

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

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
MS KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 623 & 791/MUM/2022
(A.Ys: 2014-15 & 2015-16)**

DCIT – Central Circle – 2(1) Room No. 804, 8 th Floor Old CGO Building Annex Bldg M.K. Road, Mumbai - 400020	v.	M/s. Mirah Dekor Pvt. Ltd., 208, Parvati Industrial Estate Sunmil Compound, Lower Parel Mumbai - 400013 PAN: AABCM4262A
(Appellant)		(Respondent)

Assessee Represented by	:	Shri K.P. Dewani
Department Represented by	:	Shri Sandeep Raj
Date of Hearing	:	12.10.2022
Date of Pronouncement	:	30.11.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 14.02.2022 for the A.Ys. 2014-15 and 2015-16.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No.623/MUM/2022 for Assessment Year 2014-15 as a lead case.

3. Brief facts of the case are, assessee filed e-return of income for the A.Y.2014-15 on 29.11.2014 declaring total income of ₹.80,94,470/-. A search action u/s. 132 of the Income-tax Act, 1961 (in short "Act") was carried out on 20.05.2015. Consequently, notice u/s. 153A dated 03.10.2016 was issued and served on the assessee. In response assessee filed its return of income on 28.09.2017 declaring the same income as per original return of income. Subsequently, assessment u/s.143(3) r.w.s. 153A of the Act was completed on 28.12.2017 at an assessed income of ₹.4,80,92,980/-.

4. The assessee vide its letter dated 19.02.2018 filed an application for rectification u/s. 154 of the Act, wherein assessee brought to the notice of the Assessing Officer some mistakes in the Assessment Order and calculation sheet, which are apparent on record and it is relating to TDS credit of ₹.32,93,556/- instead of ₹.34,54,888/- and also calculation of penal interest u/s. 234A, and u/s. 234B of the Act.

5. The Assessing Officer perused the application filed by the assessee and granted the issue raised by the assessee subject to verification of the same. Further, assessee vide letter dated 15.03.2018 stated as under: -

"1. The Income Tax assessment for Assessment year 2013-2014 was completed on 28/12/2017 determining total income at Rs.33,37,20,140/- and raising a demand of Rs. 9,13,51,840/- while completing the Assessment you have made addition of Rs.3,48.05,318/- on account of gross profit @19% on purchases made from M/s. Sarvesh Mercantile Pvt. Ltd.

2. In this connection we have filed an application for rectification u/s. 154 for the reason that during the year relevant to Assessment year 2013-2014 there was no purchases by us from M/s. Sarvesh mercantile Pvt. Ltd. After verification you have also found that there was no purchases made by us from M/s. Sarvesh Mercantile Pvt. Ltd during the year relevant to Assessment year 2013-2014 and therefore during the course of personal hearing you were kind enough to agree to rectify such mistake apparent from record.

3. However you have also brought to our notice that there were such purchases from M/s.Sarvesh Mercantile Pvt. Ltd. During the year relevant to Assessment year 2014-15 and therefore you propose to rectify the Assessment order for Assessment year 2014-2015.

4. It is respectfully submitted that we have preferred an appeal against such addition in Assessment order for Assessment year 2013-2014 which is yet pending. On passing rectification order 2013-2014 we shall withdraw the Appeal on this ground. However we do not agree to such addition in principal and we shall be filing appeal against such rectification order if such addition is made.

5. Without prejudice to our right to prefer appeal against such proposed rectification for Assessment year 2014-2015, we have no objection if you propose to rectify the Assessment order for Assessment year 2014-2015. In any case this will not effect our right to Appeal."

6. After considering the application filed by the assessee u/s. 154 of the Act Assessing Officer observed that during the year under consideration the assessee has made purchases from M/s. Sarvesh Mercantile Pvt. Ltd. amounting to ₹.18,71,63,322/- and the sales were made to M/s. Ecospace International Pvt. Ltd. amounting to ₹.26,25,95,687/-. During the course of the assessment proceedings the assessee had failed to prove the genuineness of the said transactions entered with M/s. Sarvesh Mercantile Pvt. Ltd and M/s. Ecospace International Pvt. Ltd. Considering the fact on record that assessee has not proved the genuineness and the said transaction was only executed on paper no real transaction of purchases of sales were entered with the said parties, it cannot be said that any expenditure was incurred for the same. In view of the said facts the Assessing Officer determined the difference between sales declared by the assessee and purchases, he added the difference of ₹.7,54,32,365/- as the income of the assessee.

7. Aggrieved assessee preferred appeal before the Ld.CIT(A) and Ld.CIT(A) after considering the submissions of the assessee which is reproduced in appellate order at Para No. 10, Ld.CIT(A) by relying on the decision of the Coordinate Bench in original assessment u/s. 143 r.w.s. 153A in which Coordinate Bench has deleted the addition by accepting the

bonafide transaction of trading transactions with M/s. Sarvesh Mercantile Pvt. Ltd. and M/s.Ecospace International Pvt. Ltd., in the order dated 13.08.2021, by taking the conclusion reached by the Coordinate Bench Ld.CIT(A) has deleted the addition for the difference in the purchases and sales transactions as the additional income in the hands of the assessee made by the Assessing Officer in the section 154 proceedings.

8. Aggrieved, revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.7,54,32,365/- without considering the facts that transaction of sales of Rs.26,25,95,687/- entered with M/S Ecospaces International Pvt. and transaction of purchases of Rs.18,71,63,322/- entered with M/s. Sarvesh Mercantile Pvt. Ltd. are not genuine and transactions were executed on paper and no real transaction of purchase and sale were entered.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the rectification order u/s 154 of the IT Act was having legal infirmity when neither any material changes to facts of the case was made in the rectification order nor is there any requirement under the Income Tax Act, 1961 for the Assessing Officer to undertake permission from higher authorities before passing such order u/s.154 of the Act."

9. Ld. AR at the time of hearing submitted that the issue under consideration is already covered in favour of the assessee and submitted his written submissions. For the sake of clarity, it is reproduced below: -

"Ground No.1 & 2:

Addition for difference in Purchases & Sales Rs.7,54,32,365/-

A.O. Para 3.1 Page-2

CIT(A) Para- 11 Page-25 to 27

A) No mistake much less mistake apparent from record to make addition at Rs.7,54,32,365/-. Reliance on:

i) 82 ITR 50 (SC) T.S. Balram, ITO vs. Volkart Brothers & Ors

B) A.O. noted in order u/s 154 dated 18/05/2018 at para 3.1 that assessee has made purchases from M/s. Sarvesh Mercantile Pvt. Ltd. amounting to Rs.18,71,63,322/- and the sales were made to M/s.Ecospace International Pvt. Ltd. amounting to Rs.26,25,95,687/- Assessee had failed to prove the genuineness of the said transactions and difference between purchases made from M/s. Savesh Mercantile Pvt. Ltd. amounting to Rs.18,71,63,322/- and corresponding sales made to M/s. Ecospace International Pvt. Ltd. amounting to Rs.26,25,95,687/- is added to the total income of the assessee at Rs.7,54,32,365/-

C) In case of assessee assessment is framed u/s 153A r.w.s. 143(3) of I.T. Act 1961 on 28/12/2017. Assessment order has been placed in paper book at pages 22 to 28 [26]. A.O. at para 7 has discussed the transaction of purchases and sales with M/s. Sarvesh Mercantile Ltd. and Ecospace International Pvt. Ltd. at Rs.18,71,63,322/- and Rs.26,25,95,687/- respectively. After discussion A.O. has computed commission at 2% of the transaction value of Rs.18.71 crores and Rs.26.25 crores with above mentioned parties at Rs.89,15,632/- to be assessed to tax at the hands of assessee. Hon'ble ITAT has deleted addition for commission made in ITA N.7415 at para 8 & 9 vide order dated 13/08/2021. (P-8 to 21) [P-16]

D) Purchases/sales of parties having been accepted there remain no scope for computing difference to be brought to tax u/s 154 of I.T. Act 1961.

E) It was explained that transaction of purchase and sale with above parties are independent trading transaction with two independent parties. There is no rationale to work out difference to make addition at the hands of assessee. A.O. in assessment framed u/s 143(3)/153A had already examined such transaction and made addition at 2% of such value which is deleted in appellate proceedings. Conclusion of A.O. to assess difference as income in

order u/s 154 is prima facie incorrect and unjustified. It can in no manner of consideration be considered as mistake apparent from record.

F) Books of account of appellant are not rejected, the transactions of purchase and sales from M/s. Sarvesh Mercantile Pvt. Ltd. and M/s. Ecospace International Pvt. Ltd. and profit arising on such transactions already form part of income declared and accepted in return and assessment framed, there is no scope for making addition at the hands of assessee by computing difference in purchase and sales of certain selected transaction. The transaction of purchases from M/s. Savesh Mercantile Pvt. Ltd. and sale of M/s. Ecospace International Pvt. Ltd. stood accepted as bonafide transaction of trading in quantum appeal of assessee by Hon'ble ITAT in its order dated 13/08/2021. In view of above nothing adverse remains for which any addition could be made."

10. On the other hand, Ld. DR relied on the orders passed by the lower authorities.

11. Considered the rival submissions and material placed on record, we observe that Coordinate Bench held the transaction entered by the assessee with M/s. Sarvesh Mercantile Pvt. Ltd., and M/s. Ecospace International Pvt. Ltd., has independent trading transactions with two independent parties. Even Ld.CIT(A) has considered the ratio laid down by the Coordinate Bench and discussed the same in his order. Therefore, respectfully following the decision of the Coordinate Bench, we are inclined to accept the findings of the Ld.CIT(A). Accordingly, grounding No. 1 raised by the revenue is dismissed.

12. With regard to Ground No. 2 which is against the decision of the Ld.CIT(A) in which he held that the rectification order u/s 154 of the Act was having legal infirmity when neither any material changes to facts of the case was made in the rectification order nor is there any requirement under the Act for the Assessing Officer to undertake permission from higher authorities before passing such order u/s.154 of the Act. We observe that rectification proceedings initiated by the Assessing Officer with regard to certain mistakes apparent on record and Assessing Officer has reviewed his own order in the rectification proceedings initiated by the assessee and enhanced the addition. By enhancing such substantive income, it is brought on record that Assessing Officer has not obtained any approval from higher officials. Before us, it is argued by Ld.DR that there is no record under the Act for the Assessing Officer to undertake permission from higher authorities before passing order u/s. 154 of the Act. In our considered view Assessing Officer has no right to review his own order except mistake apparent on record. In the given case, Assessing Officer has enhanced the addition in the rectification proceedings initiated by the assessee, it is not the proceedings of rectification initiated by the Assessing Officer. In order to enhance the addition, the Assessing Officer has to get a prior approval from the higher

officials before proposing any addition. Particularly considering the fact that it is a 153A proceedings and Assessing Officer is bound to follow the due process of law. Therefore, we are inclined to accept the findings of the Ld.CIT(A). Accordingly, ground No. 2 raised by the revenue is also dismissed.

13. In the result, appeal filed by the revenue is dismissed.

ITA.NO. 791/MUM/2022 (A.Y. 2015-16)

14. Coming to the appeal relating to A.Y. 2015-16, revenue has raised following grounds in its appeal: -

"1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.3,57,89,340/- on account of non genuine purchases and sales without considering the facts that the assessee had failed to prove the genuineness of the transactions.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in relying on the order of the Hon'ble ITAT in ITA No.6809 to 6811/MUM/2019 and deleting the addition of Rs.3,57,89,340/-, when the AO had not only considered the purchases but also the corresponding sales as bogus.*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 82,50,384/- on account of the commission on non genuine purchases and sales without considering the facts that the purchases and sales transactions were not genuine, bet mere*

accommodation entries and according to the prevailing market commission of 2% is charged for providing accommodation entries.

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,39,02,640/- on account of disallowance u/s 14A without considering the facts that the exempt income requires needs proper planning and needs of professional and hence exempt income cannot be earned without any expenditure.*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,13,09,500/- on account of seized papers A1 & A2 found from the bag of Vijay Mishra wherein there are noting's of cash in coded language and the assessee could not provide any satisfactory explanation."*

15. We shall proceed to dispose of this appeal by adjudication the issues ground wise.

16. With regard to Ground No. 1, 2 and 3, brief facts relevant to the case are, assessee engaged in the business of dealing in cloth, textile, fabrics, furniture, gift articles, generation of power and production of film, filed its return of income u/s. 139(1) of the Act on 31.01.2017 declaring total income of ₹.3,95,84,310/-. A search action u/s. 132 of the Act was carried out in the case of M/s. Luxora Infrastructure Pvt Ltd. and its associated group companies including promoters and directors. M/s.Luxora Infrastructure Pvt. Ltd. is a Joint venture between Mirah group and Soham group and it has formed as an SPV for developing and

integrated real estate project by the 'Ensara Metropark'. The Assessing Officer observed that in the case of the assessee intelligence was gathered and pre-search enquiries made, revealed that M/s Mirah Dekor P Ltd was indulged in doing certain bogus transactions with M/s Sarvesh Mercantile P Ltd. To verify the said facts, the office premise of M/s.Sarvesh Mercantile P Ltd was covered U/s 133A of the Act, 1961. During the course of the survey action, the statement of Shri KirtiKumar Tarachand Doshi was recorded on oath during which it was confirmed by him that M/s Sarvesh Mercantile Private Limited and M/s. Ecoscapes International Pvt. Ltd., are companies controlled and operated by him. Further it was stated by Shri KirttKumar Tarachand Doshi that he along with his companies were not involved in real trading activities and the trading shown in the companies controlled and operated by him is without taking actual delivery of goods. Consequently, notice u/s.153A dated 03.10.2016 was issued and served on the assessee. In response to the notice u/s.153A of the Act, Later, the case was assigned to this charge i.e. DCIT-CC2(1), Mumbai on 06.09.2017.

17. The assessee company is engaged in trading in cloth/fabrics/furniture/gift articles and also engaged in generating wind power energy and supplying the same to the Co. Ltd. The assessee

company also received other income such as co-partner share in firm, commission, interest, rent, share of profit from partnership firm and dividend during the year. To verify the genuineness of the transaction entered by the assessee with M/s. Ecoscapes International Pvt. Ltd. and M/s. Syscom Communication and M/s. Sarvesh Mercantile (P) Limited, notices u/s. 133(6) of the Act were issued to the above said purchase party and they were asked to explain and prove the genuineness of the transaction entered with. In response to the same M/s. Ecoscapes International Pvt. Ltd. Vide submission dated 24.11.2017 stated that they have entered transactions of purchase and sale of fabrics with the assessee and further it was stated by M/s. Ecoscapes International Pvt. Ltd., that the evidences of delivery of goods and delivery challans pertaining to the transactions entered with the assessee company were not traceable.

18. The Assessing Officer observed that from the above it can be seen that M/s. Ecoscapes International Pvt. Ltd. have confirmed that there was transaction of purchase with the assessee and both the parties i.e. the assessee and M/s. Ecoscapes International Pvt. Ltd. have failed to prove as to how the delivery of the goods were done pertaining to their transaction. Further, neither the assessee nor could M/s. Ecoscapes

International Pvt. Ltd. furnish any evidences of the octori paid by either of the said parties. The Assessing Officer proceeded to hold that this goes to prove the contention of Shri Kirti Kumar Tarachand Doshi wherein he had stated that the trade with the Mirah Group is done without actual delivery and the prices of the goods are decided as per the convenience of the parties.

19. Therefore, referring to several case laws, the Assessing Officer concluded that from the above facts it can be seen that the assessee has indulged in bogus sales to M/s. Sarvesh Mercantile Pvt Ltd., and bogus purchases from the above said parties as discussed in Para No. 6 to 6.7 of the Assessment Order. Accordingly, he considered the average Gross Profit of the preceding four years is worked out at 19% and the same is charged to the total purchases made from the bogus parties amounting to ₹.18,83,64,949/- and the same is worked out as $18,83,64,949 \times 119\%/100 = 22,41,54,289/-$. Accordingly, he considered the total sales on the purchases made of ₹.18,83,64,949/- from the bogus parties are amounting to ₹.22,41,54,289/- on which the Gross Profit is ₹.3,57,89,340/- ($22,41,289/- (-) 18,83,64,949/-$) which is added back to the total income of the assessee. Further, Assessing Officer made

addition of ₹.82,50,384/- in respect of commission on bogus sales and purchases.

20. Aggrieved, assessee preferred appeal before Ld.CIT(A) and Ld.CIT(A) after considering detailed submissions of the assessee allowed the grounds raised by the assessee. Against this order of the Ld.CIT(A), revenue is in appeal before us.

21. Ld. DR relied on the order of the Assessing Officer and prayed to set-aside the order of the Ld.CIT(A) in this regard.

22. At the time of hearing, Ld. AR of the assessee reiterated the submissions made before the Ld.CIT(A). Ld. AR of the assessee submitted that Ld.CIT(A) after detail verification of the submissions and also following various judicial precedents, deleted the addition made by the Assessing Officer. Therefore, Ld. AR of the assessee prayed for sustain the findings of the Ld.CIT(A). Ld. AR of the assessee filed written submissions, for the sake of clarity it is reproduced below: -

"Ground No.1 & 2: *Addition of Gross Profit at Rs.3,57,89,340/- for purchases made from M/s. Sarvesh Mercantile Pvt. Ltd.*

A.O. Para 6 Page 2 to 6

CIT(A) Para 5.2 Page 9 to 12

A) *A.O. has made addition at 19% of purchases from parties identified at para 6 by observing as bogus purchases. At para 6.10 A.O. has observed that books of account are not rejected.*

B) *Details of goods purchased from parties and corresponding sales submitted along with purchase bills. No mistake or fault found in such documents. Such legal evidence was not found to be incorrect or false. (P-87 to 89)*

C) *Complete details of purchases and sales of such goods submitted. Gross profit out of purchase of goods from parties accepted. No mistake or defect found in legal evidence placed on record. Gross profit shown at Rs.6,64,18,577/- in transaction of purchase from parties has been accepted and assessed to tax. No scope for making further addition.*

D) *Reliance on written submission before CIT(A) reproduced at para 5.1 page 5 to 9.*

E) *Gross profit on total turnover is 18.75%. The gross profit in respect to purchases made from 9 parties is 35.21% on purchase amount. The assessee has already shown 35.21% of gross profit on purchases there is no justification in making further addition at the hands of assessee and thus addition made is unjustified and unsustainable. Addition made by A.O. amounts to double addition of income at the hands of assessee.*

F) *Addition made in respect treating purchase as bogus purchase. The issue in dispute is squarely covered in favour of assessee by the decision of Hon'ble ITAT in the case of assessee.*

i) ITAT order in ITA No.6809 to 6811/Mum/2019 in the case of assessee vide order dated 12/11/2021. (P-1 to 18) [P-4, 5 para 13 & 14]

ii) ITAT order in ITA No.7414 to 7416/Mum/2018 in the case of assessee vide order dated 13/08/2021. (P. 19 to 32) [P-21 to 27 para 3 to 6]

iii) ITAT order in ITA No.5318 & 5319/Mum/2018 in the case of assessee vide order dated 01/12/2020. (P-33 to 39) [P- 38 & 39 para 14 to 17]

G) Audited books of account accepted and not rejected as observed at para 6.10 of assessment order. (P-40 to 86)

Ground No.3: Estimated addition of commission at Rs.82,50,384/- on purchases and sales.

A.O. Para 7 Page 6

CIT(A) Para 6.2 & 6.3 Page 13 to 18

A) The A.O. has made notional addition at Rs.82,50,384/- by estimating 2% of the purchases and sales observed at para 6 and notional sale value of such purchases.

B) i) Covered matter.

 ii) Similar addition for commission on sales to parties held unsustainable.

Reliance on:

i) ITAT order in ITA No.6809 to 6811/Mum/2019 in the case of assessee vide order dated 12/11/2021. (P-1 to 18) [P-4, 5 para 13 & 14]

ii) ITAT order in ITA No.7414 to 7416/Mum/2018 in the case of assessee vide order dated 13/08/2021. (P- 19 to 32) [P- 21 to 27 para 3 to 6]

iii) ITAT order in ITA No.5318 & 5319/Mum/2018 in the case of assessee vide order dated 01/12/2020. (P-33 to 39) [P-38 & 39 para 14 to 17]

23. Considered the rival submissions and material placed on record, we observed that in the past the assessment for the A.Ys. 2009-10 to 2014-15 and 2016-17 similar additions were made and in appeal before the Coordinate Bench, the Coordinate Bench has considered the facts on record and decided the issue in favour of the assessee. In the present case also Ld.CIT(A) respectfully followed the decision of the Coordinate

Bench and deleted the addition made by the Assessing Officer. We observe that in assessee's own case in ITA.No. 6809, 6810 & 6811/Mum/2019 for the A.Y. 2009-10, 2010-11 and 2016-17 respectively, the Coordinate Bench held as under (with regard to Ground No. 1 & 2): -

"24. We have heard both the parties and perused the records. Learned Counsel of the assessee submitted that all necessary documents regarding genuineness of purchases were submitted. No shortcoming whatsoever has been noted. He submitted that the assessee has submitted following documents before the Assessing Officer as reflected in page No. 8 of the paper book as under: -

"Details of Purchases from the relevant parties mentioned in your letter dated 07/0 1/2014 along with quantity wise and value wise details of purchases for the period from 01.04.2008 to 31.03.2009 as Annexure -1.

- Copies of Purchase Invoices issued by the said parties along with ledger copies of parties are enclosed herewith as Annexure -2.*
- Details of corresponding sales of the goods purchased from the said parties with copies of Invoices along with Delivery challan, courier POD/Lorry receipt issued by transporter wherever applicable are enclosed herewith Annexure-3.*
- Details of Purchase vis-a-vis Sales along with quantity wise and value wise details of purchases and sales are enclosed herewith as Annexure-4.*
- Copies of relevant Bank Statements reflecting payments to the said purchase parties are enclosed herewith as Annexure-5.*
- Copies of Sales tax Assessment order for the period, 01.04.2008 to 31.03.2009 are enclosed herewith as Annexure-6."*

25. He also submitted that the assessee has duly submitted proof of genuineness of these parties as under in paper book page No. 9:-

"We have in our records the proof of the genuineness of these parties to the extent possible. We have obtained/checked:

- (i). Online TIN number (Sales tax number) of the parties*
- (ii). Copy of TIN number' allotment letter from sales tax department*
- (iii). Copy of acknowledgement of VAT return*
- (iv). Copy of last VAT payment challan*
- (v). Copy of PAN number*
- (vi). Copy of Certificate of Incorporation*

Copies of the same enclosed herewith as Annexure-7".

26. Learned Counsel of the assessee also referred to the paper book wherein he submitted that the details of impugned purchases and corresponding sales have also been provided. They have also been produced before us by means of paper book. Learned Counsel has further submitted written submission in this regard as under: -

"A) A.O. has made additions in computation at Rs.4,59,58,347/-. In tabulation made of same parties at page 8 & 9 A.O. has computed total at Rs.4,59,58,347/- as against correct total of Rs.4,23,39,429/-. There is totaling mistake of A.O. at page 8 & 9 of Rs.36,18,918/-. This dispute was raised in Grounds of Appeal at Sr. No.4. Excess addition is Rs.36,18,918/- on account of totaling mistake.

B) Mistake in figures of purchase from two parties namely Swastik Sales & Agency Pvt. Ltd. and Vijay Sagar Trading Pvt. Ltd. rectified in order passed by A.O. on 01/07/2021 wherein addition is reduced by Rs.2,30,75,897/- (Rs.2,25,24,418 + Rs.5,51,479).

C) Addition of Rs.1,92,63,532/- (Rs.4,59,58,347/- - Rs.2,30,75,897/- - Rs.36,18,918/-) for purchases from parties remain after rectifying totaling mistake and reduction given by A.O.

D) Submission as made before A.O. on 09/01/2014 reproduced in assessment order at page 4to7. Evidences submitted indicates that complete details of purchases and corresponding sales of such goods submitted before A.O. Invoice payments through proper banking channel. Parties

were holding TIN. Copy of Acknowledgement of VAT return and last VAT payment challan available. Submission has not been found to be incorrect or false. Onus to explain - purchases is discharged. No addition as made by A.O. sustainable.

E) Only reason for disallowance is no response received in response to notice u/s 133(6) of IT. Act 1961 and assessee could not produce parties before A.O. Reliance has been placed on affidavit before Sales Tax Authorities by parties that no delivery is given and they are only charging commission (Para 7.2 & 7.3) of assessment order.

F) Notice u/s 133(6) have been issued in the year 2014 in respect to transaction in the year 2008-09 with a gap of more than 5 years.

G) Affidavits were not confronted to assessee nor was opportunity to cross examine the deponents allowed. Addition on the basis of such evidence unsustainable.

Reliance on:

(i) Supreme Court order in Civil Appeal No.4228 of 2006 in the case of M/s. Andaman Timber Industries vide order dated 02/09/2019.

(ii) (2019) 418 ITR 0315 (SC) CIT vs. Odeon Builders Pvt. Ltd."

27. Further learned Counsel of the assessee referred to the following case laws: -

Disallowance on bogus purchases: -

- ITAT order in ITA No.6758/Mum/2019 in the case of R.A. Industrial Metals vide order dated 01/07/2021
- ITAT order in ITA No.2959/Mum/2014 in the case of Ramesh Kumar & Co. vide order dated 28/11/2014
- Hon'ble Bombay High Court in ITA No.1298 of 2017 in the case of Shapoorji Pallonji & Co. Ltd. vide order dated 04/03/2020
- Hon'ble Bombay High Court in ITA No.1940 of 2017 in the case of Vaman International Pvt. Ltd. vide order dated 29/01/2020

- *ITAT order in ITA No.6551/Mum/2012 in the case of assessee vide order dated 06/01/2015*
- *(2019)418ITR0315(SC) CIT vs. Odeon Builders Pvt. Ltd.*

28. *Per contra learned Departmental Representative relied upon the orders of authorities below.*

29. *Upon careful consideration, we note in this case the Assessing Officer has made addition of bogus purchases on the ground that during the survey by sales tax authority information was obtained that certain parties have issued sale bills without actual delivery. In this regard the Assessing Officer has referred to names of fourteen parties. Assessee in this regard has given complete details and documentary evidence. The assessee has also given detailed note on the gross profit ratio, details of purchase and details of sales including linking of purchase and sales. No defects whatsoever have been found by the authorities below. The Assessing Officer has made addition simply because notices issued under section 133(6) to these parties have been remained un-responded. It is not the case that the Assessing Officer has issued summons under section 131(1) of the Act. Just because the said parties have not responded to order under section 133(6) the Assessing Officer has rejected all documentary evidence and learned CIT(A) has called these as dumb documents and upheld the addition. In this regard we note that the Assessing Officer has firstly rejects the books of account solely on the ground that these parties have not responded. Once the Assessing Officer rejected the books of account he cannot add any item from the same accounts arbitrarily. Moreover, when all documentary evidence have been produced, sales have also been linked to the purchases, details of same were also before the authorities below, addition for bogus purchases is not legally sustainable. Moreover, it is the submission of learned Counsel of the assessee that the assessee has already shown 18.11% as gross profit on the sales which has also been accepted and taxed by the revenue authority. In identical circumstances when sales are not doubted, in the decision of Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises Pvt. Ltd. (372 ITR 619) it was held that when sales are not doubted no disallowance for bogus purchases is permissible. Furthermore, Hon'ble Jurisdictional High Court in the case of Shapoorji Pallonji & Co. Ltd. (supra) vide order dated 4.3.2020 has held as under :-*

"18. Thus, we find that according to the Tribunal the assessing officer had merely relied upon information received from the Sales Tax Department, Government of Maharashtra without carrying out any independent enquiry. Tribunal had recorded a finding that assessing officer had failed to show that the purchased materials were bogus and held that there was no justification to doubt genuineness of the purchases made by the respondent - assessee.

19. We are in agreement with the views expressed by the Tribunal. Merely on suspicion based on information received from another authority, the assessing officer ought not to have made the additions without carrying out independent enquiry and without affording due opportunity to the respondent - assessee to controvert the statements made by the sellers before the other authority. Accordingly, we do not find any good ground to entertain this question for consideration as well.

20. Consequently, we find no merit in the appeal preferred by the Revenue. Appeal is dismissed."

30. We note that the above said case laws are fully applicable on the facts of this case. Addition has simply been made on the basis of information from sales tax department, the Assessing Officer has not issued any summons under section 131(1). Sales have not at all been doubted, the assessee has not been given any opportunity to controvert the statement made by the seller before the authorities. Furthermore, when the assessee has already shown sufficient gross profit which has more than 12.5% being the general disallowance done in such cases no disallowances on account of bogus purchases is required on the facts and circumstances of this case.

31. Moreover our adjudication on bogus purchases addition for A.Y. 2016-17 also applies mutatis mutandis where we have deleted the addition noting that such additions were deleted by the ITAT earlier in assessee's own case. Hence, in the facts and circumstances of the case, we respectfully follow the precedent as above and set aside the orders of authorities below and delete the disallowance.

24. Further, the Coordinate Bench observed as under (with regard to Ground No. 3): -

"13. Upon careful consideration we note that this addition has solely based upon the statement of third party. Hon'ble Apex Court in the case of S. Khader Khan Son (352 ITR 480) has held that addition solely based upon the statement obtained under survey u/s. 133A is not sustainable. Moreover, we note that the assessee has also given corresponding sales details from said purchases. It is totally contradictory that purchases are treated as bogus but sale and closing stock out of the said purchase is accepted. No defect has been noted in the sales. Moreover, as submitted by learned Counsel of the assessee the ITAT in assessee's own case in earlier years has deleted additions made on the basis of statement of Shri Kirtikumar Doshi and treating the purchases as bogus. We may refer to the following ITAT order in assessee's own case in combined order for A.Y. 2012-13, 2013-14 & 2014-15 vide order dated 13.08.2021 in para 6 thereof as under:-

"As the facts and circumstances of the case are exactly identical in these years also, respectfully, following the Tribunal's order in assessee's own case, as nothing was controverted by learned Sr. DR, we are deleting the addition of commission made by Assessing Officer on notional basis by treating the genuineness of purchases from Sarvesh Mercantile Pvt. Ltd and assessee as bogus and subsequent sales made by assessee to Ecoscapes International Pvt. Ltd as bogus without any corroborating evidence to prove the receipt/payment of commission in cash. We delete the addition and allow these two grounds of assessee's appeal".

14. Moreover as noted above assessee has shown sufficient gross profit and the same has been accepted and brought to tax. Hence legality of notional disallowance is not sustainable. Accordingly, in the

background of the foresaid decision and precedence the same is directed to be deleted."

25. We observe that Ld.CIT(A) has followed the decision of the Coordinate Bench in assessee's own case and nothing has been brought on record by the revenue to rebut the findings of the Ld.CIT(A). Respectfully following the above said decision of the Coordinate Bench, we do not find any infirmity in the order of the Ld.CIT(A) in deleting the additions made by the Assessing Officer. Accordingly, Ground No. 1, 2 and 3 raised by the revenue are dismissed.

26. Coming to the Ground No. 4, relevant facts are, during the assessment proceedings Assessing Officer observed that assessee has credited dividend amounting to ₹.17,939/- under the head "other income". When the assessee was asked why disallowance u/s. 14A should not be made in its case. Assessee vide its submission dated 17.05.2017 stated that the investment made were not for earning exempt income but to acquire strategic interest. After considering the submissions of the assessee Assessing Officer observed that the investments made by the assessee through which the dividend income earned by the assessee are exempt u/s. 10(34) of the Act. Accordingly, he proceeded to make the disallowance u/s. 14A r.w. Rule 8D as under: -

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount (Rs.)</u>
1	The amount of expenditure directly relating to income Which does not form part of total income - Rule 8D(2)(i)	0
2	Expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt an amount computed in accordance with the following formula, namely: $A \times B / C = 78916483 \times 455123485 / 1660734560$	21627023
	A = The amount of expenditure by way of interest other than amount of interest included in clause (i) incurred during the previous year.	97070529
	B = The average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee on the first day and the last day off the previous year,	519890606
	C = The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last of the previous year - Rule 8D(2)(ii)	1771769585
3	i. Average value of investments - 3229754536 8D(2)(1ii) ii. Disallowance An amount equal to one half percent of the average of the value of investment Income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee on the first day and the last day of the previous year, iii. 0.5% of Rs, 4551 2348567-	2275617
4	Total disallowance (1+2 + 3)	23902640

27. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and made detailed submissions which are reproduced in Para No. 7.1 of the appellate order. After considering the submissions of the assessee Ld.CIT(A) restricted the disallowance u/s. 14A of the Act to the extent to net exempt income earned by the assessee considering the fact that assessee itself suomoto disallowed an amount of ₹.15,079/ - by relying

on the decision of the Coordinate Bench in the case of the assessee for the A.Y. 2016-17. Aggrieved revenue is in appeal before us.

28. Ld. DR relied on the order of the Assessing Officer.

29. On the other hand, Ld. AR reiterated the submissions made before the Ld.CIT(A).

30. Considered the rival submissions and material placed on record, we observe that Ld.CIT(A) has relied on the decision of the Coordinate Bench in the assessee's own case and came to the conclusion that disallowance u/s. 14A cannot exceed more than the exempt income earned by the assessee. In the given case assessee has no doubt earned dividend income of ₹.17,939/- and suomoto disallowed an amount of ₹. 15,079/- and earned the net exempt income of ₹.2860/-. We observe that Assessing Officer has not followed the Rule 8D in making suomoto disallowance, therefore the disallowance can never be more than the exempt income earned by the assessee as per the judicial precedence on this issue. Therefore, we are inclined to uphold the findings of the Ld.CIT(A) and accordingly, ground no. 4 raised by the revenue is dismissed.

31. With regard to Ground No. 5, the relevant facts are, during the course of the search action at the premises of the assessee and in the cubicle of Shri Vijay Mishra, a rummaging a black bag was found which contained slips of papers and two sheets of paper on which certain transactions were recorded. The statement of Shri Vijay Mishra was recorded wherein he was required to explain the contents written on those pieces of paper. After considering the statement of Shri Vijay Mishra, Assessing Officer observed that Shri Vijay Mishra was involved in carrying cash from one place to another on the instruction of Umakant Shahu, Accountant, Anand Shetty, Director of Mirah Dekor Pvt Ltd and Umesh Vartak, finance head of the group. Assessing Officer further observed in his order that the paper piece noting and the 2 sheet of papers where the details of cash transactions have been recorded are seized during the course of search operation and Annexure A1. The total amount which were received and given in the seized papers were also totaled as Annexure A-1 and Annexure A-2, made part of the statement of Vijay Mishra.

32. Further he observed that it was found, original total amount of loose papers seized from the office premises titled as A-1 and A-2 was ₹.9,02,38,204/- (out of which ₹.6,65,16,654/- was pertaining to

AY 2013-14 and balance ₹. 2,37,21,550/ was pertaining to AY 2015-16).

From the same, certain errors were pointed out by the Shri Anand Shetty and the assessee offered a sum of ₹.6,06,16,654/- for AY 2013-14 and ₹.2,12,21,550/- for AY 2015- 16. Accordingly, assessee was asked to show cause that if the said amount of ₹ 2,12,21,550/- was not offered to tax while filing of Its return in response to section 153A of the Act why the said amount should not be added back to the total income. In response assessee has submitted and reconfirmed that the total declaration made on account of the seized papers were amounting to ₹.2,12,21,550/- for AY 2015-16 and pointed out certain discrepancies. After discussing the submissions of the assessee and statement which is reproduced in Para No. 9 to 11 of the Assessment Order, Assessing Officer after making certain adjustment proceeded to make the addition of ₹.2,13,09,500/-.

33. Assessee preferred an appeal before the Ld.CIT(A) and submitted that assessee has already declared the above said income in the return of income A.Y. 2015-16 and Assessing Officer has made the proposed addition which result into double addition. After considering the submissions of the assessee, Ld.CIT(A) remitted the issue back to the file of the Assessing Officer with a direction that the above claim of the

assessee may be verified and if found correct the addition may be deleted.

In the order giving effect it is brought to our notice that Assessing Officer has verified and deleted the addition after due verification. Therefore, this ground raise by the revenue becomes infructuous. Accordingly, this ground raised by the revenue is dismissed as infructuous.

34. In the result, appeal filed by the Revenue is dismissed.

35. To sum-up, both the appeals filed by the Revenue are dismissed.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai / Dated 30/11/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
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