

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.577/Mum/2020
(Assessment Year :2008-09)**

Shri Pravin Bhanwarlal Gandhi Room No.B, 2 nd Floor 199/201, Shaikh Memon Street Mumbai	Vs.	ITO Ward – 20(2)(5) Room No.217, 2 nd Floor Piramal Chambers, LLbaug Parel, Mumbai – 400 012
PAN/GIR No.AEPPG7070E		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri R A Dhyani
Date of Hearing	11/04/2022
Date of Pronouncement	29/ 04/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.577/Mum/2020 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-55, Mumbai in appeal No.CIT(A)-55/ITO-20(2)(5)/IT-72/2019-20 dated 28/11/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2016 by the Id. Income Tax Officer- 20(2)(5), Mumbai (hereinafter referred to as Id. AO).

2. The ground No.1 raised by the assessee is on violation of principles of natural justice.

2.1. The ground No.2 raised by the assessee is challenging the validity of re-assessment u/s.147 of the Act.

2.2. The ground No.3 raised by the assessee is challenging the addition made on account of ingenuine purchases in the sum of Rs.1,08,04,800/-.

3. None appeared on behalf of the assessee. In fact, this appeal was preferred by the assessee on 24/01/2020. Thereafter, the appeal was listed for hearing on 11/08/2021, 27/09/2021, 22/11/2021, 06/01/2022 and finally adjourned to 11/04/2022. We find that on none of these occasions, the assessee secured his presence in person or through his authorised representative. Even written submissions were not filed by the assessee in support of the grounds of appeal raised before us. Since sufficient opportunities have been given to the assessee in the instant case, we deem it fit to hear the Id. DR and dispose of this appeal based on the materials available on record. We find that even before the Id. CIT(A), none appeared on behalf of the assessee. But we find the Id. CIT(A) had disposed of all the grounds of appeal of the assessee by giving an elaborate finding in this regard and also disposed of the appeal on merits. Sufficient opportunities were indeed given to the assessee which has not been utilised by the assessee. Hence, the ground No.1 raised by the assessee stating that there was violation of principles of natural justice is dismissed herein.

3.1. The ground No.2 raised by the assessee is challenging the validity of re-assessment. We find that assessee is an individual and proprietor of

M/s. Nakoda Silver House engaged in wholesale trading and manufacturing of silver utensils and ornaments. The return of income for the A.Y.2008-09 had been filed by the assessee u/s.139(1) of the Act on 29/09/2008 declaring total income of Rs.12,47,660/-. In the said return, the assessee had offered income from house properties, business income and income from other sources. The assessment was completed u/s.143(3) of the Act on 23/12/2010 determining total income at Rs.14,56,992/-. Subsequently, the assessee's case was sought to be reopened u/s.147 of the Act and notice u/s.148 of the Act was issued and served on 31/03/2015 after due recording of reasons by the Id. AO. In the reasons recorded, the Id. AO mentioned that there was an information received from DDIT Investigation, Mumbai that a person named Shri Bhanuram Aidanji Desai (B A Desai) had opened bank accounts in various names and had the practice of opening bank accounts and closing the same within a short period of time. Since assessee had certain transactions with that person to the tune of Rs.1,08,04,800/- by way of ingenuine purchases, the Id. AO observed that income of the assessee had escaped assessment within the meaning of Section 147 of the Act. The law is very well settled that sufficiency of reasons need not be gone into while recording the satisfaction that income of the assessee had escaped assessment within the meaning of Section 147 of the Act. It is noted that there is prima facie material that income of the assessee had escaped assessment. In the instant case, Shri B.A. Desai had opened and closed the bank accounts after holding it for a very short period of time and in that said bank accounts lot of monies were deposited and immediately withdrawn in cash. The assessee also was found to be one of the beneficiaries of having said bank transactions with Shri B.A. Desai and the same constitutes prima facie material available with the Id. AO while recording the reasons for reopening. In response to notice u/s.148 of the

Act, the assessee filed a letter dated 09/04/2015 stating that return already filed may be treated as a return in response to notice u/s.148 of the Act. The reasons recorded for reopening of assessment were duly furnished to the assessee. The assessee filed preliminary objections vide letter dated 28/07/2015 and the said objections were disposed of by a speaking order by the Id. AO dated 28/05/2015. The assessee again filed yet another letter dated 14/09/2015 objecting to reopening of assessment. The same was also disposed of by way of speaking order by the Id. AO vide order dated 29/01/2016. Hence, the entire legal procedure that were contemplated by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., reported in 259 ITR 19 were duly complied with by the Id. AO in the instant case. Hence for the aforesaid reasons, we hold that the Id. AO had validly assumed his jurisdiction for reopening the assessment u/s.147 of the Act. Accordingly, the ground No.2 raised by the assessee is hereby dismissed.

3.2. The Id. AO observed that assessee had booked bogus expenditure to the tune of Rs.1,08,04,800/- through the bank accounts of the concerns viz. M/s. Balaji Enterprises, M/s. Oswal Traders, M/s. Jay Ambe Trading Company, M/s. Ramdev Bullian which are also managed and controlled by Shri B.A. Desai. The Id. AO observed that the amounts credited in the bank accounts of these concerns are withdrawn in cash immediately or withdrawn after transferring the same to other bank accounts. The Id. AO also observed that on examination of the audited financials of the assessee company, it had made purchases from M/s. Balaji Enterprises. Since, M/s. Balaji Enterprises had been found to be an accommodation entry provider, the Id. AO directed the assessee to explain the veracity of purchases made from M/s. Balaji Enterprises. The assessee furnished the details of purchases, sales, bank statements and stock register before the

Id. AO. The Id. AO issued notice u/s.133(6) of the Act to M/s. Balaji Enterprises and summons u/s.131 of the Act to Shri B A Desai and the said notices were returned unserved with remarks "not known". Accordingly, the Id. AO proceeded to disallow the entire purchases of Rs.1,08,04,800/- on the ground that assessee had issued cheques to M/s. Balaji Enterprises which had been immediately withdrawn in cash from the said bank account and hence the purchases were ingenuine. This action of the Id. AO was upheld by the Id. CIT(A).

3.3. Admittedly, we find that assessee had furnished the details of corresponding sales made out of purchases together with the stock registers and bank statements. Payments to M/s. Balaji Enterprises had been made by way of account payee cheques by the assessee. Since M/s. Balaji Enterprises was one of the concerns managed by Shri B A Desai whose bank accounts operation were found to be suspicious as detailed hereinabove, the lower authorities had doubted the veracity of transactions carried out by the assessee with M/s. Balaji Enterprises. Even though it has been recorded in the orders of the lower authorities that soon after the cheques are deposited in the bank account of M/s. Balaji Enterprises, the amounts were withdrawn in cash, there is absolutely no evidence brought on record by the lower authorities to prove that the said cash had been handed over to the assessee. In other words, there is no evidence brought on record to prove the cash trail with the purchases made by the assessee warranting making of disallowance of purchases. However, the assessee also had not discharged its onus beyond doubt in as much as the assessee was not able to explain as to why the notice u/s.133(6) of the Act could not be served on the addresses given by the assessee and he has also not bothered to produce any confirmation from M/s. Balaji Enterprises either during the course of assessment

proceedings or during the course of appellate proceedings or even before us. We find that the primary suspicion based on the corroborative evidences gathered by DDIT Investigation Wing, Mumbai regarding the transactions of Shri B A Desai vis-à-vis M/s. Balaji Enterprises still remains. Since assessee had carried out certain purchase transactions with such suspicious parties, the onus is more on the assessee to prove that it has debited genuine expenditure in its books. It is the case of the Revenue that assessee had debited purchases from M/s. Balaji Enterprises. It is not in dispute that the corresponding sales made out of purchases together with stock register has been produced by the assessee before the lower authorities. Hence, it would be just and fair to tax only the profit element embedded in the value of such purchases. Considering the industry in which assessee is engaged, we deem it fit and appropriate to estimate such profit element at 5% of the value of purchases, which in our considered opinion, would meet the ends of justice. Accordingly, the ground No.3 raised by the assessee is partly allowed.

4. In the result, appeal of the assessee is partly allowed.

Order pronounced on 29/ 04 /2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/ 04 /2022
KARUNA, *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,

(Asstt. Registrar)
ITAT, Mumbai