

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2838/MUM/2023**  
**Assessment Year: 2009-10**

Omkar Metal and Alloys  
Corporation, C P Tank  
Room No. 47, Balakrishna  
Niwas, 2<sup>nd</sup> floor, 2<sup>nd</sup>  
Panjarapole Lane,  
Mumbai-400004.  
**PAN NO. AAAFO 4997 N**  
**Appellant**

ITO 19.2.4,  
Matru Mandir, Opp Bhatia  
Hospital, Grant Road (West),  
Mumbai-400007.  
**Vs.**

**Respondent**

**Assessee by** : Mr. Vimal Punmiya  
**Revenue by** : Mr. H.M. Bhatt, Sr. DR

Date of Hearing : 14/12/2023  
Date of pronouncement : 29/12/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 28.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, raising following grounds:

1. *Ground On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.9550585/- made by the Assessing Officer to the total income of the appellant which is calculated @ 12.5% on alleged non-genuine purchases of Rs.76404685/-.*



*Provisions of the Act ought to have been properly construed and regard being had to facts of the case such addition should not have been confirmed. Reasons assigned by him are wrong and insufficient to justify confirming of addition of Rs.9550585/-.*

- 2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming invoking of provisions of section 145(3) of the Act and rejecting books of account by the Assessing - Officer.*
- 3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to provide copy of remand report and opportunity to file rejoinder of the same.*
- 4. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming initiating proceeding under section 147 of the Act by issuing notice under section 148 of the Act in as much as reasons recorded by Assessing Officer depict mere suspicion and no tangible material is available in possession of the Assessing Officer.*
- 5. The Commissioner of Income Tax (Appeals) erred in upholding order made under section 143(3) rws 147 of the Act which is illegal, bad-in-law, ultra virus and without allowing reasonable opportunity of the hearing, and without appreciating facts, submission and evidences in their proper perspective and without providing copies of material relied upon, without providing opportunity to cross examine, which is liable to be annulled.*
- 6. The learned Commissioner of Income Tax (Appeals) erred in upholding charging of interest under section 234A, 234B and 234C and 234D of the Act*

2. Briefly stated, facts of the case are that the assessee filed its return of income for the year under consideration on 29.09.2009 declaring total income at Rs.27,95,800/-. The return of income was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, information had been received from the Director General of Income-tax (Investigation), Mumbai that assessee had taken accommodation entries in the form of bogus purchase/sale bills without supplying any goods. On the basis of the information received, the Assessing Officer recorded the reasons to believe that income had escaped assessment and accordingly, he



issued notice u/s 148 of the Act on 08.03.2014. During the course of the reassessment proceedings, the Assessing Officer observed that 19 parties from whom the assessee had received total accommodation entries of Rs.7,64,04,685/-. During the course of the assessment proceedings, the Assessing Officer asked the assessee to furnish details and complete address of those parties including purchase bills details/invoice bills details of transaction of the goods i.e. lorry receipts, documentary evidence reflecting the relevant entries having received goods in premises of the assessee and having consumed such goods etc. However, no such information except copy of the ledger account, copy of the invoices and bank statement of the assessee was provided to the Assessing Officer. Further, the Assessing Officer issued notice u/s 133(6) of the Act on the address of the parties provided by the assessee however same were returned back with the remark of the postal authorities that parties left or address not known. In the circumstances, the Assessing Officer asked the assessee to produce said purchase parties for examination however, the assessee failed in doing so. Thereafter, the Assessing Officer following decision of the Hon'ble Gujarat High Court in the case of **CIT v. Simit P. Seth (supra)** treated 12.5% of total non-genuine purchase amount as the profit margin earned from such purchases and accordingly made addition observing as under:



*“6. Now, in the given face and circumstance of the case, it is held that the assessee has indulged in non-genuine transaction. The intention of indulging in such activity is to suppress the true profits and to reduce the tax liability. Therefore, an addition on account of a higher margin of profit would be fair and equitable. Hence, following the decision of the Gujarat High Court in the case of CIT Vs. Simit P. Sheth (2013) reported in 356 ITR 451 (Guj.) and also giving due consideration to the fact that the assessee has recorded such purchases in the books of account, I am of the considered opinion that, it would be just and fair, if profit element embedded in such purchases is taken as the profit earned from purchases shown to have been made from the above mentioned non-genuine parties. Therefore, an amount of Rs. 95,50,585/- being 12.5% of the total non-genuine purchases of Rs. 7,64,04,685/- is added to the total income of the assessee as profit earned from such purchases. Proceedings under 274 r.w.s 271(1)(c) are separately initiated for furnishing inaccurate particulars of income chargeable to tax.”*

3. On further appeal, the Ld. CIT(A) upheld the disallowance following various decisions cited in the impugned appellate order including the decision of the Hon'ble Supreme Court in the case of **Sumati Dayal v. CIT (1995) 214 ITR 801**. The Ld. CIT(A) also rejected the contention of the assessee that no opportunity of cross-examination was provided, on the ground that the assessee failed to substantiate its purchase with documentary evidences and therefore the assessee cannot shift its burden to the Assessing Officer.

4. Before us, the Ld. Counsel for the assessee has filed a Paper Book containing paged 1 to 407. The Ld. Counsel for the assessee relied on the decision of the Tribunal dated 03.03.2020 in the case of the assessee for assessment year 2008-09, 2010-11 and 2011-12. The Ld. Departmental Representative (DR) on the other hand relied on the order of the lower authorities.



5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the identical issue of bogus purchases and addition thereof in terms of the percentage of such purchases was made in the case of the assessee in assessment year 2008-09, 2010-11 and 2011-12. The Tribunal (supra) following decision of the Hon'ble Bombay High Court in the case of **Mohammad Haji Adam Company (supra)**, deleted the addition of bogus purchases on the ground that gross profit declared by the assessee in respect of alleged bogus purchases was more than the gross profit declared in the non bogus parties:

*"8. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The brief facts of the case are that assessee is engaged in the business of trading in ferrous and non-ferrous metals. The AO got an information from the Sales Tax Department regarding assessee taken purchase bills which was alleged to be bogus. Accordingly, the AO reopened the assessment and after making inquiry added 12.5% of the alleged bogus purchases in the assessee's income in all the years under consideration. By impugned order by the CIT(A) after considering various judicial pronouncements directed the AO to restrict the addition to the extent of 6.5% of alleged bogus purchases. The precise observation of CIT(A) read as under.:-*

*"7.9 The appellant made purchases from eleven parties who are said to be hawala operators, who is indulged in providing bogus bills without supply of any material. Independent inquiries conducted revealed that no such party is existing in the given address. When asked to produce the party during the assessment proceedings by the AO, appellant expressed his inability to do so. In the present case, A.O. estimated the profit percentage on bogus purchases as 12.5%. The simple issue to be decided is whether the percentage adopted by the AO is correct in the line of business i.e. trading in ferrous and non-ferrous metals. As noticed above, in the similar circumstances of bogus purchases, Hon'ble Gujarat High Court estimated the additional advantage towards tax benefit (10% and the profit margin (2.5%) totaling to 12.5%. In the present case on perusal of copies of the invoices furnished by the*



appellant in the bill the percentage of VAT levied is © 4%. Applying the same logic, the profit margin should be adopted @ 2.5%. In view of the above, in my considered opinion, applying the logic of the above said case the profit percentage embedded on such purchases is restricted to 6.5% (i.e. 4% of VAT levied + 2.5% towards profit margin), that will meet the ends of the justice. Taking all the facts into consideration and applying the logic of Simit P. Sheth case, the A.O. is defected to restrict the estimation © 6.5% on the non-genuine purchases of Rs. 6,22,26,968/-. Appeal on Ground No. 1 is treated as 'Partly Allowed'."

9. It was argued by Ld. AR that all the documents in support of the purchases were furnished to the AO during the course of assessment proceedings and the AO after considering the same and also the material on record, expressed his view that the explanation is not I tenable for the reason that the Sales Tax Department has certified these parties to be non-genuine operators. When the bills bearing VAT No. allotted by Sales Tax Department the further enquiry should have been made from Sales Tax Department. Just because their names appear in the list it cannot be concluded that the said purchases from the suppliers are bogus. The A.O. should have called for KYC details. It is stated that since the period of more than six years has elapsed, the assessee being businessman cannot keep track of the transactions of the other party with whom he has made purchases. The A.O. should have deputed ward inspector and forced the attendance of these parties. It is submitted that the A.O. failed to collect and bring on record the evidences from Sales Tax Department and not provided copies of the same to the assessee. It is submitted that observation made by the A.O. that purchases made by the appellant from the above parties are non-genuine is wrong and baseless therefore requested to delete the additions. Appellant placed reliance on the following decisions which includes:- Ramanand Sagar Vs. DCIT (256 ITR 134), CIT v. Nangalia Fabrics (P.) Ltd. 220 Taxmann 17 (Guj.), CIT Vs. M.K. Brothers (163 FR 547), Nikunj Eximp Enterprises (P.) Ltd. v. CIT 216 Taxman 171 (Bom.), CIT v. M.K. Bros. 163 FIR 249 (Guj.),etc. It is also argued that the dealers are regularly assessed to tax and the purchases properly reflected in the books of account and payments are made through account payee cheques and on payment of the amount to the seller, the purchaser has no control on their affairs and there is no evidence that the cash is received back from the suppliers and the purchases cannot be treated as bogus. Appellant maintained stock register and also maintained the quantitative details. The gross profit shown during the previous year is reasonable and satisfactory in comparison to the G.P shown in the same line of business in which assessee is engaged and relied on several cases cited along with brief of the case laws of Hon'ble ITAT Benches giving relief in similar bogus purchase cases. It is stated that after addition the rate of G.P. would work out to 10% which is not possible in this line of business. The assessee has declared G.P. at the rate of 4.91% for year under consideration.



10. However the AO did not agree with the assessee's contention and he added 12.5% of alleged bogus purchase in the assessee's income. By impugned order by CIT(A) directed to restrict the addition to the extent of 6.5% of alleged bogus purchases. The Ld. AR argued that the assessee has filed all the documents and evidence to prove the genuineness of the purchases so made which comprises of:-

*“(i) Copies of Ledger Accounts along with copies of purchase invoices of the specified parties.*

*“(ii) Copies of bank statement evidencing made through proper banking channels by issuing account payee cheques in respect of all the parties highlighting the relevant entries.*

*“(iii) Chart showing the details of purchases of the alleged parties.*

*“(iv) Details in respect of purchases from the above named parties and the corresponding sales.*

*“(v) Item wise and bill wise extract of stock register of entire year containing inward and outward movement of trading good dealtwith.*

*“(vi) Copy of invoice and delivery challans issued by alleged hawala dealers for alleged purchases made.*

*“(vii) Confirmation letter of alleged hawala dealers alongwith copy of their sale tax return and paid VAT challan.*

11. As per the Ld. AR under these facts and circumstances decision of the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 is applicable for quantifying the addition in respect of bogus purchases. The Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019 have held as under:

*“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assesses additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee*



*and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts."*

12. *The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated 07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:*

*"9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P. Seth (supra). We have considered the rival contentions ITA No. 4192/Mum/2018 and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly."*

13. *It is clear from the above decisions that in case of bogus purchases where sales are accepted, quantitative details of purchases, sales and stock was filed with copy of delivery challans, the addition is required to be made only to the extent of lower GP declared by the assessee on bogus purchases as compared to G.P. on normal purchases. As per the G.P. statement chart placed on record we found that the GROSS PROFIT declared by assessee in respect of alleged bogus purchases was more than the GROSS PROFIT declared in the normal purchases. Under these facts circumstances, applying the judicial pronouncement laid down by Hon'ble Jurisdictional High Court as discussed above, we do not find any merits for the addition so upheld by CIT(A)."*

5.1 Since in the year under consideration also it is not disputed that assessee has taken been accommodation entries of the bogus purchases and the only issue in dispute is regarding the quantum of addition to be made on the basis of those bogus purchases. In the case of Haji Adam (supra) it is observed that corresponding



sales were not doubted and quantitative details of bogus purchase and sales was duly submitted to indentify the sales corresponding to the bogus purchases and identify the amount of the profit earned in the case of every transaction of bogus purchases. The Ld. Counsel for the assessee was asked to file details of the sales corresponding to the bogus purchases, however he submitted that said details were not currently available and therefore, he requested that matter might be sent back to the file of the Assessing Officer for deciding in the issue in dispute relying on the decision of the Mohammad Haji Adam & Co. (supra). Accordingly, we feel it appropriate to restore this issue back to the file of the Assessing Officer with the directions to identify the sales corresponding to the bogus purchases and compute the gross profit earned in each transaction of the sale of the bogus purchases and wherever the gross profit on transaction of sale corresponding to bogus purchases is found to be less than the gross profit on the genuine purchases, then he may make addition for the corresponding amount of deficiency of gross profit. Following the decision of the Hon'ble Bombay High Court in the case of Haji Adam (supra) the ground No. 1 to 3 of the appeal of the merit are allowed for statistical purposes. The ground No. 4 and 5 of the appeal challenging the validity of the reassessment were not pressed before and therefore same are dismissed as infructuous. The ground No. 6



being consequential and ground No. 7 being general, same are dismissed as infructuous.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 29/12/2023.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 29/12/2023

Rahul Sharma, Sr. P.S.

**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,

(Assistant Registrar)  
**ITAT, Mumbai**