

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1978/M/2023
Assessment Year: 2009-10**

M/s. Rameshkumar Vyas, Room No. A12, Devidayal Chawl, Tulsinagar, Kanjurmarg, Mumbai-400 042 PAN: AAAPV6230B	Vs.	ITO, Ward 26(2)(1), Shree Krishna Park, C-, Room No.401, Above Abhyudaya Bank, Diva Shil Road, Diva (E) – 400 612 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Smt. Mahita Nair (Sr. Ar.)

Date of Hearing : 31 . 08 . 2023
Date of Pronouncement : 31 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Rameshkumar Vyas (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 17.11.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2009-10 on the grounds inter-alia that :-

“In the facts and the circumstances of the case and in law, the learned A.O. erred in passing the order u/s 144 r.w.s 147 and therefore rendering the whole re-assessment bad in law, also on the basis of

borrowed satisfaction, presumption and surmises and also erred in disregarding various cases decided in this regard.

2. In the facts and circumstances of the case and in law, the learned A.O. erred in disallowing Rs. Rs.57,74,017/- alleged non-genuine purchases being 100 per cent of the alleged amount even though the payments were made by A/C Payee Cheques/RTGS from the disclosed bank accounts and relying upon third party statement.

a. By disregarding the case of M/S Haji Mohd Adam which was also followed by the jurisdictional ITAT in several cases holding that only differential GP between verifiable and unverifiable purchases could only be added instead of whole amount of purchases which is not verifiable.

b. even though the payment for purchases is made from the books by A/C payee cheques and cannot be termed as non-genuine even though the same has been fully allowed by the jurisdictional Mumbai Tribunal in many cases.

c. only on the basis of the information on the website www.mahavat.gov.in about 6 suspicious dealers whose copy of statement recorded were not furnished to the appellant and without affording cross examination u/s 131.

d. without appreciating the fact that no addition can be made if the suppliers are not traceable as per the judgment of the Bombay High Court.

e. No sales can be made by a trader without purchases

3. In the facts and circumstances of the case and in law, the learned A.O. erred adding Rs 480000/ in respect of cash deposited in bank account as unexplained cash credits. 4. In the facts and the circumstances of the case and in law, the learned Commissioner of

Income Tax(A) NFAC erred in confirming the above additions.

5. In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(1)(c) and charging interest u/s 234.

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- This appeal is filed late and delay in filing may be condoned as per affidavit filed.*
- A Detailed paper book along with case laws will be submitted at the time of hearing.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of information uploaded by the Sales Tax Department on their website and information received from Directorate General of Income Tax (Investigation) [DGIT (Inv.)] that the assessee is one of the beneficiaries of the hawala bills procured without having actual delivery of goods, assessment was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act'). Notice under section 148 of the Act was issued and served upon the assessee by affixture. Notices issued under section 142(1) were issued but returned with remarks "not known" and consequently Assessing Officer (AO) proceeded to frame the assessment ex-parte. On the basis of information that the assessee being engaged in the business of trading in steel under the name and style of M/s. Mayur Steel Traders and information gathered from the Abhyudaya Cooperative Bank and as per information available at AIR the assessee deposited cash amount of Rs.4,80,000/- to his bank account for which no explanation has come on record. The AO also noticed that the assessee is a beneficiary of bogus purchase bills to the tune of Rs.54,90,638/- and Rs.2,83,379/- total amounting to Rs.57,74,017/- from Praveen Steel Traders/Anuradha Traders and Shree Durga Steel respectively and thereby framed the assessment at the total income of Rs.64,60,657/-.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by

the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. Notice of the appeal was issued to the assessee but it was not received back served/unserved. From the history of the assessment order and appeal order it appears that the assessee has never appeared before the Lower Revenue Authorities and summons sent for his first service received back unserved with the remarks “not known”. Keeping in view the fact that the assessment order as well as order passed by the first appellate authority are passed at the back of the assessee there is no use to keep the appeal pending as the same is ultimately required to be decided on merits after providing opportunity of being heard to the assessee. So the Bench has decided to dispose of this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly none of the notices issued under section 148 of the Act as well as notices issued under section 142(1) of the Act by the AO to the assessee were served upon and assessment was framed ex-parte. Even the impugned order passed by the Ld. CIT(A) shows that the assessee has not been served upon. In para 1 of the impugned order it is recorded that notice was issued on 22.01.2020 fixing the hearing for 05.02.2020 and thereafter it is vaguely recorded that “thereafter various hearing notices were

issued as per record but no response from the assessee has come on record". It shows that the notices issued to the AO have never reached to the assessee.

7. First appellate authority has not even preferred to get the notice served by way of dasti notice. So adequate opportunity of being heard has never been provided to the assessee. So we are of the considered view that to decide the issue once for all and to stop the multiplicity of the proceedings the assessee is required to be served by way of dasti summons and then to frame the assessment. So in the interest of justice and to decide the issue once for all the impugned order passed by the Ld. CIT(A) is hereby set aside and remanded back to the AO, before whom the assessee has never appeared nor shown to be served, who shall frame the assessment after getting his service affected and by providing opportunity of being heard.

8. Consequently, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 31.08.2023.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31.08.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.