

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'J' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 691/Mum/2022 (A.Y. 2016-17)

Viraj Profiles Limited Ground and First Floor Viraj Towers, Near Western Express Highway Metro Station, Andheri East Mumbai-400 069. PAN : AABCV1740N (Appellant)	Vs.	DCIT, Circle 3(2) Room No. 1923 19 th Floor Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Pratik Jain
Department by	Shri Manoj Kumar
Date of Hearing	16.03.2023
Date of Pronouncement	01.05.2023

O R D E R

PER B.R. Baskaran (AM) :-

The appeal filed by the assessee relates to the assessment year 2016-17 and is directed against the order passed by Ld CIT(A)-51, Mumbai.

2. The facts relating to the case are discussed in brief. The assessee is engaged in the business of manufacture and sale of stainless steel products. A search and seizure action was carried in the hands of the assessee and its associates on 13.7.2017. Consequent thereto, the assessments of the year under consideration were completed by the AO u/s 153A r.w.s 143(3) of the Act.

3. In the appellate proceedings, the Ld CIT(A) allowed the appeal of the assessee in part. Hence the assessee has filed this appeal before the Tribunal challenging the order passed by Ld CIT(A).

4.0 Following issues are urged in this appeal by the assessee:-

- (a) Partial confirmation of addition relating to alleged bogus purchases.
- (b) Partial confirmation of addition relating to Corporate Guarantee commission.
- (c) Addition towards alleged cash component in purchase of agricultural lands.

5. The first issue relates to the addition made on account of alleged bogus purchases. Since the Ld CIT(A) has given partial relief, both the parties are in appeal before us on this issue.

5.1 During the course of search proceedings, it was noticed that the assessee has purchased goods from M/s Samnik General Trading Company, M/s GSP International, M/s Ankit International, M/s SPA Heights P Ltd, M/s Godwin Metal Trade P Ltd, M/s. Saj Trading Company, M/s. Rashmi Steels, M/s. Kshemkari Steel and M/s. Manohar Manak Alloys P Ltd. The revenue carried out enquiries from these parties either u/s 131 of the Act or by taking survey and search operations u/s 133A/132 of the Act. From the result of these investigations, the revenue came to the conclusion that these entities have provided only accommodation bills without actually supplying materials. In this regard, the AO placed reliance on the statements given by some of the suppliers and also statement given by the employees of the assessee concern. Accordingly, the AO disallowed entire purchase amount of Rs.15,30,36,741/- made from these parties.

5.2 In the appellate proceedings, the Ld CIT(A) restricted the addition to 6% of the value of above said purchases. The assessee is aggrieved with the decision of Ld CIT(A) in restricting the addition to 6% of value of alleged bogus purchases.

5.3 The Ld A.R submitted that the AO has disallowed the purchases presuming that they are bogus. In this regard, he has placed reliance on the statements given by some of the suppliers, financial profiles of suppliers, use of outstation vehicles for transportation of goods, survey findings of two parties. He also relied upon the statement given by an employee named Shri

P Nandakumar, who has stated that the various suppliers have given only bills to the assessee. However, the AO did not give credence to the enquiry conducted by DGCEI on identical allegations of providing accommodation bills and the examination by him with some of the suppliers. The DGCEI has given a finding that the assessee has actually procured the materials. The Ld A.R further submitted that the AO himself has observed that the assessee could have procured materials from other sources and have got accommodation bills from these suppliers. This observation of the AO shows that the receipt of materials by the assessee was not doubted by him.

5.4 The Ld A.R further submitted the Ld CIT(A) held that the entire purchases could be disallowed only when the materials have not been received by the assessee. Accordingly the Ld CIT(A) has held that, if the assessee could prove the receipt of materials, then only the incremental gross profit should be added. The Ld CIT(A) further observed that the manufacturing loss disclosed by the assessee would prove whether the materials have been received or not, i.e, if the materials have not been actually received, the assessee would be showing more manufacturing loss in order to tally the quantity details. He submitted that the Ld CIT(A) has given a finding that the manufacturing loss declared by the assessee is within the prescribed limit of Standard Input Output Norms (SION) published by the DGFT, Government of India. The Ld CIT(A) also relied upon the findings of DGCEI, wherein it was found during the search conducted by them that the assessee has received materials from other parties, while the bills were issued by different parties. Under these set of facts, the Ld CIT(A) restricted the addition to 6% of the value of purchases in all the above said years.

5.5 The Ld A.R further submitted that the assessee has furnished all the details to prove the genuineness of purchases. He further submitted that the statement given by the employee was general in nature and not with regard to any specific bills and his statement has been denied by the CMD Shri Neeraj Raja Kochhar. He further submitted that the AO has also relied upon

a statement given by a person named Shri Chandra Shekar Nair, which has later been retracted by him. Hence his statement cannot be relied upon. In any case, the above said person was not director in any of the suppliers concerns when he made the statement. He further submitted that the search team could not find any material to show that the cheque payments made towards alleged bogus purchases have been flowed back to the assessee in the form of cash. He further submitted that the Excise department, which examines the production details of the assessee, did not find fault with the books of accounts of the assessee. Accordingly, the Ld A.R contended that the entire disallowance made by the AO should have been deleted by the Ld CIT(A).

5.6 In the alternative, the Ld A.R submitted that the AO himself has observed that the assessee has received materials from one source and obtained bills from others. In this kind of situation, as observed by Ld CIT(A), only incremental profit should be added. He submitted that the incremental profit rate of 6% estimated by Ld CIT(A) is very much on the higher side. He submitted that the assessee has shown gross profit rate of 17% during these years and the said profit rate has been accepted by the Transfer pricing officer under Transactional Net Margin Method, since the said profit rate is at par with the rate of profit declared by the comparable companies. He submitted that, in the following cases, the Tribunal has restricted the addition to 2% of the value of purchases:-

- (a) Suman Gupta vs. ACIT (ITA No.4774/Mum/2014 dated 23.8.2017). In this case, this assessee was engaged in Steel business.
- (b) Geolife Organics (ITA No.3699/Mum/2016 dated 05-05-2017). In this case, this assessee was engaged in metal business.
- (c) Timex Art Décor P Ltd (ITA No.7293 & 7294/Mum/2017 dated 18-10-2019).

Accordingly, in the alternative, the assessee pleaded that the addition may be restricted to 2% of the value of purchases.

5.7 The Ld D.R, on the contrary, supported the orders passed by the assessing officer. He submitted that the Ld CIT(A) has relied upon the report given by DGCEI regarding consumption of materials, but did not examine the quantity details. He further submitted that the assessee has claimed that lorries registered in other states have been used for transportation of materials, which is not permitted. Hence transportation of materials has not been proved. The assessee has not furnished the details of octroi payments. Accordingly, he submitted that the purchases made from the accommodation bill providers cannot be said to have been proved by the assessee. Accordingly, he submitted that the AO has rightly disallowed entire amount of purchases and the same should be retained and the orders passed by Ld CIT(A) on this issue should be reversed.

5.8 In the rejoinder, the Ld A.R placed his reliance on his written submissions.

5.9 We have heard rival contentions on this issue and perused the record. The assessee is engaged in the business of manufacture and sale of Stainless Steel Products. In the manufacturing of products, the materials purchased by it is melted and converted into the finished products. In the case of trading of goods, the sales quantity could be reconciled with the purchase quantity. However, in the case of manufacturing of goods and when the raw materials is converted into other type of finished goods, the receipt of material can be judged on comparing the manufacturing loss. The gross profit rate declared by the assessee vis-à-vis other comparable companies is another measure to judge the genuineness of purchases. If an assessee has introduced bogus bills without actually receiving the materials, then the natural tendency is to show higher manufacturing loss in order to adjust the quantity details and the same would result in showing lower gross profit rate.

5.10 The submissions made by the assessee with regard to the observations made by the AO are summarized below:-

a. The assessee has submitted the entire documentary evidences such invoices, purchase order, Goods receipt note, stock register showing receipt, bank statement, etc. to establish the genuineness of the purchases and no doubt raised by the AO.

b. The acceptance of employee of Mr. P Nandkumar is general in nature without any reference to any material found during the search and the same was duly denied by the CMD Mr. Neeraj Raja Kocchar.

c. Reliance on statement of one Mr. Chandra Shekhar Nair who allegedly was carrying out business of certain suppliers is incorrect since he was not a director in any of the said suppliers at the time of search and he has duly retracted the same before AO. Similarly, other suppliers have nowhere given clear statement that they are engaged in providing accommodation entry.

d. No evidence of any cash payments/receipts were found at the premises of the suppliers as well as assessee.

e. Allegation of use of outside state vehicle may be violation of Motor Vehicle Rules; however, same has no bearing on income tax,

f. Further, the suppliers were called for cross examination and all have confirmed to have supplied material before AO- para 12 of assessment order.

g. Second layer investigation into supplier of supplier is not futile since it constitute hardly negligible part of total purchases made by the assessee's supplier.

h. Material accepted from above parties accepted by excise from 2013 till 2018.

i. Thus, the allegation of AO that parties are not genuine is incorrect.

j. Further, it is submitted that the entire raw material has been actually received by the assessee and the same has been consumed by the assessee for manufacturing purpose. Details of the consumption has been duly submitted before AO during assessment proceedings. The manufactured goods have been further exported by the assessee. The assessee has submitted the entire evidence to support the receipt of material, consumption of the same and its output which has been exported. Further, the assessee has also submitted the input output ratio wherein the average manufacturing/ burning loss in respect of main product 'billets' is 7.14% as against standard of 10% prescribed by DGFT. The same is placed at page no. 75 of the paperbook. AO has mechanically rejected the same on the ground that no one to one correlation has been submitted by the assessee. It is important to note that in assessee's business where measurement of input and output units is same, the extent of use of raw material can be seen from the quantitative chart showing purchase of raw material and its consumption without going into

one to one correlation. Therefore, in such case, input output ratio needs to be accepted.

k. Accordingly, the receipt of material and its consumption in the manufacture cannot be doubted. This is moro-so when the AO has himself stated that the material has been received by the assessee from open market in para 17 of the assessment order.

l. Further it is also submitted that the majority of the suppliers have appears before the Id. AO and confirmed that the they have supplied the material to the appellant.

m. Further, we also rely on the findings of the DGCEI in the assessee's own case wherein after extensive search, they have concluded that the material has been duly received by the assessee. Kindly refer to conclusion of the DGCEI at page 136 of the CIT (A) order.

n. Thus, it is submitted that assessee has duly purchased material from the suppliers. It is possible thai the suppliers have themselves procured the material from open market and the same has been supplied to assessee. However, the said fact cannot lead to a conclusion that the purchases are bogus.”

5.11 We notice that the AO himself has observed at paragraph 17 of the assessment order that the purchases have been made from open market against the bills obtained from entry providers. We also notice that the assessee has furnished all the relevant documents to prove the purchases, which are narrated in point (a) in the preceding paragraph. As observed earlier, the manufacturing loss declared by the assessee is a relevant factor to determine whether the assessee has received materials or not. We notice that the Ld CIT(A) has given a finding that the manufacturing loss declared by the assessee was within the prescribed limit of SION published by DGFT, Government of India. We also notice that the DGCEI has also conducted search in order to find out whether the assessee has actually received material against the alleged accommodation bills and he has given his opinion that the materials have been received.

5.12 We notice that the assessee has furnished gross profit rate chart before Ld CIT(A) as under:-

A.Y	G.P rate
2013-14	17.47%
2014-15	17.37%
2015-16	17.43%
2016-17	18.80%
2017-18	17.77%
2018-19	17.16%

The average rate of gross profit declared by the assessee is more than 17%, which was stated to be more than the industry average. The Ld A.R submitted that the above said contention is evidenced by the Transfer Pricing Study conducted by the assessee, wherein the international transactions have been bench marked under TNM method. It is stated that the Transfer pricing officer has accepted the T.P study, meaning thereby, the TPO has accepted the gross profit margin of the assessee to be at par or more than the industry average. Under these set of facts, we are of the view that the Ld CIT(A) was justified in holding that the assessee has actually received materials and hence disallowance of entire amount of purchases is not justified. When the receipt of materials is accepted, the AO's reliance on the statements given by the suppliers or employee/other persons shall become insignificant.

5.13 We notice that the Ld CIT(A), having held so, has proceeded to hold that the assessee would have made profits in purchasing materials from other suppliers. In this regard, the Ld CIT(A) has taken support from the decision rendered by Hon'ble jurisdictional Bombay High Court rendered in the case of Rishabhdev Technocable Ltd (2020)(115 taxmann.com 333)(Bom), wherein it was held by the High Court that in a case where the parties from whom such purchases allegedly made were bogus but the purchases in themselves were not bogus, only a gross profit ratio could be added to the income of an assessee. We notice that the Ld CIT(A) has estimated the said

incremental profit @ 6% of the value of purchases, but did not give any basis for arriving at the above said rate of 6%.

5.14 It is the contention of the assessee that, in the facts and circumstances of the case, no disallowance of purchases is warranted, since the manufacturing loss and the gross profit rate declared by the assessee compares well with industry standards. The assessee itself, in the alternative, has submitted that the addition towards incremental gross profit may be restricted to 2% of the value of purchases. In support of this contention, the Ld A.R also relied upon certain case laws (referred supra).

5.15 We find merit in the said contentions under the facts of the present case. We noticed earlier that the manufacturing loss declared by the assessee was less than the SION standards prescribed by DGFT. The gross profit rate declared by the assessee was more than the industry average. Hence, in the normal circumstances, no disallowance of purchases is called for. However, since some of the suppliers have stated that they have not supplied the materials and since the AO & DGCEI has opined that the assessee might have procured materials from others, it is possible that the assessee could have made some profit in such an exercise. Hence, in order to take care of revenue leakages, if any, some addition is called for. We notice that the addition has been restricted to 2% in the following cases:-

- (a) Suman Gupta vs. ACIT (ITA No.4774/Mum/2014 dated 23.8.2017). In this case, this assessee was engaged in Steel business.
- (b) Geolife Organisations (ITA No.3699/Mum/2016 dated 05-05-2017). In this case, this assessee was engaged in metal business.
- (c) Timex Art Décor P Ltd (ITA No.7293 & 7294/Mum/2017 dated 18-10-2019).

Accordingly, we modify the order passed by Ld CIT(A) in all these years and direct the AO to restrict the addition on account of non-genuine purchases to 2% of the value of alleged bogus purchases in both the years., i.e., AY 2014-15 and 2015-16.

6. The next common issue urged by both the parties relate to the transfer pricing adjustment in respect of Commission on Corporate Guarantee given to the Associated Enterprises by the assessee.

6.1 The assessee had provided Corporate Guarantee to its Associated Enterprises for the loan taken by them. The assessee contended before TPO that the same is a Share holder activity and hence it cannot be considered as an International Transaction. The TPO did not accept the contentions of the assessee. By considered the commission charged by State Bank of India, the TPO made transfer pricing adjustment @ 1.50% of the Guarantee amount given by the assessee.

6.2 The Id CIT(A) noticed that an identical TP adjustment made in the assessee's own case in AY 2010-11 has been adjudicated by the Tribunal and the Guarantee Commission was restricted to 0.50% following the decision rendered by the Hon'ble Bombay High Court in the case of Everst Canto Cylinders Ltd (2015)(58 taxmann.com 254; 378 ITR 57)(Bom). Following the said order, the Ld CIT(A) directed the AO to restrict the Commission on Corporate Guarantee given by the assessee @ 0.50% of actual value of loan taken by the Associated Enterprises. Both the parties are aggrieved. While the assessee seeks further reduction, the revenue contends that the guarantee commission should be retained @ 1.50%.

6.3 We have heard rival contentions on this issue and perused the record. We notice that the co-ordinate bench of Tribunal has examined an identical issue in the assessee's own case in AY 2010-11 and the Tribunal has restricted the rate of commission at 0.50% of the value of loan actually availed by the Associated Enterprises. In this regard, the Tribunal has followed the decision rendered by the jurisdictional Hon'ble Bombay High Court in the case of Everest Canto Cylinders Ltd (supra). Since the decision rendered by Ld CIT(A) on this issue is covered by the decision rendered by the jurisdictional High Court and the Tribunal, we do not find any reason to

interfere with the decision so taken by Ld CIT(A) on this issue. Accordingly we uphold the same.

7. The next issue urged by the assessee relates to the addition made towards cash component paid in purchase of agricultural land amounting to Rs.1,23,19,000/-.

7.1 The facts relating to this issue are stated in brief. During the course of search proceedings, soft copy of draft sale agreement was found in the laptop of Shri Shilan Thaker. The said agreement showed that a piece of land was proposed to be purchased at Rs.11,14,44,000/- from Shri Rahul J Sankhe. In the above said agreement, it is stated that the above said consideration was proposed to be paid by way of cheque amounting to Rs.8,14,44,000/- and by way of cash amounting to Rs.3,00,00,000/-. The ledger accounts obtained from the seller disclosed that the assessee has paid a sum of Rs.5,11,66,500/- by way of cheques to the seller. It was noticed that the assessee has not accounted for any cash payment in the books of accounts. Hence the AO asked the assessee about the cash component of Rs.3.00 crores.

7.2 The assessee submitted that the above said agreement is an unsigned draft Agreement for sale and it was prepared at the time of negotiation of the deal for purchase of agricultural land. It was submitted that the said agreement for sale was never registered and further it did not mention the name of 'purchaser'. It was submitted that, after conclusion of negotiation, the sale deed was registered for a consideration of Rs.9,91,25,000/-. It was also submitted that the very fact that the search team did not find any material to support the alleged payment of cash of Rs.3.00 crores would show that the assessee never paid the said amount.

7.3 The AO, however, did not accept the explanations of the assessee. He referred to the statement taken from Shri Shilan Thaker, wherein he has stated that the draft agreement was found in his laptop. He had also stated

that he does not know the status of cash payments mentioned in the agreement. The AO interpreted the same as that Shri Shilan Thaker did not deny the transactions of cash payments. Accordingly, the AO drew the conclusion that the assessee has made cash payments in this deal of purchase of agricultural land. He noticed that the agreement was entered for Rs.11.14 crores and the sale deed was registered for Rs.9.91 crores. Accordingly, the AO concluded that the difference amount of Rs.1,23,19,000/- has been paid by way of cash and accordingly assessed the same as income of the assessee u/s 69C of the Act. The Ld CIT(A) also confirmed the same.

7.4 The Ld A.R reiterated the contentions that were made before AO. In addition to the same, the Ld A.R submitted that the stamp duty value for this property was only around Rs.4.00 crores, but the property has been registered for a value of Rs.9.91 crores. Accordingly, he submitted that the AO has made this addition on the basis of uncorroborated, unsigned and incomplete draft agreement. In this regard, he placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. AKME Projects Ltd (2014)(42 taxmann.com 379)(Delhi). On the contrary, the Ld D.R supported the order passed by Ld CIT(A).

7.5 We have heard the parties on this issue and perused the record. We notice that the assessing officer has made the addition on the basis of a draft agreement found in the laptop of Shri Shalin Thaker. Following discrepancies were found with regard to this document.

- (a) No physical copy of the agreement was found during the course of search. The soft copy was also unsigned one.
- (b) The name of purchaser was not mentioned in the draft agreement.
- (c) There was difference in the sale consideration mentioned in the sale agreement and the Sale deed. The consideration mentioned in the draft agreement was Rs.11.14 crores and in the Sale deed was Rs.9.91 crores. As per the draft agreement, the cheque amount was mentioned as Rs.8.14 crores, whereas the assessee has

actually paid cheque amount to the tune of Rs.9.91 crores. Though the cash component was mentioned as Rs.3.00 crores in the draft agreement, the AO could make addition to the extent of Rs.1.23 crores only. The said difference in the alleged cash consideration itself supports the case of the assessee that the draft agreement was prepared, when the negotiations were going on.

- (d) In the draft agreement, the date of agreement is mentioned as “---day of September, 2015” at one place and as”----April, 2015” in another place.
- (e) The actual purchase value was far higher than the Stamp duty value.
- (f) The AO has only obtained ledger account copies from the seller and no specific enquiry about the cash component was made by the AO.
- (g) The AO has referred to the statement given by Shri Shilan Thaker, wherein, in fact, he did not agree with the alleged payment of cash component, as inferred by the AO. He has only expressed ignorance about the same. The AO has only drawn adverse inferences stating that Shri Shilan Thaker did not specifically deny cash transactions.

The above said discrepancies noticed in the draft agreement and also the fact that the AO did not conduct proper enquiries to find the veracity of the draft agreement would drive us to conclude that the AO could not have placed reliance on the draft agreement in entirety without corroborating the same with any independent enquiries. The above said view of ours finds supports from the decision rendered by Hon’ble Delhi High Court in the case of CIT vs. AKME Projects Ltd (2014)(42 taxmann.com 379)(Delhi), wherein it was held as under:-

“The findings of the tribunal are factual. The Assessing Officer had relied upon an unsigned agreement, which was found during the course of survey and did not proceed further by examining the person, who had drafted the agreement or the witness. The first appellate authority and the tribunal, on the other hand, have relied upon several factors to hold that the draft agreement was not executed/signed and implemented. There were separate transactions with third parties and the transaction between the assessee and United Special Ispat Limited was only in respect of 5.431 acres of land and not for 75 acres of land subject matter of the draft agreement. We also notice that the Assessing Officer did not make addition of Rs. 3 crores, the amount mentioned in the "draft agreement to sell" but addition of Rs.1.15 crores was made. **The draft agreement to**

sell could have been the starting point of investigation and further detailed verification, which has not been carried out. In the absence of the said investigation and evidence, it is not possible to hold that the orders passed by the first appellate authority and the tribunal are perverse. We also note that the stand of the respondent-assessee has been consistent. The appeal is accordingly dismissed.”

7.6 In view of the foregoing discussions, we are of the view that the impugned addition of Rs.1,23,19,000/- cannot be sustained. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete this addition.

8. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on 01.5.2023

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 01/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai