

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 1873/Mum/2022
(Assessment Year: 2015-16)

Maa Jagdambe Tradelinks Ltd. Shop No. 7, Ground Floor, A-Wing, Navkar Building, Yashwant Gaurav Complex, Nalasopara (W), Mumbai -400 101	Vs.	Asst. CIT, Circle-12(3)(2) Mumbai
PAN/GIR No. AACCP 3980 H		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Rahul Hakani
Revenue by	:	Ms. Vranda U. Matkarni
Date of Hearing	:	14.12.2022
Date of Pronouncement	:	09.03.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The assessee has challenged the grounds of reopening of the assessment and on the addition amounting of Rs.67,41,777/- being differential gross profit @ 1.33% on the total purchases, amounting to Rs.50,9,00,512/-.

3. The brief facts are that the assessee company is engaged in the business of textiles and has filed its return of income dated 30.03.2017, declaring total income at

Rs.1,17,15,030/- and the same was processed u/s. 143(1) of the Act. Pursuant to a search and seizure action dated 05.02.2016 u/s.132 of the Act carried out in the case of Shri Vipul Vidur Bhatt and his other related entities, the assessee's case was reopened u/s. 148 of the Act for the reason that the Investigation Wing had received information that the assessee company has taken bogus accommodation entries from the entities operated by Shri Vipul Vidur Bhatt.

4. The Assessing Officer (A.O. for short) passed the assessment order u/s. 144 r.w.s. 147 of the Act by determining the total income at Rs.1,84,56,800/- where the impugned addition amounting to Rs.67,41,777/- was made on account of recalculated gross profit @ 2.5% on the alleged bogus purchase.

5. The assessee has challenged in ground no. 1, the reopening of the assessment on the basis of the information from the Investigation Wing and that the A.O. has issued notice u/s. 148 of the Act only on the basis of the borrowed satisfaction and that the A.O. has not applied his mind for reopening the case of the assessee. It is observed that subsequent to the search and seizure action carried out in the case of Shri Vipul Vidur Bhatt, it was found that 347 bogus entities which was managed, controlled and operated by Shri Vipul Vidur Bhatt was providing bogus accommodation entries to various parties, out of which the assessee company was found to be one of the beneficiary. It is stated that the assessee has taken bogus accommodation entries from two entities namely Lunkard Textiles Pvt. Ltd. of Rs.10 lacs as undisclosed income and M/s. Shipra Fabrics Pvt. Ltd. of Rs.50,59,512/- as bogus purchase as per the information from the Investigation Wing. It is stated that Shri Vipul Vidur Bhatt in his statement recorded u/s. 132(4) of the Act

has accepted that these are bogus entities and are into providing bogus accommodation entries to various beneficiaries. Based on the above information, the A.O. reopened the assessee's case u/s. 147 of the Act on the reason to believe that the assessee was beneficiary of bogus purchases for the impugned amount. The assessee's contention is that it had made genuine business transaction with M/s. Shipra Fabrics Pvt. Ltd. for purchase of fabrics amounting to Rs.50,59,00,511/- out of which Rs.56,36,71,537/- was made during the impugned year and the remaining was made during financial year 2013-14. The assessee is said to have made sales against the said purchases and alleged that Shri Vipul Vidur Bhatt was neither a director nor a shareholder of M/s. Fabrics Pvt. Ltd. and contended that the statement does not have any relevance to that of the assessee's case and that the reopening was based on the original statement which was subsequently retracted by the deponent. The assessee has challenged the reopening on the basis that the retracted statement was held to be bad in law and had relied on the decision of Hon'ble Karnataka High Court in the case of *CIT vs Dr. N. Thippa Setty* [2010] 322 ITR 525 (Karnataka) along with the other decisions.

6. The learned Authorised Representative (Id. AR for short) for the assessee contended that the reopening of the assessee's case based upon the statement of Shri Vipul Vidur Bhatt, which was subsequently retracted was bad in law, as the A.O. has failed to apply his mind and it was merely based on the borrowed satisfaction. The Id. AR relied on the various decisions along with the decision cited above and contended that the reopening was illegal and void and that the proceeding u/s. 148 was to be quashed on this ground.

7. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the submission of the Id. AR and stated that section 147 of the Act can be invoked where the A.O. has reason to believe that the income has escaped assessment on account of failure to disclose truly and fully all the material facts. The Id. DR relied on the decision of the Hon'ble Gujarat High Court in the case of *Peass Industrial Engineers (P) Ltd. vs. Dy. CIT* [2016] 73 taxmann.com 185 (Guj) and *Pr. CIT vs. Paramount Communications (P) Ltd.* [2017] 79 taxmann.com 409 (Del), wherein it was held that the information received from the Investigation Wing was a tangible material to initiate the reassessment proceeding.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the A.O. has initiated the reassessment proceeding based on the information from the Investigation Wing that the assessee was a beneficiary of bogus accommodation entries provided by the entities of Shri Vipul Vidur Bhatt pursuant to search and seizure action. The said information revealed around 347 companies which was confronted by Shri Vipul Vidur Bhatt, out of which the assessee is said to have received bills for purchase of fabrics from M/s. Shipra Fabrics Pvt. Ltd. which was amongst the list of bogus entities controlled by the said person.

9. From this, it is evident that the A.O. has reason to believe that the income of the assessee has escaped assessment and based upon it proceeding u/s. 147 was initiated. On a bare perusal of section 147, it is seen that the A.O. should have 'reason to believe' to reopen the assessment. On consideration of the decision cited by the parties, we are of the view that the reopening of the assessment initiated by the A.O. is made as per the

provisions of the Act and, therefore, we do not find any reason to quash the proceeding initiated u/s. 147 of the Act. Ground no. 1 raised by the assessee is dismissed.

10. Ground no. 2 pertains to the impugned addition made on the total alleged bogus purchase made by the assessee from M/s. Shipra Fabrics Pvt. Ltd. The A.O. had recalculated the gross profit ratio for the reason that the assessee has declared a low rate compared to other companies which is in the same line of the business as that the assessee. The assessee had challenged the said addition on the ground that the A.O. has failed to mention the precise provision of law under which the impugned addition has been made and also challenged the ground that the assessee has proved the identity of the persons and genuineness of the transaction and also on the fact that the A.O. has not rejected the books of accounts of the assessee for the fact that the impugned year assessment order was not passed u/s. 143(3) of the Act. The assessee has also challenged the addition on the ground that the assessee was not provided with an opportunity for cross examination of Shri Vipul Vidur Bhatt, thereby violating the principles of natural justice.

11. From the facts of the case, it is observed that the assessee has made a trading turnover of Rs.120.67 crores, thereby earning a gross profit of Rs.1.41 crores , which is worked out as 1.17% of the trading sales. The assessee has submitted that the company has an average capital employed of 321.06 lacs and gross profit of Rs.140.84 lacs makes the average capital employed at 43.87%. The assessee further stated that the gross profit of 44% was very much high in textile industry which is finding it difficult to survive in the market. The assessee contended that considering the market status, the gross profit

margin on 1.23% was reasonable. The assessee also stated that the gross profit margin and textile industry during the impugned year ranged from 0.20% to 3% and the gross profit in trading industry range from 0.20% to 2%. The A.O.'s assessment of gross profit @ 2.5% on the alleged bogus purchase from Shipra Fabrics Pvt. Ltd. resulting in an addition of gross profit of 1.33% was exorbitant. The assessee, in addition to this stated that the lower authorities have failed to consider the documentary evidence such as ledger confirmation from M/s. Shipra Fabrics Pvt. Ltd., sample purchase bills and delivery challans, corresponding sample bills as well as challans, stock exchange register, purchase and sales of fabrics were not considered by the lower authorities. The assessee further stated that the books of accounts were audited and were not found to be false for the fact that the A.O. has not rejected the books of accounts u/s. 145 of the Act. The assessee also made a submission that M/s. Shipra Fabrics Pvt. Ltd. is still in existence and that mere reliance on the statement of Shri Vipul Vidur Bhatt is not warranted.

12. The assessee has made a comparative analysis of the gross profit ratio of five listed entities from textile industry and two listed entities from trading industry and has stated that the gross profit of above 7 companies is 1.08% whereas the assessee has declared gross profit of 1.17% for the impugned year.

13. The A.O. has specified that the profits of the assessee has to be recalculated on the basis of the materials made available by the assessee, wherein the A.O. has also relied on the decision of the Hon'ble Calcutta High Court in the case of *CIT vs. Eastern Commercial Enterprises* [1994] 210 ITR 103 (Cal), where it was held that if the assessee has furnished comparative analysis of gross profit ratio, the department has to rely on the

gross profit ratio on the basis of such comparative cases. From perusing the comparative analysis relied on by the assessee, the A.O. observed that gross profit varies from 0.5% to 2.5% of the turnover and thereby recalculated 2.5% on the alleged bogus purchases. It is also pertinent to point out that the lower authorities have not disputed the corresponding sales of the assessee. It is also evident from the assessment order that the assessee has shown item-wise sales of the goods purchased for which the assessee has offered income on the same. The A.O. has also stated in para 5 of the assessment order and has admitted the fact that the assessee has shown the goods item to item and that also has held that the purchases are not entirely bogus. The A.O. thereby estimated the gross profit which is said to be as per the prevailing market rate. The only allegation in this is that the A.O. has not substantiated the basis on which the gross profit was calculated. For this proposition, we would like to place our reliance on the decision of the Hon'ble Jurisdictional High Court in the case of *Pr. CIT-17 vs. Mohammad Haji Adam & Co.* [2019] 103 taxmann.com 459 (Bom), wherein it was held that on identical facts that the purchases cannot be rejected without disturbing the sales and that the additions was to be limited to the extent of gross profit rate on purchases at the same rate of other genuine purchases. Unless it could be seen that the corresponding sale was a sham transaction, we cannot hold the impugned purchases to be bogus. By relying on the decision of the Hon'ble Jurisdictional High Court in the case of *Mohammad Haji Adam & Co.* (supra), the gross profit on the impugned purchase should be considered inline with the genuine purchase and also by considering the fact that the assessee would have benefited from purchasing in grey market. On the facts of the present case, the disallowance of 2% of the bogus purchase will meet the ends of justice based on the submission of the assessee and also

from the findings of the lower authorities. The gross profit ratio offered by the assessee at the rate of 1.17% is to be reduced and the differential amount is to be calculated. We hold and direct accordingly. Ground no. 2 is partly allowed.

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

Order pronounced in the open court on 09.03.2023

Sd/-

Sd/-

(Amarjit Singh)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 09.03.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai