

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 3201/Mum/2016 (A.Y. 2010-11)**

Milind Kishenchand Agrawal,  
Sun Enterprises, 605/A, Dhawalgiri Building,  
Plot No.13, Sher-E-Punjab Society,  
Mahakali Caves Road, Andheri (E),  
Mumbai-400093.

**PAN: AACPA1340F**

..... Appellant

Vs.

ITO-20(2)(2),  
Piramal Chambers,  
Parel, Mumbai.

..... Respondent

Appellant by	:	Sh. Shailesh M. Bandi
Respondent by	:	Smt. Mahita Nair, DR
Date of hearing	:	19/07/2022
Date of pronouncement	:	11/10/2022

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-39, Mumbai [hereinafter referred to as ('CIT(A)')] vide order dated 23.02.2016 for the Assessment Year (AY) 2010-11. The assessee has raised following grounds of appeal:

"A) **Disallowance out of purchases u/s.69C-Rs.1,23,90,660/-**

1. *The learned CIT(A) erred in confirming the disallowance of Rs.1,23,90,660/ being 25% of alleged bogus purchases of Rs.4,95,62,642/- merely on the basis of list of suspicious parties published by Sales tax department without appreciating the fact that the goods were actually purchased from the 4 parties and hence, the disallowance restricted to 25% of the total purchases made from 4 parties is without any justification and liable to be deleted.*
2. *The Ld. CIT(A) failed to appreciate that all the relevant details and particulars of purchases made from 4 parties were placed on record and payments were made through the banking channel and even bank statements of the 4 parties were received by AO from their bank and no cash involvement was noticed in their bank statements and hence, merely on presumption, suspicion and surmises holding that purchases are made from grey market and thereby presuming purchase price inflated by 25% and thus sustaining disallowance of Rs.1,23,90,660/- out of genuine purchases is without any justification and liable to be deleted.*
3. *The Ld. CIT(A) failed to appreciate that the AO had not proved with any material evidence that the purchases made from parties listed by Sales tax department were in fact non-genuine purchases and neither any investigation was carried out by AO proving that the funds have come back to the coffers of the appellant and hence, the disallowance sustained at 25% of the total purchases made from 4 parties is without any justification and liable to be deleted.*
4. *The learned CIT(A) ought to have appreciated that there was no inflation in the purchase price of the material and the same is very much comparable to the market price and hence, merely on presumption the disallowance restricted to Rs.1,23,90,660/- being 25% of total purchases is unjustified and liable to be deleted.*
5. *Without prejudice to the above and without admitting, the disallowance restricted to 25% of the total purchases is excessive and the same ought to have been restricted considering the GP earned in the business of the appellant and hence, the disallowance sustained of Rs.1,23,90,660/- being 25% of total purchases is arbitrary, without any justification and liable to be deleted.*

**B) Disallowance of Rs.3,88,250/- out of expenses for non-deduction of tax**

6. *The Ld. CIT(A) has erred in confirming the disallowance made by AO of total amount of Rs.3,88,250/- on the ground of non-deduction of tax at source without appreciating the fact that all the parties have filed return of income*

*and paid taxes on their returned income which includes the amounts received from the appellant and hence, in view of the amendment to section 40(a)(ia) of the Act, the disallowance confirmed of Rs.3,88,250/- may be deleted.*

7. *The Ld. CIT(A) further failed to appreciate that out of Rs.3,88,250/-, amount of Rs.3,58,250/- was paid towards interest on loan to various parties and they had issued Form 15G as well as loan confirmation and since they were not having taxable income, no deduction of tax was made and hence, the disallowance confirmed of Rs.3,58,250/- is without any justification and liable to be deleted.*

**C) Disallowance u/s.43B-Rs.10,89,016/-**

8. *The Ld. CIT(A) erred in confirming the disallowance made of Rs.10,89,016/ w/s.43B of the Act for non-payment of MVAT without appreciating the facts and circumstance of the case and hence, the disallowance confirmed of Rs.10,89,016/- u/s.43B of the Act is without any justification and liable to be deleted.*

**D) 1/5 Disallowance out of various expenses- Rs.29,346/-[5479 + 23867]**

9. *The Ld. CIT(A) erred in confirming 1/5 disallowance out of expenses incurred towards motor car depreciation and telephone expenses without appreciating that the expenses were incurred wholly and exclusively for the purposes of the business and were very much reasonable compared to the volume of business and hence, the disallowance confirmed at 1/5th of the expenses is unjustified and liable to be deleted.*

**E) Disallowance out of Electricity charges- Rs.30.980/-**

10. *The Ld. CIT(A) erred in confirming disallowance of Rs.30,980/- out of electricity charges without appreciating that the same was incurred for the purpose of business and hence, the disallowance confirmed may be deleted.*

**F) Disallowance u/s.40A(3)- Rs.41,406/-**

11. *The Ld. CIT(A) erred in confirming disallowance u/s.40A(3) of the Act of Rs 41,406- without appreciating the fact that the same was incurred for the purpose of business and necessary supporting document was produced and that the expenses was incurred due to business exigency and hence, the disallowance made u/s 40A(3) of Rs.41,406/- is without any justification and liable to be deleted.*

**G) Disallowance out of travelling expenses - Rs.59,737/-**

12. *The Ld. CIT(A) erred in confirming disallowance of Rs.59,737/- out of travelling expenses without appreciating that the same was incurred for the purpose of business and hence, the disallowance confirmed may be deleted.*
13. *The appellant craves leave to add, amend, alter or delete all or any of the aforesaid grounds of appeal."*

2. Brief facts of the case are that the assessee is proprietor of M/s Sun Enterprises engaged in the business of merchant importer and trading in DEPB/DFRC import licenses and electrical goods. The assessee filed his return of income declaring the total income of Rs. 14,48,100/-. Assessee's case was selected for scrutiny under CASS.

3. In this case, information was received from DGIT, Mumbai that during the year under consideration, the assessee had entered into Hawala Transactions for purchases amounting to Rs. 4,95,62,642/- with following parties:

No.	Name of the party	Amount
1.	M/s Navaratan Metal Impex	Rs.1,20,27,397/-
2.	M/s Ronak Industries	Rs.1,54,20,797/-
3.	M/s Tamas Steel & Alloys Pvt. Ltd.	Rs.1,08,60,374/-
4.	M/s Polaris Sales Agency Pvt. Ltd.	Rs.1,12,54,074/-
Total		Rs.4,95,62,642/-

In view of the above, information, the assessee was asked to produce the above parties in person (proprietor in case of proprietary concern, partner in case of

firm, director in case of company, etc) before the undersigned along with certified copies of ledger account of the said party, copies of bills issued by the said party, quantitative details of goods purchased from the said party, details of delivery of goods with delivery challans and bank statements evidencing payments to the said party. In response, the assessee's representative, vide letter dated 31/01/2013 furnished copies of ledger account of the said parties, copies of purchase invoices & delivery challans, bank statements highlighting the payments made to these parties and a statement of quantitative description of goods purchased from these parties. Subsequently, the assessee's representative, vide letter dated 16/03/2013 stated that purchases from all relating to these parties were submitted and that it is not correct that it is not correct that the purchases from the aforesaid parties are bogus. The assessing officer treated the same as unexplained expenditure and added u/s 69C of the Act.

4. Against this addition assessee preferred an appeal before the Ld. CIT (A). Ld. CIT (A) after considering the fact of the case and submission of the assessee, Ld. CIT (A) partly allowed the appeal of the assessee and disallowance of Rs. 4,95,62,642/- u/s 69C, he restricted up to 25%. Against this order of Ld. CIT (A) assessee felt aggrieved and filed this appeal before us. We have gone through the order of AO, Order of Ld. CIT (A) and submissions of the assessee before the authorities below.

5. We observed that AO has accepted the sale made by the assessee, books of account of the assessee were accepted and there is no rejection of books of account by the AO. Other than documentary evidence has filed by the assessee

before the authorities below, he relied upon the following judicial pronouncement in his favour as under:

- i. Kishinchand Chellaram v/s CIT (1980) 125 ITR 713 (SC)
- ii. Nikunj Eximp Enterprises Pvt Ltd. v/s CIT, Mumbai – Bombay High Court IT APP No. 5604 of 2010 (2012)
- iii. ITO v/s Peranand (2007) 107 TTJ 395 (jd) (Trib)
- iv. ITO v/s Puspal Kumar Das (ITAT Kolkata) dt 19<sup>th</sup> December 2015
- v. Ramesh Kumar & Co. v/s ACIT (ITA No. 2959/Mum/2014 dt. 28-11-2014 AY 2009-10)
- vi. DCIT v/s Rajeev G Kalanthi ( ITA No. 6727/Mum/2012 dt 20-08-2014 AY 2009-10)
- vii. Ganpatraj A Sanghavi v/s ACIT (ITA No. 2826/Mum/2013 dt. 05-11-2014 AY 2009-10)
- viii. ACIT v/s Shivam Textile & Proofing Industries (ITA No. 5248/Mum/2013 dt. 16-07-2015 ITAT Mumbai AY 2010-11)
- ix. ACIT vs Ramila Pravin Shah (ITA No. 5246/Mum/2013 dt. 05/03/2015, ITAT Mumbai AY 2010-11)

6. We have considered the submissions of the assessee and the case laws relied upon, the issue of bogus purchases have been dealt with in so many cases by the hon'ble Jurisdictional High court and Mumbai ITAT also. Various judicial forums found that in such type of cases assessee entered into the transactions to save vat and cash discount etc. As the books have not been rejected and the figure of the sale declared by the assessee also not disturbed, we do not have any hesitation in following Hon'ble Bombay High Court in the case of PCIT-17 v/s M/s

Mohammad Haji Adam & Co. (Income Tax Appeal No. 1004 of 2016). In view of this order of Hon'ble Jurisdiction High Court We direct the AO to recalculate the addition keeping in view the ratio laid down in the case Mohammad Haji Adam & Co. (Supra). Accordingly, case is restored back to the file of the AO to follow the directions has held in the case of Mohammad Haji Adam & Co. (Supra). In the result Ground No. 1 to 5 raised by the assessee is partly allowed.

7. Ground No. 6 & 7 pertains to disallowance of Rs. 3,88,250/- during the course of the assessment proceedings, the assessee was asked to furnish copy of TDS Returns for the year under consideration with annexures thereof. However, the assessee merely submitted copies of Form 27A without any annexures thereof. Hence, the said fact was brought to the notice of the assessee and he was asked to furnish party-wise details of tax deducted at source during the year u/s.194A, 194H and 194J of the Act. In response, the assessee's representative, vide letter dated 21/12/2012 submitted a statement giving TDS details. On perusal of the details, it is noticed that the assessee has failed to deduct tax at source on the following payments:-

Name of Party	Head of Expense	Type of Payment	Amount (Rs.)_
A. R. Trivedi	Professional Fees	194J	30,000/-
Heen Bhambwani	Interest on loan	194A	45,000/-
Rajesh Sawanani	Interest on loan	194A	22.500/-
Sunrise Impex	Interest on loan	194A	90,000/-

Amita Khandelwal	Interest on loan	194A	57,833/-
Rishi Khandelwal	Interest on loan	194A	30,417/-
Saroj Sawnani	Interest on loan	194A	22,500/-
Priti Madhukar	Interest on loan	194A	90,000/-
		Total	3,88,250/-

Since, the above said payments fall within the scope of section 194A and 194J of the Income Tax Act, the assessee was liable to deduct tax at source on such payments. However, the assessee has failed to deduct tax on the said payments. Hence, the assessee was asked to furnish an explanation as to why these amounts should not be disallowed as per provisions of section 40(a)(ia) of the I.T. Act. In response, the assessee's representative, vide letter dated 16.03.2013 stated that the assessee had received Form 15G from the aforesaid parties and TDS was deducted from the payment made to these parties.

The scheme of TDS was introduced to collect revenue from the payer on behalf payee in this case as discussed (supra) other than audit fee of Rs. 30,000/- all other payments were interest payment and recipient of interest as claimed by the assessee was not chargeable to tax as their income is below taxable limit hence all of them furnished declaration in form no. 15G. Although date on form no 15G is mentioned wrongly. In this regard we rely upon on the decision of Hon'ble Jurisdiction High court in the case of PCIT-5 v/s Perfect Circle India Pvt. Ltd. (ITA No 707/2016). Has held in this decision that if the recipient is below taxable limit or has

already been paid taxes on the income received from the payer no disallowance u/s 40 a(i)(a) can be made and no recovery of TDS can be made against the payer. In the light of decision and facts we restore the matter back to the AO for fresh opportunity to the assessee to establish his contentions and then decide accordingly. We direct the assessee also to produce relevant evidence about its contentions before the AO. Accordingly, this ground of appeal Ground No 6 & 7 raised by the assessee is allowed for statistical purposes.

8. Ground No. 8 pertains to disallowance Rs. 10,89,016/- u/s 43B of the Act In respect of disallowance u/s 43B it was observed by the AO that "the assessee has debited to the Profit & Loss A/c. an amount of Rs. 10,90,178/- on account of VAT. However, on perusal of the Tax Audit Report, Outstanding liability of Rs.10,89,016/- on account of VAT was not paid till the due date of filing the ROI. Hence, the assessee was asked to furnish an explanation as to why the said amount should not be added back to the total income as per provisions of section 43B of the I.T. Act. In response, the assessee's representative, vide letter dated 21.12.2012 stated:

*"Outstanding liability of M.VAT due to non payments of outstanding by customer, assessee face heavy financial crisis and laid himself bankrupt. In such circumstances, he was unable to pay MVAT liability".*

Subsequently, the assessee's representative, vide letter dated 16.03.2013 reiterated that the assessee was unable to pay the MVAT liability as he was facing heavy financial crisis and had laid himself bankrupt. In view of the above, it is clear that the sum of Rs.10,89,016/- has not been paid before the due date of filing the return of income. Hence, I disallow the said amount of Rs.10,89,016/- as per

provision of section 43B of the I.T. Act and the same is added to the income of the assessee.

During the course of appellate proceedings also the assessee failed to prove that the amount has actually been paid and hence, in absence of any evidence of payment of the said amount, which is allowable only on actual payment basis, the addition made by the AO is confirmed. Even before us assessee was not able to substantiate his ground; hence, this ground of appeal raised by assessee is dismissed.

9. Ground No. 9 to 12 pertain to 1/5<sup>th</sup> Disallowance out of various expenses- Rs. 29,346/- [5479 + 23867], Disallowance out of electricity charges – Rs. 30,980/-, Disallowance u/s. 40A(3) – Rs. 41,406/- and Disallowance out of travelling expenses – Rs. 59,737/-.

10. We have gone through the order of AO, order of the Ld. CIT(A) and submissions made by the assessee. We found that Ld. CIT(A) has already given relief on account of lower personal withdrawals and element of personal use in the case of proprietor of a business cannot be ruled out. Keeping in view the detailed order of Ld. CIT(A) and submissions of the assessee, other than disallowance out of Electricity charges all other disallowances we found to be in order. Resultantly, we delete the disallowance made under the head “Electricity Charges” amounting to Rs. 30,980/- and other disallowances, we sustain the order of Ld. CIT (A). In the result, Ground No.10 raised by assessee is allowed and Ground No. 9, 11 & 12 raised by assessee are dismissed.

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

Order pronounced in the open court on 11<sup>th</sup> day of October, 2022.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 11/10/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)

**ITAT, Mumbai**