independent inquiries carried out by him by issuing notices u/s 133(6) had revealed that the purchase transactions in question were not genuine. In our considered view, in the backdrop of the information received by the A.O from the Investigation wing, Mumbai that the assessee had not made any genuine purchases from the aforementioned parties and had only procured bogus purchase bills from them, a very heavy onus was cast upon the assessee to substantiate the authenticity of the aforesaid purchase transactions and dispel all doubts as regards the authenticity of the said purchases transactions. However, we find that the assessee except for relying upon certain self suiting documentary evidence/claims viz. ledger accounts of the parties; bank statements indicating entries of payments made to the aforementioned parties, purchase bills etc., and harping on the fact that the payments to the aforementioned parties were made by account payee cheques and VAT was paid qua the purchase transactions in question, had however, failed to place on record any such clinching evidence which would conclusively prove the genuineness of the impugned purchase transactions.

9. We have given a thoughtful consideration to the facts involved in the case before us, and are in agreement with the view taken by the lower authorities that as the assessee had furnished complete quantitative details as

regards the disposal of materials that were claimed to have been purchased from the aforementioned tainted parties, therefore, the addition in its hands was liable to be restricted only to the extent of the profit element that he would have generated by making such purchases from the unidentified dealers operating in the open/grey market. Insofar the quantification of such profit element is concerned, we find that the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate as that of other genuine purchases. The Hon'ble High Court while concluding as hereinabove had observed as under :

“8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed, that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of the other genuine purchases. We, thus, respectfully following the aforesaid judgment of the Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs. 3,89,55,914/- in the case before us are concerned, by bringing the G.P rate on the amount of such bogus purchases at the same rate as that of other genuine purchases. Although, it is the claim of the assessee that its gross profit rate declared in the books of accounts is 3.85%, however, the same in the absence of any supporting material cannot be accepted on the very face of it. Accordingly, we are of the considered view that the matter in all fairness requires to be restored to the file of the A.O, who is directed to call for the necessary records and after making necessary verifications restrict the addition by bringing the G.P rate as regards the impugned purchases of Rs. 3,89,55,914/- to the same rate as that of the other genuine purchases accounted for in its books of accounts. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the additions in terms of our aforesaid observations. The order passed by the CIT(A) is 'set aside' and the matter is restored to the file of the A.O for the limited purpose to give effect to our aforesaid directions.

10. Resultantly the appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 28.07.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 28.07.2021
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की 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.

सत्यापित प्रति //True Copy//
आदेशानुसार BY ORDER,

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