

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) &  
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No2579/MUM/2019 - A.Y. 2008-09  
ITA No2580/MUM/2019 - A.Y. 2009-10  
ITA No2581/MUM/2019 - A.Y. 2010-11  
ITA No2582/MUM/2019 - A.Y. 2011-12  
ITA No2583/MUM/2019 - A.Y. 2012-13

M/s Karma Industries Limited 101, Vasu Villa, Amar Jyot Compound, Opp to MTNL, Kandivali West, Mumbai <b>PAN : AAACS7557H</b>	vs	The Asst. Commissioner of Income Tax, Central Circle-36, Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Prateek Jha, Adv.
Department represented by	Shri Rakesh Ranjan, CIT DR

Date of hearing	22/09/2022
Date of pronouncement	28/09/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

These appeals have been filed by the assessee as against order of Ld. Commissioner of Income-tax (Appeals)-53, Mumbai, all dated 26/11/2015 passed under section 250 of the Income-tax Act, 1961, relevant to assessment years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13.

2. These appeals challenge the assessment orders passed under section 143(3) read with section 153C of the Income-tax Act, 1961 by the Assessing Officer and subsequently confirmed by the Ld.CIT(A).

3. The facts in all the appeals being similar except for the quantum specified in these appeals, we hereby pass a consolidated order, for the sake of convenience. For brevity, we have considered assessment year 2008-09 as the lead case.

4. The assessee filed its return of income on 26/09/2008 declaring total income of Rs.48,64,877/-. Subsequent to the search action conducted on 21/07/2011 under section 132 of the Income-tax Act in the case of Shri Rajesh Mehta, who is the director the assessee company and a survey action at the premises of the assessee company, assessment order under section 143(3) read with section 153C dated 26/03/2014 was passed determining total income at Rs.2,93,92,537/-. The assessee was asked to furnish the details of purchases and sales made in the relevant assessment years by the Assessing Officer wherein the assessee has submitted the details of purchases from the following hawala parties:-

S.No	Name of the party	Amount (Rs.)
1.	M/s KRC Trading Co. Pvt Ltd	1,14,79,550
2.	M/s B.A. Trading Co. Pvt Ltd	28,04,49,628
3	M/s Expansion Trading Co. Pvt Ltd	32,39,61,332
<b>TOTAL</b>		<b>61,58,90,510</b>

5. It was observed by the Assessing Officer that the said purchases made by the assessee pertaining to the parties referred to above are bogus parties as per the enquiries conducted by the Sales-tax Department, Maharashtra. The same sellers were appearing in the official website of the Sales-tax Department as hawala dealers, who were in the business of providing bogus bills. The notices under section 133(6) sent to the concerned persons were also returned unserved in some cases. Upon enquiry at the premises of M/s KRC Trading Pvt Ltd, the Assessing Officer observed that there was no such party existing at the

given address. The Assessing Officer also stated that on verification of the bank statements of these parties, it is evidenced that there has been layering of amounts in various accounts resulting in cash withdrawals in one or the other account. From the said transactions, the Assessing Officer concluded that there was no actual business transaction carried out in these companies. The Assessing Officer has gone further in making independent enquiries related to 16 parties including M/s KRC Trading Co. Pvt Ltd in which the assessee has shown huge purchases. The bank transactions revealed deposits by way of cheques and thereafter immediate withdrawals of cash or transfer of money to other accounts and subsequent withdrawal from the said accounts. On a statement recorded under section 131 of the I.T. Act from Shri Dharmendra Darjee, who is one of the directors of M/s KRC Trading Co Pvt Ltd and also proprietor of M/s S.P. Corporation revealed that he was acting as a mere face-man of Shri Chandrakant Chitalia, who obtained signed blank cheques from Shri Dharmendra Darjee for which some amount of commission was received. The Assessing Officer also obtained statement of Shri Sooraj M Pathak, director of M/s Expansion Trading Co. Pvt Ltd. The statements of these persons establish the modus operandi of these companies, who had no genuine business transactions and was only into the business of accounting bogus purchases and issuing of bogus sales bills without any actual business carried out. The Assessing Officer further stated that on examination of the ratio of bogus purchases with that of the total purchases, it is evident that the ratio was as high as 52% for the impugned assessment year and similar modus operandi was found to be followed in the subsequent assessment years, 2009-10 to 2012-13 by the assessee. Transaction has also been found from M/s Shivani Hot rolled Steels Pvt Ltd where assessee had made bogus purchases to

the tune of Rs.72,37,200/- from the said company, which, director has also agreed to providing accommodation entries without any actual business transaction. It was also observed that the directors of the assessee company for assessment year 2008-09 have been changed and thereupon huge bogus purchases were shown in the books of the assessee company. The Assessing Officer inferred that out of the total purchases, the purchases from bogus / hawala parties amounted to 33% to 71% in all the impugned assessment years.

6. It is observed by the Assessing Officer that the sales made by the assessee to many reputed companies such as HDIL, Patel Engineering, M/s Unity Infra Projects Ltd, M/s K Amish Kumar and M/s Valecha Engineering Ltd, etc being searched by the Investigation Wing of the department, who has failed to establish the genuineness of the transaction with the assessee company and its associate concerns. As the assessee failed to furnish documentary evidence pertaining to the purchases and sale and due to lack of maintenance of proper records, the Assessing Officer rejected the assessee's books of account as per the provisions of section 145(3) of the I.T. Act. The Assessing Officer further estimated 2% on the accommodation entries provided by the assessee by rejecting the claim of Shri Rajesh Mehta, director of the assessee company, who stated that commission @1% was only received for such accommodation entries. The Assessing Officer rejected the claim of 1% commission on the ground that the assessee company has failed to furnish details as to the commission estimated on the total turnover on such bogus / accommodation entries. The Assessing Officer added Rs.2,38,22,923/-being 2% as commission income on the bogus transaction of Rs.119,11,46,132/- which included all the expenses of the assessee company including the commission paid by the assessee to other hawala dealers. On an appeal

before the Ld.CIT(A) on the addition made by the Assessing Officer, the Ld.CIT(A) confirmed the addition made by the Assessing Officer alongwith 2% commission on the bogus transactions on the ground that the assessee has failed to prove that the commission received by the assessee was @1% on the bogus transaction. The Ld.CIT(A) also confirmed the action of the Assessing Officer in rejecting the books of account of the assessee as per provisions of section 145(3) of the I.T. Act.

7. Further to this, the assessee had also claimed deduction under Chapter VIA of Rs.7,04,737/- which was rejected by the Ld.CIT(A) on the ground that the assessee has failed to furnish any supporting documentary evidence pertaining to the claim of the assessee.

8. The assessee is in appeal before us as against the order of the Ld.CIT(A) on the ground of rejection of books of account under section 145, on addition, being 2% of the bogus sales and on the disallowance of deduction claimed under Chapter VIA.

9. The assessee has also preferred an additional ground of appeal in all these appeals challenging the action of the lower authorities in not appreciating the third party evidence which were used for passing the orders without granting the assessee, copies of evidences and opportunity to the assessee to present on the same.

10. The Ld.AR for the assessee contended that the director of the assessee company, Shri Rajesh Gunvantrai Mehta had admitted that the assessee company has only provided accommodation entries to M/s Modern Road Makers Pvt Ltd and M/s IDSS Infrastructure Pvt Ltd and to its associated concerns, M/s Acclaim Industries Ltd, which are said to be functioning from the same premises of the assessee company. This is evident from the assessment

order on page 2. The Ld.AR further stated that the assessee company was receiving commission @1% on such accommodation entries and the estimation of 2% by the lower authorities is an exorbitant rate charged on the assessee company.

11. The Ld.DR, on the other hand, contended that the assessee before us nor before the lower authorities has filed any documentary evidence such as bank accounts, confirmation from the parties, etc. pertaining to the bogus transactions. The Ld.DR further stated that the assessee has not filed any details as to the percentage of commission charged by the assessee company and also the details from whom such commission was taken. The Ld.AR stated that there is no evidence of return of income filed by the alleged parties. It is also stated that in the statement of the director of the assessee company, he has admitted that they are only into providing accommodation entry, has not been retracted till date.

12. Having heard the rival submissions and perused the materials on record, we proceed to decide grounds 2 & 3 where ground 1 is of general nature and needs no adjudication. Grounds 2 & 3 raised by the assessee pertains to the rejection of books of account as per the provisions of section 145(3) and on the addition of the impugned amount @2% of the sales as net income of the assessee. With regard to the issue pertaining to the rejection of books of account of the assessee company, the Ld.AR has placed his reliance on the decision of Punjab & Haryana High Court in the case of Commissioner of Income-tax, Patiala vs Dhulla Ram, Labour Contractor (2014) 42 taxmann.com 349 wherein it was held that in the case of cash credit under section 68 of the I.T. Act and where the Assessing Officer has rejected the books of account of the assessee in its entirety, the Assessing Officer cannot rely on any entries

pertaining to the books of account of the assessee rejected by the Assessing Officer for making an addition under section 68 of the Act. The Ld.AR also relied on the decision of the Hon'ble High Court of Rajasthan in the case of G.K. Contractor (2009) 19 DTR 305 (Raj). The Ld.DR contended that the facts of the above decisions pertain to trading account which is not the case in the case of the assessee.

13. Upon consideration of the submissions made by either parties, we are of the opinion that the Assessing Officer has rejected the books of account on the fact that the assessee has failed to maintain proper records and owing to other irregularities, the Assessing Officer has made the assessment in the manner provided in section 144 of the Act by invoking the provisions of section 145 as the books maintained by the assessee were not reliable. The same has been confirmed by the Ld.CIT(A). We do not find any infirmity in the order of the Ld.CIT(A) in rejecting the books of account of the assessee, thereby we uphold the order of the Ld.CIT(A) and reject ground 2 of the appeal filed by the assessee.

14. Ground 3 pertaining to the addition made on the basis of 2% commission on the alleged bogus sales. The Ld.AR for the assessee submitted that the assessee may be given one last opportunity for producing additional evidence which were placed before us by way of confirmation letters from parties and other relevant details as additional evidence pertaining to the claim of 1% commission. The confirmation letters from the parties produced by the Ld.AR, in our opinion, needs to be thoroughly examined and enquired into by the Assessing Officer as to the genuineness of the said documents. We also observe that the said confirmation letters did not have details of name, PAN, etc of the persons, who have signed them. We further observe that

some signature in the said confirmation letters were found to be identical with that of others. On this note, we direct the Assessing Officer to make a thorough enquiry pertaining to the said additional evidences to be furnished by the assessee and also to examine the genuineness of the persons furnishing the confirmation letters. With these observations, we remand this issue to the file of the Assessing Officer for admitting additional evidences and for considering this issue on merits based on the submission of the assessee. We also direct the Assessing Officer to consider on merits as to how 2% commission on the estimated sales has been arrived at by the Assessing Officer, in case the submission of the assessee on additional evidence is not to the satisfaction of the Assessing Officer. This ground of appeal is allowed, for statistical purpose.

15. Ground 4 pertains to the disallowance of deduction claimed under Chapter VIA of Rs.7,04,737/- made by the Assessing Officer and thereafter confirmed by the Ld.CIT(A).

16. The Ld.AR contended that the donation made to charitable trust was disallowed for want of documentary evidence by the Assessing Officer. When confronted with, the Ld.AR stated that only ledger account pertaining to the said transaction was available with the assessee. In the circumstances, we are inclined to dismiss this ground of appeal for lack of evidence to substantiate the claim of the assessee. In the result, ground 4 filed by the assessee is dismissed.

17. In the result, appeal of the assessee is partly allowed for statistical purpose.

**ITAs No. 2580/Mum/2019 – A.Y. 2009-10**

18. Grounds 1 to 3 of this appeal are identical to that of ITA No.2579/Mum/2019 and the decision arrived at therein will apply mutatis mutandis to these grounds.

19. Ground 4 pertains to addition of unsecured loan of Rs.6,72,32,000/- as unexplained cash credit under section 68 of the I.T. Act made by the Assessing Officer and confirmed by the Ld.CIT(A) and ground 5 pertains to the addition made of share capital and share premium of Rs.47,34,75,000/- as unexplained cash credit under section 68 made by the Assessing Officer and confirmed by the Ld.CIT(A).

20. The Ld.AR for the assessee contended that both these grounds were dismissed by the Ld.CIT(A) for the reason that the assessee has failed to furnish necessary confirmations, bank accounts, income-tax returns, etc. of the loan creditors and in case of share premium, the assessee has failed to prove the identity and financial capacity of the 21 parties, who were said to have invested in share capital and share premium of the assessee company and also on the ground that the genuineness of the said transaction was not proved by the assessee.

21. The Ld.AR submitted that the assessee may be given one last opportunity to furnish the relevant details and documentary evidences to substantiate the claim of the assessee before the Assessing Officer. Even on this ground, we are inclined to remand the issue to the file of the Assessing Officer for providing one final opportunity to the assessee to produce the relevant details in support of its claim.

22. In the result, appeal of the assessee is partly allowed for statistical purpose.

**ITA No.2581/Mum/2019**

23. The grounds in this appeal are identical to that of the appeal decided by us above and therefore, the decision appended therein would apply to this appeal mutatis mutandis.

24. In the result, appeal is partly allowed.

**ITA No.2582/Mum/2019**

25. The grounds raised in this appeal are identical to that in appeal No.2579/Mum/2019 which we have already decided elsewhere in this order. Therefore, the decision arrived at against appeal in ITA No.2579/Mum/2019 shall be applied mutatis mutandis, in this appeal.

26. In the result, appeal is partly allowed for statistical purpose.

**ITA No.2582/Mum/2019**

27. The grounds raised in this appeal are identical to that in appeal No.2579/Mum/2019 which we have already decided elsewhere in this order. Therefore, the decision arrived at against appeal in ITA No.2579/Mum/2019 shall be applied mutatis mutandis, in this appeal.

28. In the result, appeal is partly allowed for statistical purpose.

29. The assessee has filed additional grounds of appeal in all these appeals wherein ground 1 pertains to furnishing of copies of third party evidence relied upon by the lower authorities and for giving opportunity to the assessee to present its stand in the matter. As the other grounds of appeal are remanded back to the Assessing Officer, we direct the Assessing Officer to furnish the assessee the copies of the third party evidences relied upon by the lower authorities and to facilitate an opportunity to the assessee to counter the same.

30. Ground 2 of the additional ground raised by the assessee is premature and is liable to be dismissed.

31. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced in the open Court on 28<sup>th</sup> September, 2022.

Sd/-	sd/-
<b>(OM PRAKASH KANT)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 28/09/2022

Pavanan

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

**ITAT, Mumbai**