

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 48/Mum/2023 (A.Y. 2010-11)**  
**&**  
**ITA No. 49/Mum/2023 (A.Y. 2011-12)**

**Vishal Praful Mehta**

A/305, Sairaj Garden CHS Ltd, Iraniwadi  
Rd No. 3, Kandivali (W)  
Mumbai - 400067  
**PAN: AFGPM0875G**

..... Appellant

Vs.

**ACIT- 33(3)**

Room No. 708, 7<sup>th</sup> Floor, Kautilya Bhavan,  
BandraKurla Complex,  
Bandra East Mumbai- 400051

..... Respondent

Appellant by : Ms. Rashmi Vyas  
Respondent by : Ms. Vranda U Matkari, Sr. AR

Date of hearing : 09/03/2023  
Date of pronouncement : 15/05/2023

**ORDER**

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

These two appeals by assessee are directed against the order of Commissioner of Income Tax (Appeals)-45 (for short 'CIT (A)'). The assessee has raised the following grounds of appeal:

FOR AY 2010-11

**1. NATURAL JUSTICE**

*1.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order passed by Learned Commissioner of Income Tax (Appeals) - 45, Mumbai ["Ld. CIT (A)"] be held as bad and illegal, as:*

*(i) The same is framed in breach of the principles of natural justice; and*

*(ii) The same is perverse, passed without application of mind to the facts on record.*

*1.2 without prejudice to the generality to the above, in the facts and the circumstances of the case, and in law, the order is bad in law as:*

*(i) The same is passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant; and*

*(ii) The order is passed without application of mind to the facts and the submissions brought on record.*

**2. REASSESSMENT**

*2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"].*

*2.2 While doing so, the Ld. CIT (A) failed to appreciate that:*

*(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;*

*(ii) The necessary preconditions for initiating and completion thereof were not satisfied.*

2.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.

WITHOUT PREJUDICE TO THE ABOVE

3. *DISALLOWANCE OF RS. 29, 36,657/- UNEXPLAINED PURCHASE / BOGUS PURCHASE*

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance to the extent of Rs. 29,36,657/- to the income of the Appellant, on account of alleged non-genuine purchase/alleged bogus purchase/alleged unexplained expenditure u/s 69C of the Act.

3.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action only on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.4 without prejudice to the above, assuming- but not admitting that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.

LIBERTY

4. the appellant craves leave to add, alter, deletes or modifies all or any the above ground at the time of hearing.

AY 2011-12

1. NATURAL JUSTICE

1.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order passed by Learned Commissioner of Income Tax (Appeals) - 45, Mumbai ["Ld. CIT (A)"] be held as bad and illegal, as:

(i) The same is framed in breach of the principles of natural justice; and

(ii) *The same is perverse, passed without application of mind to the facts on record.*

*1.2 Without prejudice to the generality to the above, i*

*On the facts and the circumstances of the case, and in law, the order is bad in law as:*

*(i) The same is passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant; and*

(iii) *The order is passed without application of mind to the facts and the submissions brought on record.*

*1.2 WITHOUT PREJUDICE TO THE ABOVE*

*2. DISALLOWANCE OF RS. 1, 70,332/- UNEXPLAINED PURCHASE/BOGUS PURCHASE U/S 69C OF THE ACT*

*2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance to the extent of Rs. 1,70,322/- to the income of the Appellant, on account of alleged non-genuine purchase/alleged bogus purchase/alleged unexplained expenditure u/s 69C of the Act.*

*2.2 While doing so, the Ld. CIT (A) erred in:*

*(i) Basing his action only on surmises, suspicion and conjecture,*

*(ii) Taking into account irrelevant and extraneous considerations; and*

*(iii) Ignoring relevant material and considerations as submitted by the Appellant.*

*2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

*2.4 Without prejudice to the above, assuming- but not admitting-that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.*

*LIBERTY*

*3. the Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.*

1. These two appeals for AY 2010-11 and 2011-12 filed by the assessee on 06-01-2023. In this case we observed that date of communication of the order passed by Ld. CIT (A) u/s. 250 was 20-09-2019. In that case due date for filing the appeal was 18-11-2019. Resultantly there is a delay of 1144 days. This fact of delay assessee had accepted in form no. 36 also vide column- 11. Although there was no application filed by the assessee at the time of filing of form no.36 to condone the delay. Thereafter office of assistant registrar ITAT Mumbai issued defect memo dated 01-02-2023 and provided 10 days' time to the assessee for justifying this delay of 1144 days.
  
2. In response to the above defect memo assessee filed an affidavit along with an application to condone the delay vide letter dated 08-03-2023. We have gone through the affidavit and application for condonation of delay along with evidence adduce by the assessee to substantiate the contents of affidavit filed. We observed that assessee is not very highly qualified. Assessee's son is suffering with **epilepsy, which is a central nervous system disorder**. This disease creates abnormal behaviour, causing seizures, sensation, and some time even loss of awareness. This problem to the son of the assessee started in the year 2018. With reference to this we have gone through the relevant medical certificates submitted by the assessee. In addition to this assessee's parents are also suffering from **ailments** including high diabetes, varicose vein in both the legs and assessee's mother is bed ridden as on today also. Relevant medical records are there on record for verification.
  
3. In normal circumstances, such a delay of 1144 days can't be condoned whatever may be the reason but looking at terrible health issues to the family members of the assessee along with the facts of original assessment vis-à-vis reassessment we are of the considered view that case of the assessee is a fit one to be considered for the condonation of delay. Tribunal being a final fact-finding authority and a last resort to the assessee available

against the order of Ld.CIT (A). Rejecting assessee appeal here on the ground of delay may cause serious injury to the judicial delivery system and the type of assessee under consideration. In view of above we condone the delay of 1144 days and admit the appeal for hearing on merits.

4. Both the appeals filed by the assessee have similar grounds and facts involved. In view of this we are taking ITA no. 48/mum/2023 as lead case. The ratio descend in this appeal will apply mutatis mutandis to ITA No. 49/Mum/2023
  
5. Brief facts of the case are that assessee filed original return of income on 24-09-2010 declaring total income at Rs 52,93,655/-. Assessee was engaged in the business of trading of Iron & Steel Sheets. Case of the assessee was selected for scrutiny under CASS and total income was assessed at Rs 4, 29, 80,520/- vide order dated 23-12-2012. Against this original assessment order assessee preferred an appeal before the then Ld.CIT (A)-35 Mumbai. The then Ld.CIT (A) allowed the appeal of the assessee vide order dated 09-05-2013 and accepted the returned income of the assessee. Thereafter revenue preferred an appeal before the co-ordinate ITAT bench and there also revenue lost the appeal vides order dated 05-10-2016. Then as the matter is above the threshold, department further appealed before the honourable Bombay High Court. Here also honourable Bombay High Court confirm the decision of the then Ld.CIT (A) and dismissed the appeal of the department.
  
6. In the meantime, information was received from Maharashtra Sales tax department through DGIT Investigation about assessee that he was engaged in the practice of inflating the purchases through the hawala parties by taking bogus bills without delivery of goods. Case of the assessee was reopened u/s. 148 and a notice was issued dated 11-02-2015. We have gone through the order of AO and found that there were total 7 parties involved

in the case of assessee as per the information received from the office DGIT Investigation. The name of the parties is as under:

S.No	Name of the Party	PAN	AMOUNT
1.	SWASTIK ENTERPRISE	AFQPD6684L	17,23,304
2.	SIMANDHAR TRADING CORPORATION	AOXPD8558F	109,53,073
3.	RUSHABH ENTERPRISE	AAEPD4401C	58,23,655
4.	RIDDHI IDDHI CORPORATION	AABPP9349J	48,88,125
5.	HITEN ENTERPRISES	AABPP2740H	146,17,686
6.	ADIGIN ENTERPRISES	AAGPS5286C	18,72,020
7.	ABHAY ENTERPRISES	AABPA3114G	167,33,114
		TOTAL	5,66,10,977

7. Out of this 7 parties party no. 1, 2, 3 and 5 were found to be doubtful in the original assessment order and party no. 4, 6 and 7 was found to genuine during original assessment order. These facts are on record and not under challenge by the revenue also. It is only after communication from DGIT Investigation party no.4, 6, and 7 was alleged to be bogus. We observe that all the 7 parties mentioned (supra) were always in the knowledge of AO and he categorically decided to treat party no 1, 2, 3 and 5 as bogus. Whereas he himself found party no. 4, 6 and 7 to be genuine. As far as party no. 1, 2, 3 and 5 are concerned were found to be genuine by the then Ld.CIT (A), ITAT and honourable Bombay High Court also. As far as party no. 4, 6 and 7 are concerned were duly verified by AO himself and declared to be genuine. Secondly there is no misrepresentation of information by the assessee. In these circumstances when all the transactions with these parties have gone through a serious scan by various authorities, a piece of information from the office DGIT Investigation can't be considered super sacrosanct over and above the order of ITAT and honourable Bombay High Court. As the nature of transaction and modus operandi with all the 7 parties are similar and AO is not able to establish in his reassessment order any new fact emerged out of communication from the DGIT Investigation office which makes him able to change his stand taken earlier at the time of original assessment.

8. The only allegation of the AO in his reassessment order that assessee was not able to produce the parties and parties were not responding to the notice issued u/s. 133(6) is irrelevant by efflux of time. As the assessee entered into the transactions during FY 2009-10 and case was reopened in FY 2015-16 and enquiry were also conducted during that period. With a time, lag of 6 years all type of possibilities are there like closure of business, change in address, change of city etc. as far as relevant documents are concerned as mentioned in para 4.2 were duly submitted and acknowledged by the AO himself in his order vide para 4.3 of the assessment order. In this situation one fact is confirmed that assessee was never non-co-operative; always submit relevant documents as required by AO (both during the original assessment and reassessment proceedings. In this situation we are of the considered view that reassessment order passed was based on conjunction, surmises and guess work. Rather it's a fit case where order have been passed by ignoring the crucial facts and evidence of the original assessment order and called to be an order based on change of opinion.
9. In the light of above we direct the AO to delete the additions and accept the returned income of the assessee.
10. In view of the above facts on record and discussion held, **ITA No. 48/Mum/2023 (A.Y. 2010-11) & ITA No. 49/Mum/2023 (A.Y. 2011-12)** of the assessee are allowed.

Order pronounced in the open court on 15<sup>th</sup> day of May, 2023.

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

*Mahesh R. Sonavane*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

(Dy. / Asstt. Registrar)  
**ITAT, Mumbai**