



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

BEFORE SHRI. PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.944/MUM/2019
Assessment Year: 2009-10

Mr. Mehul Prakash Mehta
401/402, Mahalaxmi Apartment
16, Akash, 90 Feet Road
Nath Panth Road, Ghatkopar (E)
Mumbai

(Appellant)

v. ITO, W-27(1)(1)
Mumbai

(Respondent)

PAN No.AGHPM8335M

Assessee by:
Revenue by:

Shri V. D. Parmar, A.R.
Shri Mahita Nair, D.R.

Date of hearing : 12.10.2023
Date of pronouncement : 27.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Shri Mehul Prakash Mehta (assessee-appellant) for assessment year 2009-10 against the appellate order passed by the Commissioner of Income Tax (Appeals), 25, Mumbai (Learned CIT-A) dated 7/12/2018, wherein the appeal filed against the assessment order passed under section 143(3) read with 147 of the Income Tax Act, 1961(the Act) dated 15/3/2015 by the Income Tax Officer 27(1)-1, Mumbai (Learned Assessing Officer) was dismissed.

02. Therefore, the assessee is in appeal before us raising the following grounds:

“(a)On facts and circumstances of the case and in law reopening of the case u/s 147 of the IT Act 1961 is bad in law as the case is reopened without disposing off the objections raised by assessee vide letter dated 07-03-2015 against reopening the case.

(b)(i) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding that reopening the case u/s 147 of the IT Act 1961 is valid.

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding that issue of notice under section 148 of the IT Act 1961 is valid.

(iii) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding that the reopening the case u/s 147 is valid without appreciating the facts that the case is reopened on basis of general, vague and nonspecific information. Reasons recorded by AO nowhere mentions name of Hawala operator stating in his statement or affidavit that the appellant is beneficiary of Hawala entries. Further AO has not brought any material on record to show that the appellant is beneficiary of Hawala entries.

(c)(i) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the addition of Rs.45,22,875/- made by AO without appreciating the fact that such addition is made without giving opportunity of cross examinations of Hawala operators even though specific request was made by assessee during assessment proceedings. Thus there is in violation of principle of natural justice.

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the addition of estimated suppressed profits of Rs.45,22,875/- at rate of 12.5% of Hawala purchases for which there is no basis and without appreciating the fact that appellant is trader and there is complete quantitative tally, and there is no evidence brought on record to prove that such purchases are inflated.

(iii) On facts and circumstances of the case and in law Ld. CIT (A) erred in confirming the rejection of books of accounts u/s 145(3) of the IT Act.”

03. The brief facts of the case shows that the assessee, an individual engaged in trading in Chemical & Solvent, filed his return of income on 30.9.2009, declaring a total income of Rs.33,99,774/-. Subsequently, information was received from the DGIT (Investigation), Mumbai that the assessee has taken accommodation

entries from the Hawala dealers listed by the Maharashtra Sales Tax Department. The case of the assessee was reopened by issuing notice under section 148 of the Act dated 30/3/2014. The assessee filed letter dated 27/4/2014 reiterating his return. Subsequently, the reasons for reopening were provided to the assessee on 5/8/2014. The assessment proceedings started.

04. The Learned Assessing Officer referred to the information where the assessee is alleged to have taken accommodation entries on bogus purchases to the extent of Rs.3,61,83,004/- from 19 different parties. When questioned, the assessee stated that the purchases are genuine and submitted the quantitative details, ledger account, copy of purchase bills, corresponding sales, etc. The Learned Assessing Officer, after detailed discussion and examination of the details furnished by the assessee, found that the assessee has not proved the genuineness of the purchases. Accordingly, he made addition of 12.5% of the bogus purchases, amounting to Rs.45,22,875/-. The order under section 143(3) read with 147 of the Act was passed on 15/3/2015, wherein total income of the assessee was assessed at Rs.79,22,650/-.
05. The assessee, aggrieved with that, preferred an appeal before the Learned CIT-A. The reopening was challenged. For the reopening of the assessment, the Learned CIT-A upheld the action of the Learned Assessing Officer, holding that there is tangible material that there is no assessment already made and therefore, following the decision of the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd., 210 CTR 30, confirmed the reopening. With respect to the addition on merits, the Learned CIT-A dismissed the ground raised by the assessee, holding that the Learned Assessing Officer has given a well reasoned finding and therefore, estimation of the gross profit @ 12.5% is proper.
06. The assessee is aggrieved and is in appeal before us.
07. The Learned Authorised Representative of the assessee submitted that identical issue arose in the case of the assessee for assessment year 2012-13, wherein the SMC Bench has restricted the addition to 5% of the alleged bogus purchases. Further, for assessment year 2010-11, identical issue was decided by another

SMC Bench, taking 5% as the profit. Therefore, it was the claim of the Learned AR of the assessee that at the most 5% of the profit could have been estimated.

08. He further submitted that the gross profit of the assessee for assessment year 2009-10 is 1.41% and also furnished a chart showing gross profit of the assessee for earlier years. He further referred to the decision of the Hon'ble Bombay High Court in **Mohammad Haji Adam & Co. [2019] 103 taxmann.com 459 (Bombay)** wherein the issue has been decided in favour of the assessee. No arguments were raised on the reopening of the assessment.
09. The Learned DR supported the orders of the lower authorities.
10. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the case of bogus purchases, the Hon'ble Bombay High Court in **[2019] 103 taxmann.com 459 (Bombay)** has held that Where there was no discrepancy between purchases shown by assessee and sales declared, no question of law or on form Tribunals order restricting addition made by AO on account of boguspurchase by bringing gross profit rate on purchases at same rate as applied in other genuine purchases. Therefore, we restore the issue back to the file of the Learned Assessing Officer to determine the profit in accordance with the above decision of the Hon'ble Bombay High Court.
11. In the result, ground No.1(a) and (b) of the appeal are against reopening of assessment, in absence of any argument , are dismissed.
12. Ground No.1(c) of the appeal is partly allowed.
13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 27.10.2023.

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED:27.10.2023

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar