

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI  
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2232/Mum/2023  
Assessment Year: 2016-17**

The ITO-4(3)(1), Mumbai.	<b>v.</b>	M/s.Update Marketings Pvt. Ltd., 404, Chartered House, Dr.C H Street, Marine Line, Mumbai-400 002.
		[PAN: AAACU 0629 A]
<b>(Appellant)</b>		<b>(Respondent)</b>
Department by	:	Shri Vithal Machindra Bhosale, Sr.DR
Assessee by	:	None
Date of Hearing	:	05.10.2023
Date of Pronouncement	:	17.10.2023

**ORDER**

**PER ABY T. VARKEY, JM:**

This appeal has been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals)/NFAC dated 25.04.2023 for AY 2016-17. The main grievance of the Revenue is against the action of the Ld.CIT(A) restricting the disallowance @ 12.5% of the bogus purchase instead of 100% as made by the AO.

2. The assessee is a Private Ltd. Co., and had filed return of income on 07.10.2016 declaring total income of Rs.28,05,470/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter ‘the Act’); and later, the AO issued notice u/s.148 of the Act dated 30.03.2021 informing the assessee his desire to re-open the assessment. According to the AO, the basis for re-opening

:: 2 ::

the assessment was that he received information from the DDIT (Investigation Wing) Unit-2(1), Mumbai, that the Directors of M/s.ABN Tradelink Pvt. Ltd., and its associates were not doing any real business/trading activity and instead, were only providing accommodation entries in the form of bogus purchases and sales to various parties. According to the AO, there was no real transaction/movement of goods/material of such transaction; and only bills were provided by the entry operators. According to the AO, the assessee, M/s.Update Marketings Pvt. Ltd, was one of the beneficiary and has shown to have purchased (bogus goods) worth of Rs.4,00,01,050/- from M/s.Radiance Multitrade Pvt. Ltd., and Rs.3,00,00,056/- from M/s.Aspire Steel & Engg. Pvt. Ltd., during the relevant AY 2016-17. Therefore, according to the AO, the assessee's financials reflecting transaction of purchases of goods from M/s.Radiance Multitrade Pvt. Ltd. & M/s.Aspire Steel & Engg. Pvt. Ltd., were in-genuine; and therefore, after re-opening the assessment, he directed the assessee to prove the genuineness of the purchases from these two (2) parties. Pursuant thereto, the assessee asserted that it had carried out genuine transaction with these two parties, and in order to support such a contention had filed ledger abstracts of the said parties and also filed the proof of payments made in respect of the bills through account payee cheque /NEFT, and filed the bank statements. The assessee also brought to the notice of the AO that the purchase bills reflect the TIN of the vendors and that they were registered dealers under the Sales Tax

:: 3 ::

Act. However, the AO did not accept the contention of the assessee and held the purchases made from these two parties as in-genuine and rejected the plea of the assessee that profit embedded in the purchases only may be taxed. Accordingly, he added the entire bogus purchase to the tune of Rs.7,00,01,106/-. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/NFAC, who was pleased to partly allow the appeal filed by the assessee by restricting the addition @ 12.5% of the purchases of Rs.7,00,01,106/-.

**3.** Aggrieved by the aforesaid action of the Ld.CIT(A)/NFAC, the Revenue is in appeal before us.

**4.** We have heard the Ld.DR and perused the materials available on record. We note that the assessee is a Private Ltd. Co., and has declared in the year under consideration total income of Rs.28,05,470/-. Later, the assessment was re-opened by the AO on the basis of information from the Investigation Wing that the assessee has transacted with group concerns of M/s.ABN Tradelink Pvt. Ltd., i.e. M/s.Radiance Multitrade Pvt. Ltd., & M/s.Aspire Steel & Engg. Pvt. Ltd. According to the AO, Investigation Wing based on enquiry has found that these companies were not doing any real business/transactions and were only providing accommodation entries in the form of bogus purchases and sales to various parties. Based on the statements recorded from the directors /accountant / CA / CFO of M/s.ABN Tradelink Pvt. Ltd., the AO was of the opinion that the

:: 4 ::

transaction shown by assessee of purchases from two concerns were bogus purchases to the tune of Rs.4,00,01,050/- (M/s.Radiance Multitrade Pvt. Ltd.) and of Rs.3,00,00,056/-, M/s.Aspire Steel & Engg. Pvt. Ltd.) and therefore, he made an addition of Rs.7,00,01,106/- which has been restricted by the Ld.CIT(A)/NFAC @ 12.5% of the purchases by relying on the decision of the Hon'ble Bombay High Court in the case of PCIT v. S.V.Jiwani [2022] 145 taxmann.com 230 (Bom.), wherein, the Hon'ble High Court in similar case upheld the action of the Tribunal restricting the disallowance @12.5% of the bogus purchases by observing as under:-

"4. An appeal was preferred before the Commissioner of Income Tax, (Appeals), who allowed the appeal partly vide its order dated 19th May, 2015. The Appellate Authority held that payments made by the assessee were through banking channels and that there was no evidence to prove that the cash had flowed back to the appellant. Purchase invoices and ledger statements also appear to have been produced before the Appellate Authority. It was held that what was taxable under the Income-tax Act; was only the real income. Even when the transaction was not verifiable only the income component, could be taxed and not the entire transaction amount. It was also held that it was undisputed that the sale proceeds of the goods had been duly accounted for in the books and offered to tax, hence, the entire purchase amount could not have been added in the present case and that with a view to plug any revenue leakage in the aforementioned circumstances, disallowance of @ 12.5% was held to be reasonable to safeguard the interest of revenue. It, therefore, confirmed the addition to the extent of 12.5% of the alleged purchases of Rs. 4,50,08,383/~ i.e. Rs, 56,26,047/-, therefore, relief was granted to the appellant to the extent of Rs.4,50,08,383/- - Rs.56,26,047/- = Rs.3,93,82,336/~.

The order of CIT(Appeals) was challenged before the Tribunal vide its order dated 03rd May, 2017, dismissed the same. It was held that without

:: 5 ::

purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the MCGM, which is a Government Authority. It also held that the A.O. had not disputed the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute work awarded by MCGM. The Tribunal, therefore, held that the entire purchase made by the assessee could not be added back as income, but only profit element embedded therein, be treated as income of the assessee,

5. We have gone through the well reasoned order of the Tribunal, which has taken into account all relevant facts before passing the order impugned. In our opinion, the order does not warrant any interference. No substantial questions of law arise in the present appeal and the same is, accordingly, dismissed."

5. Further, we note in the present case that the assessee had filed before the Ld.CIT(A)/NFAC as directed by him, the following relevant documents to prove the genuineness of the purchases and corresponding sales of such purchases made from the two parties as under:-

8.5 During the course of appellate proceedings, in view of the powers of the undersigned as per section 250(4) of the Act read with rule 46A(4) of the IT Rules, the appellant was directed to furnish various documents and details. In compliance, the appellant had submitted the following:-

- i. Tax audit report for the assessment year under consideration.
- ii. Audited financial statements of the assessment year under consideration
- iii. Ledger account of M/s. Radiance Multitrade Private Limited in the books of account of the appellant for the period from 01.04.2015 to 31.03.2016.
- iv. Ledger account of M/s. Aspire Steel & Engineering Private Limited in the books of account of the appellant for the period from 01.04.2015 to 31.03.2016.

:: 6 ::

v. Copies of purchase invoices and delivery challans issued by M/s. Radiance Multitrade Private Limited in respect of the purchases made by the appellant during the assessment -year under consideration.

vi. Copies of purchase invoices and delivery challans issued by M/s. Aspire Steel & Engineering Private Limited in respect of the purchases made by the appellant during the assessment year under consideration. :

vii. Copies of sale invoices and delivery challans in respect of the sales made to M/s. Jyoti Dye Chem Private Limited during the assessment year under consideration.

viii. Profit ratios for the preceding three assessment years,

ix. Copy of VAT return

x. Copy of VAT assessment

8.6 The above documents have been carefully perused. From the verification of purchase invoices, sale invoices, delivery challans and ledger accounts the following facts emerge:

6. It is noted that the Ld.CIT(A)/NFAC has verified the purchase invoices, sales invoices, delivery challans and ledger accounts and noted that the assessee had purchased citric acid, monosodium glutamate, black Sulphur and disperse dyes from M/s.Radiance Multitrade Pvt. Ltd., and sold the same to M/s.Jyoti Dye Chem Pvt. Ltd., *on the same day of purchase*; and it is noted that the relevant details of such finding has been given by the Ld.CIT(A)/NFAC in the impugned order and is not repeated for sake of brevity. The Ld.CIT(A)/NFAC also noted that the assessee had purchased TMT Bars and MS Pipes from M/s.Aspire Steel & Engg. Pvt. Ltd., and sold the same to M/s.Jyoti Dye Chem

:: 7 ::

Pvt. Ltd., on the same day. The details of which are given at Page Nos.10 & 11 of the impugned order. The Ld.CIT(A)/NFAC, thereafter, has given finding of the fact that the purchases made from M/s.Radiance Multitrade Pvt. Ltd., M/s.Aspire Steel & Engg. Pvt. Ltd., has been sold to M/s.Jyoti Dye Chem Pvt. Ltd., during the relevant year itself. It is also noted that the Ld.CIT(A)/NFAC found the quantities of purchases and sales duly matched with the Tax Audit Report issued by the Auditor and that purchases are duly recorded in the books of accounts and sales have been offered to tax. According to the Ld.CIT(A)/NFAC, in the aforesaid factual back ground, the entire purchases of Rs.7,00,01,106/-, cannot be added when the AO has not disturbed the corresponding sales made by the assessee. Further, it is noted that the Ld.CIT(A)/NFAC thereafter took into consideration assessee's gross profit ratio for the relevant year and noted that it was only 0.99% whereas the GP declared in the preceding assessment year was to the tune of 2.71%. According to the Ld.CIT(A)/NFAC current gross profit ratio 0.99% was lower than the preceding three years average ratio of 3.19%. Therefore, according to the Ld.CIT(A)/NFAC, assessee has offered a very low margin during the relevant AY despite huge increase in the turnover. Accordingly, he was of the opinion that the element of inflation of purchase price cannot be ruled out and therefore, he estimated the profit element embedded in the purchase of Rs.7,00,01,106/- made from M/s.Radiance Multitrade Pvt. Ltd. And M/s.Aspire Steel & Engg.

**:: 8 ::**

Pvt. Ltd. @ 12.5% by relying on few decisions which he cited in the impugned order. Since the Ld.DR could not controvert the aforesaid factual findings given by the Ld.CIT(A)/NFAC and the fact that the payments made by the assessee where through banking channel and there was no evidence to prove that the cash has been given back to the assessee; and the assessee has filed purchase invoices and sales invoices, delivery challans and ledger account and proved that the purchases made from two parties have been sold to M/s.Jyoti Dye Chem Pvt. Ltd., in the same year; and the AO has not disturbed the sales, the action of the Ld.CIT(A)/NFAC on the facts and circumstances need to be upheld and therefore, we confirm the action of the Ld.CIT(A)/NFAC and dismiss the appeal filed by the Revenue.

**7.** In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 17/10/2023.

Sd/-  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 17/10/2023.  
**TLN, Sr.PS (on Tour)**

**:: 9 ::**

**Copy to:**

1. The Appellant
2. The Respondent
3. The CIT
4. The DR, ITAT, Mumbai
5. Guard File

**// True Copy //**

**By Order**

**Dy./Asst. Registrar, ITAT, Mumbai**