

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.2135/Del/2017  
Assessment Year: 2009-10

**With**

ITA No.2136/Del/2017  
Assessment Year: 2011-12

M/s. Lakshman Tools Pvt. Ltd., 1315, Ansal Tower, 39, Nehru Place, New Delhi	<b>Vs.</b>	Income Tax Officer, Ward-15(1), New Delhi
<b>PAN :AAACL2382D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Ram Avatar Sharma, CA Sh. Bhupesh Agarwal, CA
Department by	Sh. Virendra Singh, Sr. DR Sh. Sanjay Kumar, Sr. DR

Date of hearing	25.08.2023
Date of pronouncement	29.08.2023

**ORDER**

The present appeals have been filed by the assessee against a common order dated 22.11.2016 of learned Commissioner of Income Tax (Appeals)-5, Delhi, pertaining to assessment years 2009-10 and 2011-12.

2. The common issues arising in these appeals relate to additions/disallowances made on account of alleged non-genuine purchases and commission paid for availing accommodation entries. The parties have agreed before us that the facts and issues arising in both the appeals are identical and the decision taken in one appeal would apply mutatis mutandis to the other appeal. Considering the above submissions, we proceed to deal with the relevant facts.

3. Briefly stated, the assessee is a resident corporate entity stated to be engaged in the business of manufacturing, assembling, fabricating, dealing, distributing, buying, selling of fasteners of all kinds of description, tools, appliances bolts, nuts, studs and other related items. For the assessment years under dispute, the assessee filed its returns of income in regular course. The returns filed by the assessee were initially processed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the Assessing Officer received information from the Investigation Wing of the Department indicating that certain purchases shown by the assessee in the relevant assessment years are not genuine, as, purchases are in the nature of accommodation entries availed by the assessee through bogus

purchase bills from hawala traders. The information received revealed that in assessment year 2009-10, assessee received accommodation entries of Rs.26 lakhs, being purchases from M/s. Manav Impex and M/s. Sagar Enterprises. Whereas, in assessment year 2011-12, the assessee received accommodation entries by way of bogus purchase bills of Rs.2,26,77,146/- from two parties, i.e., M/s. Radhika Enterprises and M/s. S.K. Trading. Based on such information, the Assessing Officer reopened the assessments under section 147 of the Act.

4. In course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the purchases. In response to the query raised, the assessee furnished the purchase vouchers. To independently verify the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act to the concerned selling dealers, calling upon them to furnish confirmation, Income Tax Returns, copies of balance sheets and profit and loss account, copies of bank statements for the relevant financial year etc. However, as observed by the Assessing Officer, the notices issued to the concerned parties on the address provided by the assessee returned back unserved. Further, in response to the query raised

by the Assessing Officer, the assessee submitted that it had purchased TMT Bars from concerned parties and sold them. However, as alleged by the Assessing Officer, the assessee failed to furnish the evidence relating to transportation charges paid and evidence of sale/purchase of similar goods in earlier and subsequent assessment years. Thus, the Assessing Officer, treating the purchase as non-genuine and in the nature of accommodation entries, added back to the income of the assessee. Further, he observed that for availing such accommodations entries, the assessee must have paid commission to the entry providers. Accordingly, applying commission rate of 2% on the purchase value of goods, he made additions. Though, the assessee contested the additions before learned first appellate authority, however, the additions were confirmed.

5. Before us, learned counsel appearing for the assessee submitted that reopening of assessments under section 147 of the Act is invalid, as, there is no material before the Assessing Officer to form belief that the income has escaped assessment. He submitted, merely based on the information received from Investigation Wing, the Assessing Officer has proceeded to reopen

the assessments without making any independent inquiry. Further, he submitted, the objections raised by the assessee were disposed of in a mechanical and perfunctory manner. Thus, he submitted, the reopening of assessments is invalid. In support of such contention, he relied upon the following decisions:

- i. Principal Commissioner of Income Tax Vs. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300 (Delhi HC)
- ii. G & G Pharma Vs. PCIT, [2017] 81 taxmann.com 109 (Delhi HC)
- iii. Nu Power Renewables (P.) Ltd. Vs. DCIT, 94 taxmann.com 29 (Bombay HC), dated 09.03.2018.

6. As regards the merits of the issue, learned counsel submitted, the purchase of TMT Bars, M.S. Plates and M.S. Angles were supported by purchase invoices. He submitted, the payments were made and received through normal banking channel. He submitted, in course of the proceeding before the first appellate authority, the assessee has furnished stock register, sale register, purchase register, details of GP ratio etc. Thus, he submitted, the assessee has not only furnished the details of purchases, but also the corresponding sales. Therefore, the purchases cannot be treated as non-genuine.

7. Without prejudice, he submitted, since, the sales declared by the assessee are not disputed, only the profit element embedded in the alleged non-genuine purchases can be treated as income of the assessee. In support, he relied upon the following decisions:

- i. CIT Vs. Bholanath Poly Fab (P.) Ltd. [2013] 40 taxmann.com 494 (Gujarat)
- ii. M/s. Firepro Wireless Vs. ACIT, ITA No.247/Del/2016 (ITAT, Delhi)

8. Learned Departmental Representative submitted, the Assessing Officer, after receiving specific information that the assessee has availed accommodation entries by way of bogus purchase invoices, has reopened the assessments. He submitted, the objections raised by the assessee against reopening were duly considered and rejected by the Assessing Officer. Therefore, the assessee cannot challenge the validity of assessment under section 147 of the Act. He submitted, neither in course of assessment proceedings nor before the appellate authorities, the assessee was able to furnish any credible evidence to establish the genuineness of the purchases. He submitted, assessee's claim that quantitative tally were furnished to co-relate the purchases

with corresponding sales is also a misleading statement, as, learned first appellate authority has given a categorical factual finding that the assessee was unable to co-relate the so called purchases with the corresponding sales. Thus, he submitted, the additions made should be sustained.

9. We have considered rival submissions and perused the materials on record. The first issue arising for consideration is regarding the validity of reopening of assessments under section 147 of the Act. Notably, the assessee had not raised this particular issue before the Commissioner (Appeals) but has raised it for the first time before us. Since, the additional ground raised by the assessee challenging the validity of reopening of assessment under section 147 of the Act is a purely legal and jurisdictional issue, we are inclined to admit the additional ground.

10. Facts and materials on record reveal that the returns of income filed by the assessee, at the initial stage, were not subjected to scrutiny, but were only processed under section 143(1) of the Act. Subsequently, the Assessing Officer received specific information from the Investigation Wing of the Department, which in turn, received information from

Maharashtra Sales Tax Department indicating that certain hawala dealers, without undertaking any real activity of purchase and sale, were actually providing accommodation entries on commission basis. From the information available, it was found that the assessee is a beneficiary of such accommodation entries by way of bogus purchase bills from certain parties, who have been identified as hawala dealers by the Maharashtra Sales Tax Department. Thus, as could be seen from the aforesaid facts, the Assessing Officer had tangible information in his possession indicating escapement of income chargeable to tax.

11. It is fairly well settled, at the time of reopening of assessment, the Assessing Officer, based on materials in his possession, has to form a prima facie belief that the income chargeable to tax has escaped assessment. At that stage, the Assessing Officer was not required to carry out any detailed investigation to establish that income, indeed, has escaped assessment. The only requirement is, there must be a live link between the material in his possession and the formation of belief.

12. In the facts of the present appeal, it is evident, the Assessing Officer had in his possession tangible material to form a belief

that the income chargeable to tax has escaped assessment. Accordingly, he has exercised his powers under section 147 of the Act. In fact, following due process of law, the Assessing Officer has disposed of assessee's objections against reopening of assessment through separate orders. Nothing has been brought on record before us by the assessee to indicate that the orders of the Assessing Officer disposing of the objections have been further challenged.

13. Be that as it may, after considering all aspects of the issue, we are of the view that the Assessing Officer has validly exercised his powers under section 147 of the Act. Accordingly, we dismiss the additional grounds.

14. As regards the merits of the additions made, it is a fact on record that before the Assessing Officer, except the purchase invoices and its own bank statements, the assessee failed to furnish any credible evidence to establish the genuineness of the purchases. Before learned first appellate authority, though, the assessee furnished additional evidences, however, they also did not conclusively prove the genuineness of the purchases. As could be seen from the observations of learned first appellate authority, though, the assessee has claimed that the purchases are genuine

as goods have been delivered to the parties, who purchased them from assessee, however, learned first appellate authority has raised serious doubts on assessee's statements, as, the parties to whom the assessee claimed to have sold the goods were based at Pune, but the delivery was claimed to have been made at Mumbai. He has further recorded a finding of fact that only in respect of the disputed purchases, no buyer's order could be furnished by the assessee to show that the delivery has been made to the Pune based parties at Mumbai. Further, verifying the stock register of the assessee, learned Commissioner (Appeals) has given a factual finding that the entire purchases were lying in stock till March. Further, he has recorded a finding of fact that the assessee was not able to furnish any details to co-relate the purchases with corresponding sales. In this regard, the specific observations of learned first appellate authority are as under:

*“.....It is also seen that despite the specific requisition by the undersigned to furnish the item-wise and party-wise list of goods regarding the impugned purchases and sales, the appellant has not been in a position to furnish the tally of entire purchases, sale and the opening and closing stock, in terms of value and to correlated the purchases and the sales.....”*

15. Nothing has been brought on record by the assessee before us to contradict the aforesaid factual finding of learned first

appellate authority. Learned Commissioner (Appeals) has recorded further factual finding that in addition to Maharashtra Sales Tax Department, the CESTAT has also held that the entities/dealers, from whom the assessee had purchased the goods, are hawala dealers. Since, the assessee has failed to controvert any of the factual findings of learned first appellate authority, we are not inclined to accept the submissions of the assessee that the purchases are genuine. For the same reasons, the additions made on account of commission payment are also upheld. Accordingly, we uphold decision of learned first appellate authority on the issue. Grounds are dismissed.

16. In the result, appeals are dismissed.

***Order pronounced in the open court on 29<sup>th</sup> August, 2023***

***Sd/-***  
**(G.S. PANNU)**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Dated: 29<sup>th</sup> August, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi