

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.2869/M/2018  
Assessment Year: 2011-12**

**ITA No.5833/M/2018  
Assessment Year: 2011-12**

M/s. Neon Metals Impex Pvt. Ltd., Shop No.9, 52/52A, Mulji Thakershi Building, Sindhi Lane, Nanubha Desai Road, Mumbai – 400 004 <b>PAN: AACCN5724H</b>	Vs.	Principal Commissioner of Income Tax- 5, Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Neelkanth Khandelwal, A.R.  
Revenue by : Shri Vinay Sinha, D.R. &  
Shri Vijay Kumar Soni, D.R.

Date of Hearing : 12.10.2021  
Date of Pronouncement : 22.11.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the **order dated 28.03.2018 & 29.06.2018 of the Principal Commissioner of Income Tax [hereinafter referred to as the PCIT]** relevant to assessment year 2011-12.

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2. The only issue raised by the assessee is against the revisionary order of Ld. PCIT passed under section 263 of the Act whereby ld PCIT has set aside the order of Dy. Commissioner

of Income Tax, Circle 5(3)(1), Mumbai by directing to examine the purchases of Rs.1,05,98,219/- made from M/s. Apex Ferromate Pvt. Ltd as the impugned order is erroneous and prejudicial to the interest of the revenue.

3. The facts in brief are that the assessee has filed the return of income on 28.09.2011 declaring total income of Rs.50,44,880/-. The case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act after the AO received information from DGIT (Inv.) Mumbai that assessee is beneficiary of hawala purchase bills and accommodation entries to the tune of Rs.1,05,98,219/-. The assessment was framed under section 143(3) read with section 147 of the Act on 18.03.2016 by assessing the income at Rs.63,69,650/- by making an addition of Rs.13,24,777/- towards profit on bogus purchases at the rate of 12.5% on alleged bogus purchases of Rs.1,05,98,219/-. Upon going through the assessment record, the Ld. PCIT observed that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue as the bogus purchase were brought to tax @ 12.50% . Thereafter, another notice dated 19.03.2018 was issued under section 263 of the Act to rectify the minor mistake which has occurred in the earlier notice dated 09.03.2018. Finally, the Ld. PCIT passed the revisionary under section 263 of the Act by setting aside the assessment order on the ground that there is contradiction in the assessment order itself as on the one hand the AO is observing that the purchases are bogus whereas on the other hand is applying a rate of 12.5% to tax the said bogus purchases which is contradictory and thus directed the AO to examine the issue again by holding that the

assessment order is erroneous and prejudicial to the interest of the Revenue.

4. The Ld. A.R. submitted before us that the case of the assessee was reopened specifically after the AO received information from DGIT (Inv.), Mumbai that assessee is beneficiary of hawala purchase bills of Rs.1,05,98,219/- from M/s. Impex Ferromate Pvt. Ltd. and thus the case of the assessee was reopened under section 147 of the Act. Thereafter, the AO called for detailed explanation from the assessee which was complied with by the assessee by furnishing various documents such as purchase bills, bank statements, challans etc. The AO finally, after following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Bolanath Polyfab Pvt. Ltd. (2013) 355 ITR 390 (Guj.) and also another decision in the case of CIT vs. Simit P. Sheth – 356 ITR 451 (Guj.), applied a rate of 12.5% on the bogus purchases of Rs.1,05,98,219/- and thus added a sum of Rs.13,24,777/- to the income of the assessee in the assessment framed under section 143(3) read with section 147 of the Act vide order dated 18.03.2016. The Ld. A.R. submitted that the AO has taken a reasonable possible view of the matter after taking into account the decisions of the Hon'ble Gujarat High Court and also decisions of the co-ordinate Benches of the Tribunal where consistent view of applying 3% to 12.5% on the bogus purchases is taken. Under these circumstances the ld AR prayed that the revisionary order of Ld. PCIT holding that assessment framed as erroneous and prejudicial to the interest of Revenue is incorrect and the same may kindly be quashed. In defense of his argument the Ld. A.R. relied on the decisions of the co-ordinate Bench of the Tribunal

in the case of Rahul Cables Pvt. Ltd. vs. PCIT in ITA No.1168 to 1170/Pun/2017 A.Y. 2009-10 to 2011-12 order dated 04.05.2018 wherein a similar issue has been decided in favour of the assessee by quashing the revisionary order under section 263 of the Act. The Ld. A.R. therefore prayed that the following the said decision of the co-ordinate Bench of the Tribunal the revisionary proceedings and consequent order may kindly be quashed.

5. The Ld. D.R., on the other hand, relied on the order of Ld. PCIT by submitting that no prejudice is caused to the assessee by this order as the AO has been directed to examine the issue again and therefore the Ld. D.R. prayed that the order of Ld. PCIT may kindly be affirmed.

6. After hearing both the parties and perusing the material on record, we find that undisputedly the issue of bogus purchases has been examined in the reassessment proceedings by the AO and after following the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Bolanath Polyfab Pvt. Ltd. (supra) and CIT vs. Simit P. Sheth (supra), the AO has taken a view of 12.5% of the bogus purchases to be added to income. Thus the issue has been examined in detail in the reassessment proceedings and a reasonable view has been taken. However, according to the Ld. PCIT the assessment order is contrary as on the one hand the AO is holding that purchases are bogus whereas on the other hand the AO is applying a rate of 12.5% to tax the bogus purchases and thus came to the conclusion that the assessment order is erroneous and prejudicial to the interest of the revenue and thus set aside the assessment. In our

considered opinion the revisionary proceedings initiated by Ld. PCIT appears to be not correct as he has tried to unsettle a settled position by setting aside the assessment order which is otherwise not erroneous and is in accordance with law and also in consonance with the decisions of High Court and co-ordinate Benches of the Tribunal. The case of the assessee is squarely covered by the decision of the co-ordinate Bench of the Tribunal in the case of Rahul Cables Pvt. Ltd. vs. PCIT (supra) wherein similar issue has been decided in favour of the assessee by quashing the revisionary proceedings as well as the order under section 263 of the Act. The operative part is as under:

“10. We heard both the parties and perused the orders of the Revenue on the issue of bogus purchases and the need for making addition of entire such purchases, copies of decisions etc. We have also gone through the purchase bills, other documents filed in the form of paper book by the assessee. The case of the Pr.CIT in the revision order is that the AO failed to make enquiries before completing the assessment on the claims relating to bogus purchases and the sundry creditor balances. We shall take up all the issues in the subsequent paras.

11. Regarding the allegation of the Pr.CIT relating to bogus purchases, we find the AO has taken up this issue in the re-assessment proceedings u/s.148 of the Act and called for details relating to the purchase of goods, delivery of goods and payment details for the said purchases. At the end of the scrutiny or investigation, AO came to the conclusion of making GP addition of the bogus purchases @20% would meet the ends of justice. AO relied on various decisions for arriving at this decision. Accordingly, AO made addition @20% amounting to Rs.69,55,709/-. Therefore, in our view, it is a case of taking plausible view by the AO on the issue under consideration. In the revision order, the Pr.CIT did not agree with the said view and restored the issue to the file of AO for fresh assessment implying in favour of making addition of entire such purchases. In this process, Pr.CIT ignored the fact relating to existence of various views on this issue. We have also noticed on the issue of bogus purchases, there are various views inviting debates on the requirement of making entire additions or GP additions of various rates or various GP rates etc. Therefore, making addition on account of bogus purchases constitutes a debatable one. As such, the AO has taken one prevailing view in this matter. Therefore, thrusting another view by the Pr.CIT in his revision order in our view is outside the scope of provisions of section 263 of the Act. Therefore, it is not a clear cut case of erroneous assumption of law as made out by the Pr.CIT. Hence, the revision order on this issue is unsustainable in law. Accordingly, relevant grounds raised by the assessee on this aspect are allowed.

12. Regarding the other issue of sundry creditors, we find this issue was discussed by the Pr.CIT in para 6.2 of his order. This issue was not at all taken up in the re-assessment proceedings. The reasons recorded by the AO supports the same. Normally, such issues are taken up in the regular assessment u/s.143(3) of the Act. In this case, there is no such order passed by the AO at the relevant point of time. Further, it is not the case of the Revenue that the issue of sundry creditors was not examined by the AO. In this regard, we also perused the relevant lines from Para No.6.2 and the same is extracted here as under :

“6.2 Further, perusal of the records shows that the Assessing Officer in the re-assessment proceedings failed to examine sundry creditors shown by the assessee company, the details of other purchases, valuation of stock and various expenses as claimed by the assessee company in its profit and loss account, which makes the order not only erroneous but prejudicial to the interest of revenue.. . . .”

Therefore, we find the issues above narrated by the Pr.CIT are general and casual. It is not the case of the Pr.CIT that the above issues were allowed by the AO after due process of verification of scrutiny of the account. As such, AO is not under any mandate to examine sundry creditor account. Further, it is also not the case of the Pr.CIT that there is something erroneous about the sundry creditor account and therefore, the AO failed to make proper/adequate enquiries on this issue. In our opinion, the Pr.CIT's finding is too general and the same is unsustainable. He failed to make out a case that allowing claims of the assessee on this issue amounts to erroneous order of the AO in so far as it is prejudicial to the revenue. In the absence of any categorical finding on erroneous assumption of law/fact leading to loss of revenue, the finding of the Pr.CIT is not sustainable. Therefore, we are of the opinion that the directions given by the Pr.CIT are liable to be quashed. Accordingly, the re-assessment order of the AO is restored. The grounds raised by the assessee are allowed.

13. In the result, appeal of the assessee is allowed.”

7. Since the facts before us are materially same, therefore respectfully following the order of co-ordinate Bench of the Tribunal we quash the revisionary proceedings and order passed under section 263 of the Act and consequently the reassessment passed by the AO is restored. Accordingly, the appeal of the assessee is allowed.

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8. The issue involved in the present appeal is identical to the one as stated above in ITA No.2869/M/2018 for A.Y. 2011-12. Therefore, our finding in ITA No.2869/M/2018 for A.Y. 2011-12,

mutatis mutandis, would apply to this appeal as well.  
Accordingly, the appeal of the assessee is allowed.

9. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 22.11.2021.**

**Sd/-**  
**(Amarjit Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 22.11.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.