

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

ITA No. 1683/Mum/2022

(A.Y: 2012-13)

Om Shree International Pvt Ltd., 702, 7 <sup>th</sup> Floor, Orion Business Part, Nehru Road, Santacruz (E) Mumbai – 400055.	Vs.	ACIT, Circle – 10(3)(1) Room No. 212, 2 <sup>nd</sup> Floor, Aayakar Bhavan MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCO4798B		
Appellant	..	Respondent

Appellant by :	Mr. M Subramanian.AR
Respondent by :	Mr. B. Bagchi.DR

Date of Hearing	29.11.2022
Date of Pronouncement	30.11.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order passed by the National Faceless Appeal Centre, (NFAC) / CIT(A) u/s 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstance of the case and in law, the reassessment proceedings initiated by issuance of notice u/s 148 of the act is invalid and bad in law.*

2. *On the facts and in the circumstance of the case and in law, the assessment order passed u/s 143(3) of the act is invalid and bad in law.*

3. *On the facts and in the circumstance of the case and in law, the learned C.I.T.(A) erred in dismissing the appeal and that too without even appreciating fully and properly the facts of the case.*

4. *On the facts and in the circumstance of the case and in law, the learned C.I.T.(A) erred in upholding the addition made of Rs.29,40,000/- as 'unexplained cash credit and that too without even assigning any proper reason.*

5. *On the facts and in the circumstance of the case and in law, the learned C.I.T.(A) erred in not dealing with the grounds of appeal Nos.1 to 5 pertaining to jurisdictional issue viz. invoking of provisions of section 147 of the act. The appellant craves leave to add, alter, amend or delete any or all of the grounds of appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business of exports and trading in all kind of spices, food stuff, chemicals, engineering goods, garment and textiles etc. The assessee has filed the return of income electronically for the A.Y 2012-13 on 20.09.2012 disclosing a total income of Rs.6,23,15,800/- and computed Book profits u/s 115JB of the Act of Rs. 6,15,73,980/- and the return of income was processed u/s 143(1) of the Act. The Assessing Officer (AO) has passed the order

u/s 143(3) of the Act on 14.03.2015. Subsequently, the AO has received the information from DGIT(Inv), Gwalior that the assessee has engaged in the business transactions with the parties, where the party has received RTGS from the various firms including the assessee company in the F.Y 2011-12, where the assessee has transferred funds of Rs. 29,39,900/- to one M/s Gouri Traders. The investigation wing found that the M/s Gouri Traders does not exist and is engaged in providing the accommodation entries and the assessee is the one of the beneficiary. The AO after recording the reasons has reopened the assessment u/s 147 of the Act and issued notice u/s 148 of the Act and the reasons for reopening of the assessment were provided to the assessee.

3. In compliance to notice, the assessee has filed the return of income on 23.08.2019 disclosing a total income of Rs. 6,23,24,190/- and subsequently notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. The assessee has filed the information and details on the ITBA portal from time to time. The AO to test check the genuineness of

the transactions has called for the additional information and the assessee has submitted ledger and invoice copies. Further the AO has issued notice u/s 133(6) on the Act on the M/s Gouri Traders and the same was returned un served by the postal authorities. Subsequently summons u/s 131 of the Act was issued and was returned unserved. Therefore the AO has called the assessee to produce the purchase party and the assessee failed to comply with the directions. The AO considering the events of non compliance has doubted the genuineness of the transactions as the assessee could not substantiate. The A.O. alleged the purchase transactions as bogus and treated as unexplained cash credit u/s 68 of the Act of Rs. 29,40,000/- and assessed the total income of Rs. 6,52,64,110/- and passed the order u/s 143(3) of the Act r.w.s 147 of the Act dated 01.12.2019.

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 and findings of the AO and was not satisfied with the explanations of the assessee and sustained the addition made by the AO and dismissed the

assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing the Ld. AR of the assessee submitted that the CIT(A) has erred in dismissing the appeal without going in to the merits and the facts submitted in the course of hearing. The Ld. AR emphasized that the transactions are genuine and substantiated the submissions with the judicial decisions and factual paper book and prayed for allowing the appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the contentions of the Ld. AR are that the CIT(A) has erred in sustaining the addition without considering the material information filed before the lower authorities. The assessee is a merchant exporter and procured the Hulled Sesame seeds as per export order from the trader and the details of invoices and supporting the transactions were filed in the assessee's proceedings. The Ld. AR emphasized that the addition made by the A.O

is on very higher side and the margin in the nature of business is between 12% to 13 %. The Ld.AR filed a comparison chart disclosing the G P percentage for F.Y.2011-12 to 2014-15. We considering the facts, circumstances, judicial decisions and to meet the ends of justice restrict the addition @ 6% of alleged bogus purchases in addition to G.P. offered by the assessee and we make it clear that this percentage shall be applicable to this assessment year only. Accordingly, we set-aside the order of the CIT(A) and direct the assessing officer to estimate the income @6% on unapproved/ bogus purchases and partly allow the grounds of appeal of the assessee.

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

Order pronounced in the open court on 30.11.2022.

Sd/-

(BASKARAN BR)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 30.11.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai