

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5672/Mum/2018
(A.Y: 2010-11)

M/s Ishardas Aggarwal & Sons 39, Latif House, Sant Tukaram Road, Iron Market, Mumbai – 40009	Vs.	ITO – 17(2)(1) 123B, 1 st Floor, Aayakar Bhavan, New Marine Lines, Mumbai – 400020.
PAN/GIR No. : AABF12423E		
Appellant	..	Respondent

Appellant by :	Shri Vimal Punmiya.AR
Respondent by :	Shri R.P.Veena.DR

Date of Hearing	25.08.2022
Date of Pronouncement	29.08.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 56, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.*

2. On the facts and circumstances of the case and in law the Ld CIT (A) failed to consider that reassessment proceeding cannot be initiated.

a) No reassessment can be made just to make an enquiry or verification.

b) Reassessment proceeding cannot be initiate merely on the information received from investigation wing.

c) Reassessment proceeding cannot be initiated when the LD. CIT (A) have reason to suspect and not reason to believe.

3. The Ld CIT(A) erred in confirming and treating being 3 percent of the total purchases of Rs.3,67,31,998/- as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee.

4. The Ld. CIT (A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act 1961.

5. The Ld. CIT (A) erred in confirming the initiation of the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.

6. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee is engaged in the business of trading in iron and steel pipes. The assessee has filed the return of income for

the A.Y 2010-11 on 28.09.2010 disclosing a total income of Rs. 41,907/- and the return of income was processed u/s 143(1) of the Act. The assessing Officer(A.O) has received the information from DGIT(Inv) Mumbai / Sales Tax Department, Maharashtra that the assessee has obtained accommodation entries/bogus purchase bills from 17 parties aggregating to Rs.3,67,31,998/- Therefore the A.O. has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act and in compliance to the notice, the assessee has filed a letter to treat the original return of income against the notice u/s 148 of the Act. Subsequently, the AO issued notice u/s 142(1) of the Act calling for various details and information. The assessee has filed the reply on 22-02-2016 along with partial details.

3. The A.O was not satisfied with the explanations and details and observed that the assessee has failed to produce the suppliers of goods and dealt exhaustively on the factual aspects and relied on the judicial decisions and finally considering the profit margin estimated the income@12.5% of non genuine purchases of Rs.3,67,31,998/- which worked out to

Rs.45,91,500/- and assessed the total income of Rs.46,33,407/-and passed the order u/sec 143(3) r.w.s147 of the Act dated 23-03-2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the A.O, and judicial decisions and has restricted the addition @ 3% of alleged bogus/non genuine purchases and partly allowed the appeal. Aggrieved by the CIT(A)order, the assessee and revenue has filed an appeal before the Tribunal.

5. We heard the rival submissions and perused the material on record. The Ld.AR submitted that earlier the Hon'ble Tribunal in the assessee appeal gave relief to the assessee by setting aside the matter to the file of the AO with a direction to restrict the addition by bringing gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases and in respect of the appeal filed by the revenue it was ex-parte dismissed. Whereas, the revenue aggrieved by the ITAT order passed in the assessee's appeal has filed a Miscellaneous application(M.A) seeking recall of the

Honble Tribunal order passed in the assessee appeal. The Honble Tribunal in the M.A. has recalled the order passed and posted the appeal for hearing. Against the order passed by the ITAT in revenues appeal, the revenue preferred appeal to the Honble High Court of Bombay.

6. Subsequently Jurisdictional Honble High Court in the Batch of similar appeals including the assessee case (ITA.No.8702 of 2021) has passed the order. We find the Honble High Court in ITA.No.5823/8702/8706/9209/9917/12204/12313/15404 of 2021 & ITA.No.266 of 2022 has disposed off the appeals on 16-03-2022 and observed at page 2 & 3 of the order which is read as under:

1. Mr. Suresh Kumar states that substantial questions of law proposed in these appeals are squarely covered by the orders passed by this court in the cases of The PCIT-17 Vs. M/s. Mohommad Haji Adam & Co. and PrCIT-4 Vs. M/s Paramashakti Distributors Pvt Ltd and therefore the appeals could be disposed.

2. Accordingly, all the appeals disposed.

7. We respectfully follow the observations of the Honble High Court and restore the disputed issue in the assessee appeal to the file of the Assessing Officer

to decide on merits applying the ratio of the decision of the PCIT Vs. M/s Mohommad Haji Adam & Co and partly allow the grounds of appeal of the assessee for statistical purpose.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29.08.2022.

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29.08.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai