

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
 SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3702/Mum/2017  
 (A.Y. 2010-11)**

Payal Enterprises P. Ltd. Cabin No. 2-A, 111, Satyam Shopping Centre, M.G. Road, Ghatkopar, (East), Mumbai – 400 077	Vs.	The ACIT, Circle 1 Mohan Plaza, 1 <sup>st</sup> Floor, Wayale Nagar, Khadakpada, Kalyan (West), 421301
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCP6567B		
Appellant	..	Respondent

Appellant by :	M.S. Mathuria
Respondent by :	C.T. Mathews

Date of Hearing	18.05.2022
Date of Pronouncement	28.07.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-1, Mumbai, which in turn arises from the order passed by the A.O u/s 144 r.w.s 147 of the Act for A.Y.2010-11. The assessee has raised the following grounds before us:

“(1) *On the facts and in law, learned CIT (Appeals) has erred in holding.....*

[a] *that initiation of proceedings u/s. 147/148 by the assessing officer is legal and the said assessing officer is having valid jurisdiction.*

- [b] *that the assessing officer has provided alleged information received from the Sales Tax Department to the appellant for filing his objection,*
- [c] *that the assessing officer has provided his alleged recorded reasons and belief of escapement of income to the appellant for filing his objection:*
- [d] *that the assessing officer has obtained approval u/s 151 before initiation of impugned reassessment proceedings.*
- (2) *On the facts and in law, learned CIT (Appeals) has erred in holding that the assessing officer has served legal and valid statutory notice u/s 143(2) to the appellant before passing impugned assessment order.*
- (3) *On the facts and in law, learned CIT (Appeals) has erred in sustenance of impugned addition of Rs.62,90,618 by the assessing officer without taking due cognizance of submissions with supporting documents filed before him in support of the legal contentions of the appellant that impugned addition to returned income made by the assessing officer.....*
- (a) *solely relying on alleged information received from the Sales Tax Department for forming his alleged belief of escapement of income of the appellant without any investigation by him;*
- (b) *solely relying on alleged affidavits filed by certain persons before the Sales Tax Department without providing certified copies thereof to the appellant for its rebuttal and without producing such deponent for cross examination by the appellant.*
- (4) *On the facts and in law, it is humbly prayed that impugned order may kindly be annulled /quashed under the provisions of the law as impugned assessment order is bad in law ab initio and is passed without legal and valid jurisdiction, without supplying certified copies of required informations/affidavits, without service of statutory legal notice u/s 143(2), without affording any opportunity of hearing and without producing such deponent for cross examination by the appellant.*
- (5) *The Appellant crave leave to add, to alter and/or amend the foregoing ground and to make new or additional submissions at the hearing of the appeal as well as to submit fresh documents and information as advised.”*

2. The fact in brief is that return of income declaring income of Rs.32,09,220/- was filed on 23.09.2010. Assessment u/s 143(3) of the Act was completed on 27.03.2015 determining total income at Rs.94,99,840/-. Subsequently, the A.O has received information from the

Sale Tax Department that assessee has obtained accommodation entries from the following parties:

Sr. No.	Name of the Party	TIN	Amount (Rs.)
1.	Arihant Traders	27230613104V	598560
2.	Savita International	27460654736V	1014349
3.	Bright Corporation	27490198480V	1391728
4.	Subhlaxmi Sales Corporation	27490615192V	1112092
5.	Rahul Traders	27590509892V	1163890
6.	Darshan Sales Corporation	27920382883V	1009999
	Total		6290618

Therefore, the A.O has reopened the assessment by issuing notice u/s 148 of the Act on 09.12.2013. In response to notice u/s 148 the A.O. filed letter dated 06.01.2014 stating that return filed on 11.08.2009 be treated as return filed in compliance to notice u/s 148 of the Act. During the course of assessment the A.O has not made compliance, therefore, reassessment proceedings u/s 144 r.w.s 147 of the Act was completed ex-parte by treating the aforesaid purchases made from 6 parties to the amount of Rs.62,90,618/- as unaccounted purchases and same was added to the total income of the assessee.

3. Aggrieved, the assessee filed by the appeal before the ld. CIT(A). During the course of assessment before the ld. CIT(A) the assessee company filed affidavit stating that assessee company had not taken any entries for bogus purchases as alleged by the A.O. It was also submitted before the ld. CIT(A) that the assessee company had purchased goods from various suppliers and those purchases were duly recorded in audited books of accounts of the assessee company. It was also submitted that all payments for such purchases were made by crossed account payee cheques and such purchased goods were duly sold to various dealers/consumers and full details were filed with the A.O in the

scrutiny proceedings for captioned assessment year. The assessee has also submitted before the Id. CIT(A) that copies of information received by the A.O. from the Sale Tax Department were not provided to the assessee company. It was also submitted that assessee company has also filed copies of ledger account, copies of tax invoices issued by the supplier, copies of bank account of the assessee showing payment through cheques, detailed statement of disposal of purchases effected from the said supplies to various customers with copies of sale invoices and ledger account of such respective buyers. However, the Id. CIT(A) held that in absence of quantitative details and stock register there was valid ground to held that the assessee must have inflated its purchases to reduce the taxable profit. Therefore, the appeal of the assessee was dismissed.

4. On identical issue and similar facts we have already adjudicated the appeal of the assessee pertaining to assessment year 2009-10 vide ITA No. 3701/Mum/2017. The relevant part of the operating para of the decision is as under:

*“4. Heard both the sides and perused the material on record. The assessment in the case of the assessee was completed on 15.12.2011 u/s 143(3) of the Act. The case was reopened on the basis of information received from the sale tax department that assessee had obtained accommodation entries of purchases from the certain parties to the amount of Rs.1,15,38,491/- without supplying of any material by the said parties. The A.O had disallowed the 100% of such purchases to the amount of Rs.1,15,38,491/-. The Id. Counsel has contended that purchases from alleged supplier as well as their sales were duly recorded in the regular books of account with supporting invoices/ledger account. No copy of information and cross examination was allowed to the assessee. The assessee had filed copies of ledger account, copies of tax invoices issued by the supplier, copies of bank account of the assessee showing payment made through cheque, detailed statement of disposal of purchases effected from the said parties to various customers with copies of sale invoices and ledger account of such respective buyers. It was also submitted that A.O relied on information from the website of Maharashtra Sales Tax Department without making any further inquiry. The Id. Counsel also*

*submitted that in the case of the assessee, the assessment was made or the assessment year 2009-10 and the Hon'ble Bombay High Court (copy placed in the paper book) sanctioned the amalgamation between Payal Enterprises Pvt. Ltd. & Fortran Steel Pvt. Ltd. w.e.f 01.06.2010. In the paper book the assessee has also placed gross profit ratio chart showing gross profit and sales from assessment year 2006-07 to A.Y. 2010-11. In the Financial Year 2005-06 & 2006-07 the gross profit of the assessee was at 2.57% and 2.65%, respectively. During the financial year under consideration the gross profit of the assessee company was 3.38% as compared to gross profit of 2.93% in F.Y. 2008-09. It was also explained that there was tremendous increased in the turnover of the assessee to the amount of Rs.65,37,45,410/- as compared to turnover of Rs.42,34,66,111/- recorded in the preceding year. The assessee has also placed the corresponding quantity of sale & purchase made in all these years. In the light of the above facts the assessee contended that A.O had not disproved the corresponding sales of purchased item made by the assessee during the year under consideration. The assessee has also placed reliance on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of DCIT Vs. Mohd. Hazi & Adam & Company, vide ITA No. 1004 of 2016 wherein held that purchases cannot be rejected without disturbing the sales. The relevant part is reproduced as under:*

*"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. 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 sales 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 trader. 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.”*

*The ld. Counsel has also placed reliance on the decision of ITAT, Mumbai in the case of M/s Kanak Impex (I) Vs. ITO vide ITA No. 7152/Mum/2016 dated 26.06.2019 wherein the A.O was directed to restrict the addition limited to the extent of bringing the G.P. rate of disputed purchases at the same rate of other genuine purchases after following the decision of the Hon’ble Bombay High Court as supra in the case of M/s Md. Hazi Adam & Company. Following the decision of the Hon’ble Jurisdictional High Court and decision of the ITAT, Mumbai on the identical issue on similar facts we direct the A.O to restrict the addition limited to the extent of bringing the gross profit rate on disputed purchases at the same rate of other genuine purchases. Therefore, ground no. 3 of the assessee is partly allowed. The other ground of appeal of the assessee pertaining to the issuance of notice u/s 148 i.e 1,2 & 4 were not discussed during the course of appellate proceedings before us, therefore ,the same stand dismissed.*

5. After following the decision of ITAT in the case of the assessee itself as supra we direct the A.O to restrict the addition to the extent of bringing the gross profit rate of disputed purchases at the same rate of other genuine purchases. Accordingly, ground no. 3 of the assessee is partly allowed. The other ground of appeal of the assessee pertaining to issuing of notice u/s 148 i.e 1, 2 & 4 were not discussed during the course of appellate proceedings, therefore, the same stand dismissed.

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

Order pronounced in the open court on 28.07.2022

Sd/-  
(Amit Shukla)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 28.07.2022

PS: Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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

(Asst. Registrar)  
ITAT, Mumbai