

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.110/Mum/2023  
(Assessment Year :2009-10)**

Rameshchandra Bhagwatiprasad Bagadia 102-A, Merigold CHS Ltd Ram Mandir Cross Road, Borivali West Mumbai-400091	Vs.	Income Tax Officer Ward 32(3)(1) Mumbai
<b>PAN/GIR No.AFDPB7314L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri S.G. Goyal
Revenue by	Shri Manoj Sinha
<b>Date of Hearing</b>	<b>03/11/2023</b>
<b>Date of Pronouncement</b>	<b>29/12/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 12/02/2020 passed by ld. CIT(A)-Mumbai for the quantum of assessment u/s.143(3) r.w.s. 147 for the A.Y.2009-10.

2. In the grounds of appeal, assessee has challenged various legal grounds challenging the jurisdiction of ld. AO, proceedings

u/s.148 on the ground that approval granted u/s.151 is mechanical and ld. AO has not carried out any independent enquiry before the issue of notice u/s.148. The relevant grounds raised by the assessee reads as under:-

*"1. On the facts and circumstances of the case, the Ld AO has erred failed in not issuing the copy of the order passed by the Pr. CCIT/CCIT/PT CIT/CIT for change of jurisdiction from AO Wd. 25(2)(4), Mumbai to AO Wd. 32(3)(1), Mumbai*

*2. On the facts and circumstances of the case, the Ld. AO has erred/failed to issue the notice under sec 129 required to be issue for a change in incumbency from AO Shri Hemant Kumar to AO Shri Kundan Kumar*

*3. On the facts and circumstances of the case, the Ld. AO has obtained the approval of the Approving Authority under sec. 151 in a mechanical fashion by simply stating, "Yes, I am satisfied Its a fit case for issue of notice under sec. 148*

*4. On the facts and circumstances of the case, the Ld AO has erred in placing reliance on (borrowed satisfaction) the report of the DGIT (Inv.), Mumbai only to issue the notice under sec. 148 without making independent enquiry and/or being in possession of any piece of tangible material evidence germane to the issue to dispense with the need to conduct further investigation by the Ld. AO.*

*5. The Ld. AO failed to furnish copies of evidence(s) that he has relied upon without furnishing the appellant an opportunity of rebutting/controverting the same*

*6 The Ld. AO failed to give the appellant an opportunity of cross examination of the parties who deposed before the DGIT (Inv.), Mumbai and/or the Sales Tax Department*

*7 On the facts and circumstances of the case, the Ld AO Wd 32(3)(1), Mumbai who has finalized the order of assessment has received jurisdiction over the appellant case on 25.01.2015 has*

*erred/failed to issue the statutory notice under sec. 143(2) by himself [The notice dated 20.08.2014 under sec. 143(2) was issued by the previous charge holder AO Wd 25(2)(4), Mumbai prior to the date of vesting of Jurisdiction in the AO Wd 32(3)(1), Mumbai)*

*8. The Ld. CIT(A)'s erred in confirming/upholding the order passed by the Ld. AO under sec. 143(3) without considering the material evidence placed before him and placing undue insistence on technicalities for production of lorry receipt, delivery challan, etc, and justifying the addition of Rs. 7,544,156/- in respect of bogus/hawala purchases @ 15% which was derived on a thumb rule basis without application of scientific methods and due consideration of relevant facts peculiar to the case even when the corresponding sales is accepted as being genuine and not bogus If corresponding sales wasn't treated bogus and considered genuine, how purchases could be treated bogus to justify addition is not answered both by the Ld AO and Ld CIT(A)*

*9. The Ld. AO erred in levying of interest under sec 234A on the assessed total income without considering the fact that the original ROI filed under sec. 139(1) was submitted by the appellant before the original due date and tax liability as applicable was discharged by that date by payment of self-assessment tax under sec. 140A.*

3. The brief facts are that the original return of income was filed on 15/10/2010 for A.Y.2009-10 declaring total income of Rs. 2,11,800/-. The assessee's case was reopened on the basis of information received from DGIT (Investigation) Mumbai which in turn was based on information from Sales Tax department that assessee has made bogus purchases from two parties namely, Shradha Saburi Merchants Limited and Sai Kripa Metallic Tradecom Limited for sums aggregating to Rs.5,02,94,375/-. The reasons recorded by the ld. AO reads as under:-

*“Specific Information was received from the Office of the D.G.IT. (Inv.), Mumbai that the assessee made purchases from the below mentioned party as per details given in the table. It is also informed that the Sales Tax Department, Mumbai, Govt. of Maharashtra also carried on detailed enquiries in respect of below party and took/recorded statements, deposition, affidavit etc. of main persons of above concerns which established that these concerns are into providing bogus bills. It is also established that no actual goods or services are delivered by these parties to their customers and they issued only bogus bills after charging small commission. In present case, it is found that assessee had claimed a purchased of goods worth Rs.50294375/- from parties and debited the same in the Trading and P&L A/c of the concern.*

<i>TIN No.</i>	<i>Name of the Party</i>	<i>Amount</i>
<i>27390358779V</i>	<i>SHRADHA SABURI MERCHANTS LTD</i>	<i>22822338</i>
<i>27490213709V</i>	<i>SAI KRIPA METALLIC TRADECOM LTD</i>	<i>27472037</i>
		<b><i>50294375</i></b>

*In view of detailed enquires made by the Investigation wing of Mumbai and Sales Tox Department it is evident that the assessee took bogus bills worth Rs.50294375/- at least from above parties to inflate its purchases”.*

4. The ld. AO noted that assessee has not raised any objection against the reopening and accordingly, he proceeded to decide on merits. Before the ld. AO, assessee has filed various details and copies of bills for the purchases made from the aforesaid party, however, the ld. AO noted that there is no genuineness in purchase of goods. Further, in order to verify the transactions,

AO carried out his own inquiries and sent notices u/s. 133(6) to both the parties. These notices remain unserved and were returned by the postal authorities with remark "left, not known / unclaimed). Thereafter, assessee was asked to produce these hawala parties which the assessee was not able to produce. Accordingly, after detailed discussion holding that purchases made from these parties are not genuine, he held that G.P. rate of 15% on the bogus purchases which comes to 75,44,156/- is to be added to the income of the assessee. The ld. CIT (A) too has confirmed the said action of the ld. AO in his *exparte* order holding that despite several notices, assessee has failed to appear or provide any submissions.

5. Before us, ld. Counsel for the assessee raised various legal objections. His first objection is that ld. AO has failed to issue copy of order passed by ld. PCIT for change of jurisdiction from AO Ward 25(2)(1) Mumbai to AO Ward 32(3)(1), Mumbai. To counter his submission, the ld. DR submitted that the order u/s.127 has been passed, the copy of which was also produced before us. However, in so far as opportunity of hearing, she contended that as per the provision of Section 127(3), no opportunities are required to be given where the transfer is from one Assessing Officer to other which is situated in the same city.

6. We agree with the contention of the ld. DR that once the order of transfer u/s 127 has been passed by the competent authority transferring the case from one AO to another within the same city, no opportunity of hearing is required to be given

and neither assessee has ever raised this objection that no order u/s.127 has been passed. Accordingly the contention and ground raised by the assessee is rejected.

7. Coming to his second objection that the ld. AO has failed to issue notice u/s.129 for change of incumbency from AO Shri Hemant Gaikwad to AO Shri Kundan Kumar. The ld. DR has pointed out that notice u/s.129 has been issued to the assessee by the second AO who has passed the order, copy of which has been submitted before us also. Once, the notice u/s.129 has been issued by the ld. AO before passing the assessment order and has given opportunity to the assessee to represent case then such an allegation is incorrect. From the perusal of the notice u/s.129 dated 05/01/2015, we find that ld. AO has issued notice and there is no illegality which assessee has tried to make that ld. AO has failed to issue notice u/s.129, accordingly, this ground is also rejected.

8. The third ground which has been raised that the ld. AO has got approval u/s.151 and approving authority has approved the reasons in a mechanical fashion by stating **“Yes, I am satisfied”**. Once the reasons have been recorded and such reasons are otherwise are sustainable in law for which no objections have been raised by the assessee before the ld. AO nor the reasons have been challenged before us, then if such reasons have been approved by the authority u/s.151, we do not find any infirmity that approving authority should give satisfaction in a detailed manner or give a satisfaction on such reasons stating

that he is satisfied with the reasons recorded by the ld. AO. Thus, it cannot be said that on the facts of the present case, approval has been obtained in a mechanical way. Accordingly, this ground is also rejected.

9. In ground No.4, assessee has challenged that AO has relied upon the report of DGIT (Investigation), Mumbai which is a borrowed satisfaction. Here in this case, from the perusal of the reasons it is seen that there was a specific information that assessee has purchased goods from the parties who were found to be providing bogus bills. The assessee in the books of accounts has debited the purchase made from these parties and therefore, prima facie, there was a reason to believe that these might be bogus purchases. Further, even during the course of assessment proceedings, these parties were untraceable in the enquiry conducted u/s. 133(6) and assessee also could not produce these parties, thus it cannot be held that reasons were not based on any tangible material. Therefore, it cannot be held that reasons recorded by the ld. AO is merely a borrowed satisfaction. Accordingly, ground No.4 is also rejected.

10. In ground No.6, assessee has challenged that ld. AO has failed to give assessee opportunity of cross examination of the parties who had deposed before the DGIT (Investigation) Mumbai. First of all, there is no reference of any statements of these parties nor ld. AO has based his addition on the basis of any kind of statement. Here, assessee has made the purchases from parties who have not confirmed the purchases. AO has

made the addition on the basis of his inquiry and assessee has not produced these parties. There is no statement which requires cross examination then where is the question that AO should have given opportunity of cross examination. Very importantly neither before the ld. AO nor before the ld. CIT (A), assessee has ever asked for any cross examination nor there is any reference of any statement. Accordingly, such ground is ill-conceived and same is rejected.

11. *Lastly*, coming to the ground No.7 which is on merits, the ld. AO has applied gross profit rate of 15% on the aggregate alleged bogus purchases of Rs. 5,02,94,375/- thereby making an addition of Rs.75,44,156/-. The assessee is in the business of dealing in ferrous and non-ferrous metals through his proprietary concern. Before the ld. AO, assessee has filed purchase bills and other documentary evidences. Another important fact which has been brought to our notice that most of the sale invoices were covered under the Letter of Credit from the debtor party and copies of invoices with challan and Letter of Credit and bank advices has also been placed before us. It has been stated that the bank would not discount the bills / invoices if it has not been approved. Thus, it cannot be said that there is no delivery of goods purchased from alleged parties or even if assessee has taken accommodation bills from these parties then assessee has made purchase of goods may be from grey market. At the most it could be a case of suppression of gross profit by inflating the purchases through accommodation hawala bills. The sources of purchases are from the books and the quantity of

purchase and corresponding quantity of sales has not been doubted. Therefore, AO has applied Gross Profit. But in such case, such a huge GP rate of 15% of trading in ferrous and non-ferrous metal is unwarranted. In the A.Y.2009-10, the VAT of ferrous and non-ferrous metal was @4% and if at all assessee had tried to inflate the purchases only to save VAT to the extent of 4%. Moreover, before us certain Tribunal decisions have been filed wherein on trading of ferrous and non-ferrous metals GP addition of 2% has been made on such kind of alleged bogus purchases. Accordingly, we apply GP rate of 2% on the alleged bogus purchases of Rs.5,02,94,375/-.

**12. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 29<sup>th</sup> Dec, 2023.

**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 29/12/2023  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

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