

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2659/Mum/2023
(Assessment Year: 2010-11)**

Sanjay Kumar Hirachand Jain 35, D-19, 2 nd Floor, Mathura Niwas, Room No. 12, Mugbhat Cross Lane, Mumbai- 400004 PAN : AAAPJ7719F	Vs.	ITO -20(3)(2) Piramal Chamber, Lal Baug, Parel, Mumbai- 4000212
Appellant) : Respondent)		

Appellant/Assessee by : Shri. Shreyash Shah, Adv. a/w
Shri. Kunal Shah, CA & Ms.
Ankita Bohara, CA

Revenue/Respondent by : Shri Srinivas, DR

Date of Hearing : 09.01.2024 & 23.01.2024
Date of Pronouncement : 24.01.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [in short ‘the CIT(A)’] dated 31.05.2023 for the AY 2010-11.

2. The assessee is an individual and filed the return of income for AY 2010-11 on 27.09.2010 and the return was processed under section 143(1) of the Act (the Act). Subsequently, the AO has received the information from DGIT

(Investigation), Mumbai that the assessee is taking accommodation entries and is a beneficiary of hawala transaction. The AO noticed that the assessee has made purchases from certain parties, whose name is appearing in the list given by the DGIT(Inv) as per details below:

Name of the Party who has issued bogus bills to the assessee	F.Y.	Amount
HARSH METAL CORPORATION	2009	265590
R K STEEL & MERCANTILE PVT. LTD.	2009	86,855
TOTAL		3,52,445

3. Based on the above information, the AO initiated the re-assessment proceedings under section 147 of the Act and issued notice under section 148 on 30.03.2017. The assessee in response filed a letter dated 17.04.2017 requesting the AO to treat the original return filed for AY 2010-11 as the return filed in response to notice under section 148 of the Act. During the course of assessment proceedings, the assessee furnished the copies of purchase invoice from the above parties along with copies of bank statement reflecting the payments to the said parties. The AO after perusing the details furnished, issued notice under section 133(6) of the Act to the above parties requesting them to provide all the details of the impugned transactions along with supporting documentary evidence. The notice was returned un-served. The AO deputed a Ward Inspector to verify the address who reported that none of the parties were available at the given address. The AO further issued a notice under section 142(1) calling on the assessee to file documentary evidences such as transport challans, stock register, inward register, outward register to prove the genuineness of the transactions. The assessee did not file any further supporting documentary evidence before the AO. Therefore, the

AO proceeded to treat the purchases made from the above parties as bogus and made the addition under section 69C of the Act.

4. Aggrieved, the assessee filed appeal before the AO. The assessee did not respond to the various notices of the CIT(A). The CIT(A) therefore upheld the addition made by the AO ex-parte stating that the assessee has not discharged the onus of proving the genuineness of the impugned purchase transactions. Aggrieved, the assessee is in appeal before the Tribunal.

5. The assessee is contending the appeal both on legal grounds as well as on merits as below:

“1. On the facts and circumstances of the case and in law, the assessment framed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 ("ITA") is without jurisdiction and therefore void-ab-initio and be quashed/ annulled for the reason:

a) that the proceedings u/s 147 of the ITA were initiated by the Income Tax Officer 19(3)(2), Mumbai (not having jurisdiction over appellant's case) and an order u/s 143(3) r.w.s 147 of the ITA was passed by the Income Tax Officer-20(3)(2), Mumbai (having jurisdiction over appellant's case).

b) that the reasons for reopening were recorded by the Income Tax Officer - 19(3)(2), Mumbai (not having jurisdiction over appellant's case) and were relied upon by the Income Tax Officer-20(3)(2), Mumbai (having jurisdiction over appellant's case), thus, the requirement of section 147 of the ITA requiring assessing officer (having jurisdiction over case) to record reasons for reopening not fulfilled.

Without Prejudice to the above,

2. On the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC) erred in upholding the disallowance of 100% of purchases made from Harsh Metal Corporation and R K Steel & Mercantile Pvt. Ltd., aggregating to Rs. 3,52,445/-.

Without Prejudice to the above,

3. On the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC) erred in not restricting the addition to the extent of difference in gross profit on undisputed purchases and gross profit on purchases from alleged purchase parties to tax only the profit element embedded in such alleged purchases in accordance with the ratio laid down by the Hon'ble Bombay High Court in the case of PCIT-17 vs. M/s. Mohommad Haji Adam & Co. (ITA No. 1004 of 2016).

Without Prejudice to the above,

4 On the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC) erred in passing an ex-parte order in violation of the principles of natural justice without according a reasonable opportunity of being heard.”

6. The ld. AR submitted that the legal grounds raised by the assessee are with regard to the reassessment proceedings initiated by one officer i.e. ITO, Ward-19 (3)(2), Mumbai and the assessment proceedings completed by another AO being ITO, Ward – 2 (3)(2), Mumbai and therefore the said order is without jurisdiction. On merits the ld. AR submitted that various details and evidences to substantiate the genuineness of the purchases have already been submitted which were not considered by the lower authorities. The ld AR further submitted that the AO has not disputed the turnover of the assessee and has not rejected the books of accounts. The ld AR therefore argued that the AO is not correct in making the addition of the entire purchase considering it as bogus.

7. The ld. DR relied upon the order of the lower authorities.

8. We have heard the parties and perused the material on record. The AO reopened the assessment based on information received from DGIT (Inv.) stating that the assessee has made purchases from certain parties who are listed as accommodation entry provider as per the Investigation Report. Though the

assessee furnished purchase invoices and copies of bank statement before the AO, the AO treated the entire purchases made from these parties as bogus for the reason that the notice served under section 133(6) of the Act to these parties returned unserved and that the assessee could not produce additional documentary evidences such as transport challans, stock register, inward register, etc. by the assessee.

9. For proposition of the Id AR that in the absence of any discrepancy found in sales made by the assessee, the purchases cannot be disputed, we notice that the Hon'ble Bombay High Court in the case of Principal CIT vs Mohammed Haji Adam & Co in Income Tax Appeal No.1004 of 2016 dated 11/02/2019 has considered the similar issue and held that:-

“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 assessee's 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.”

10. Going by the ratio of above judgment of the Hon'ble High Court, we are of the opinion that gross profit ratio in the alleged non genuine purchases should be restricted to the extent of same rate of other genuine purchases. In assessee's case, it was submitted before the assessing officer that the alleged bogus purchases have been recorded in the books including the stock register and that the sales out of the

said purchases have also been recorded as turnover. Therefore we tend to agree with the contention that the addition should be made based on the gross profit ratio. Considering the above decision of the jurisdictional High Court in the case of Mohammed Haji Adam & Co (supra) we hold that a GP ratio of 5% to be applied on gross turnover as addition towards bogus purchases and direct the assessing officer to recompute the liability accordingly.

11. In there result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 24 -01-2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)

Judicial Member

**SK, Sr. PS*

Sd/-

(MS. PADMAVATHY S)

Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai