

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

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA No. 766/MUM/2022 (A.Y. 2011-12)

M/s. Ravi Developments 76, Laxmi Palace, Mathurdas Road Kandivali (W), Mumbai - 400067 PAN: AAAGR2516G	v.	ACIT –Central Circle – 2 Ashar I.T. Park, 6 th Floor Road No. 16Z Wagle Industrial Estate Thane, Mumbai - 400604
Appellant		Respondent

Assessee Represented by	:	Shri Mahaveer Jain
Revenue Represented by	:	Smt. Mahita Nair
Date of Hearing	:	15.09.2022
Date of pronouncement	:	28.11.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), Pune - 11 [hereinafter in short "Ld.CIT(A)"] dated 25.02.2022 for the A.Y. 2011-12.

2. Assessee has raised following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, Ld.CIT(A) erred in upholding the addition of the Ld.A.O. to the extent of Rs. 2,32,000/- on the ground of violation of provision of section 40A(3) being aggregate of payment made to the labour contractors.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance in the nature of donation under the head miscellaneous expenses aggregating Rs.6,58,000/- on the reasoning that the same is not incurred for the purpose of business whereas the same were wholly and exclusively for business purposes.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in upholding the action of the Ld.A.O. in disallowing 91% of the purchases claimed in respect of project Woods Bld No.1 to 4 i.e. 91% of Rs. 80,59,376/- amounting to Rs. 73,34,032/- effected in FY 2008-09 on the reasoning of that such purchases were bogus.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the Ld.A.O. in disallowing whole of purchases claimed in F.Y. 2008-09 in respect of project Gaurav Jewels and further reducing the WIP of the said project by Rs.5,45,99,733/- on the reasoning that such purchases were bogus.

5. Without prejudice to the above, on the facts and circumstances of the case and in law, Ld. CIT(A) erred in ignoring the facts that even if the purchases are deemed to be bogus, only a percentage of the total purchases can be disallowed and not the entire purchases. Reliance is placed on the decision of the Hon'ble High Court of Bombay in the case of "the Principal Commissioner of Income Tax- 17 Versus M/s Mohommad Haji Adam & Co. 2019 (2) TMI 1632".

6. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the A.O. in treating the loose papers found in the business premises of the appellant firm as cash book for the period 01.03.2011 to 31.03.2011.

7. *On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs. 2,52,077/- on account of cessation of liability.*

8. *On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Rs. 5,01,253/- made by the Ld.A.O.*

9. *Appellant craves leave to add, alter, modify or delete any of the grounds of appeal."*

3. At the outset, Ld. AR of the assessee submitted that Ground Nos. 1, 2, 7 and 8 are not pressed. Accordingly, the same stand dismissed as not pressed.

4. At the time of hearing, Ld. AR brought to our notice Page No. 15 of the Assessment Order to submit that Assessing Officer has not carried out any enquiry and made the addition without making any further investigation. Further, he submitted that in assessee's own case for the immediately preceding Assessment Years in A.Y. 2009-10 and 2010-11 the Coordinate Bench has decided the issues in favour of the assessee. He relied on those order.

5. On the other hand, Ld. DR relied on the order of the lower authorities.

6. Considered the rival submissions and material placed on record, we observed that similar issues were considered and adjudicated by the Coordinate Bench in assessee's own case in ITA.No. 764 & 765/Mum 2022 dated 04.08.2022 for the A.Y. 2009-10 and 2010-11, decided the issue in favour of the assessee. While holding so, the Coordinate Bench held as under: -

"For ITA no-764/MUM/2022

6.1 The related to ground No.1 for late deposit of the PF & ESI the issue was adjudicated in favour of the assessee. So, we are deleting this addition of Rs. 10,649/-. Related ground nos. 2& 2.1 the appellate authority had mentioned in the order this this issue was not pressed by the learned counsel of the assessee before the Ld. CIT(A). But the same issue is agitated before us. This issue is setting aside to the Ld. CIT(A) for further adjudication. The learned counsel of the assessee filed a detailed document and ledger account to substantiate its claim related Ground no-2& 2.1. The assessee is directed to submit those details before the Ld. CIT(A) in support of the claim. The assessee should get a reasonable opportunity for redressal of his grievance. Related to disallowance of purchase in ground nos. 3& 4, the purchase was made for the financial year 2008-09 and sale was also made in same year. The learned counsel of the assessee submitted catena of judgment. Moreover, no such any specific finding in the order of the AO for verification of the party in dispute. Both the revenue authorities did not complete verification of the purchaser in proper way. The ld. DR was not able to press the issue strongly. We are not accepting the order of the Ld. CIT(A) for the addition made an amount of Rs. 9,52,592/-. Accordingly, the addition amount of Rs. 952,592/- is deleted. In ground no-5, related to claim of expanses for late payment charge of TDS amount of Rs. 3,93,720/- the issue was adjudicated by the Ld. CIT(A). The ld. DR also relied on the order of the Ld. CIT(A). We respectfully considered the orders of the Coordinate Bench in case of DNV GL AS vs. ADIT in ITA No. 4687/MUM/2016, dated-31-05-2017, M/s Jindal Aluminum Ltd. Vs. DCIT in ITAT No. 32/Bang/2019 dated 25.08.2021. We are inclining on the order of the CIT(A). The ground no-5 of assessee is dismissed.

For ITA no-765/MUM/2022

6.2.

6.3. *The extracted of the order of the Assessing Officer in para 10.1 is reproduced as below: -*

"10.1 On perusal of the returns of income and its annexure submitted for AY 2005-06 to AY 2011-12, it was noticed that assessee had furnished list of various Sundry Creditors & Purchasers along with VAT numbers. Accordingly letters were issued to these Purchase parties for furnishing of information u/s.133(6) of the IT Act and so as to ascertain the genuineness of the above transaction. However, the letters were returned unserved. Accordingly, the assessee was requested to produce the Purchase parties before the undersigned along with various details, Name & Address of Purchaser, VAT number, copy of return of income, Copy of Sales Tax Return, Copy of the Purchase Order, Details of Octroi, Details of mode of transport etc, to prove the genuineness of the creditors/ Purchasers appearing in the books of accounts vide Show cause dated 04.03.13, the relevant portion of which is reproduced as under:

On perusal of the return of income submitted for AY 2005-06 to AY 2011-12, it was noted that you have furnished the list of Sundry Creditors. Accordingly letters were issued to these Sundry Creditors for furnishing of information u/s 133(6). However the letters were returned unserved as per the list enclosed herewith. Annexure-4. You are requester to give the complete details of these above-mentioned Sundry Creditors as follows as it, is your responsibility to prove the genuineness of the creditors appearing in your books of accounts.

Name & Address of the Party from whom the purchases have been made.

VAT number.

Copy of return of income.

Copy of Sales Tax Return.

Copy of the Purchase Order.

Details of Octroi/ Freight Charges if paid.

Details of mode of transportation, and installation. You are requested to submit the above details immediately, failure to

which the name will be treated as unexplained investments on account of Purchases made in. your case.

On perusal of the Annexure-4, it was also noted that following parties were blacklisted by the Sales Tax Department on account of Hawala Transactions. The letters issued for furnishing information u/s 133(6) was also returned unserved. Hence you are hereby given a show cause as to explain why the above Purchase transactions in the case of the above parties for various years an mentioned below should not be treated as unexplained investments on. account of Purchases in your cases and added to your total income.

Sr no.	Name of the Party.	VAT	AY 08-09 & 0910
1	Ankit Enterprises	27060103705V	72,23,679
2	Coral Trading Co	27060224373V	91,58,325
3	Darshana Corporation	27020257763V	1,78,32,343
4	Gautarn Traders	27710403514V	14,87/200
5	Nisha Enterprises	27940256772V	56,64,464
6	Pra.ka.sh Enterprises	27840097650V	74,61,220
7	Raj Traders	27450262425V	95,80,729
8	M/s Marco Enterprises		1,11,00,355
9	Sivamani Traders	27290589500V	4,50,961
10	Vinayak Trading Co	27160650342V	6,80,446

6.4. The Ld. DR relied on the order of the revenue authorities and prayed for sustaining the addition.

7. We heard the rival submission and relied on the documents available in the record. The purchase was disallowed by the Ld. A.O. @ 91% of the total purchase. The addition was made fully depending on the available documents from the VAT authorities. No cross verification was allowed by the Id AO. The VAT authorities are generally examining the payment of VAT. The Sale Tax Department mostly concerned about the input tax credit availed by the party & payment of output tax. The assessee had utilized this purchase for its working progress. For explanation of fact, learned counsel in his PB page no. 38 annexed the comparative net profit ratio for assessment year 2008-09 to 2010-11. The details were submitted before the Id. A.O. on 11.01.2013 vide page no. 37 of the APB. The issue was also discussed by filing a letter dated 09.07.2014 to the Ld. CIT(A). The copy of the letter is annexed in page no. 18 to 26 of the APB. The details of purchase was also submitted in page no. 35

of the APB. The whole addition was made on borrowed satisfaction from VAT department. No proper cross verification was made by the revenue authorities. The Id DR also did not make any strong objection against the assessee. The stock was exhausted by the assessee during the year through sales. The Id. Counsel relied on the following judgments which are as follows: -

- 1. Nirmitee Constructions & Designs Pvt. Ltd. Vs. ACIT 2017(9) TMI 717-ITAT Mumbai.*
- 2. M/s Lotus Construction vs. JCIT-32(2), Mumbai 2018 TMI 1749-ITAT Mumbai.*
- 3. Commissioner of Income-tax-I vs. Simit P Sheth-2013 (10) TMI 1028-Gujarat High Court.*
- 4. M/s Excel Reality N Infra Ltd. Vs DCIT-9(2)(2), Mumbai (Vice-Versa) 2021 (10) TMI 948-ITAT Mumbai.*
- 5. Shri Pravin C. Bokadia vs. ITO-Circle 19(2)(5)-ITA No. 3552/Mum/2019*
- 6. Shri Praveen Singh Chandan Singh Dewal vs. ITO 19(2)(5), Mumbai, 2021 (12) TMI 50 –ITAT Mumbai.*
- 7. M/s Resolve Salvage & Fire India Private Limited vs. DCIT 14(3)(1), Mumbai 2022 (4) TMI 906-ITAT Mumbai.*
- 8. DCIT, Circle-3(1), P-7, Kolkata vs. M/s narayaniIspatPvt. Ltd. 2017 (10) TMI 67-ITAT Kolkata.*

Accordingly, we are declining the order of the Ld. CIT(A) and directing to delete the addition amount of Rs. 62,32,777/-."

In the result, In ITA No. 764/Mum/2022 in ground nos. 1,3 & 4 are allowed, ground no. 2 & 2.1 are allowed for statistical purposes and ground No. 5 is rejected. Ground no. 6 is general in nature.

In ITA No. 765/MUM/2022 in ground no. 1,4,7,8 is not pressed. Ground no. 2 is dismissed. Ground nos. 3, 5 and 6 are allowed. Ground no. 9 is general in nature. Therefore, the appeals of the assessee are partly allowed."

7. Since the issues raised in the appeal for the year under consideration are exactly similar and grounds as well as the facts are also identical, at the same time, it is established that assessee has purchased goods from the hawala and entry operators. These purchases are part of work in progress in

the A.Y. 2008-09. As per the Ground No. 5, the assessee has made an alternate plea that when the purchases are held to be bogus and only certain percentage only to be disallowed. By relying on the decision of the Hon'ble Bombay High Court in the case of Pr.CIT *v.* M/s Mohommad Haji Adam & Co. (supra) we are in agreement with the above submissions, the Coordinate Benches are disallowing only 12.5% of the total purchases as reasonable in these type of cases. However, we observe in the present case that assessee has already declared profit @9% (confirmed by the Assessing Officer) the net difference of 3.5% (12.5 – 9) should be considered for disallowance. Accordingly, we direct Assessing Officer to disallow @3.5% of the alleged bogus purchases. Therefore, Ground No. 5 is allowed and other grounds namely 3 and 4 are dismissed.

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

Order pronounced in the open court on 28th November, 2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 28/11/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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, Mum