

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3080/Mum./2023

(Assessment Year : 2009-10)

ITA no.3079/Mum./2023

(Assessment Year : 2010-11)

Menora Associates
433, Kailash Plaza, V.B. Lane
Ghatkopar (E), Mumbai 400 077
PAN - AAOFM4205F

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-27(2), Mumbai

..... Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Smt. Mahita Nair

Date of Hearing - 29/01/2024

Date of Order - 31/01/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 16/08/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment years 2009-10 and 2010-11.

2. Since the assessee has raised similar grounds in both appeals, therefore the grounds raised in ITA no.3080/Mum./2023 are reproduced for reference:-

"1. The order dated 16/08/2023 bearing No.ITBA/NFAC/S/250/2023-24/1055144331[1] Passed under section 250 of Income Tax Act, 1961 by the Hon'ble CIT[Appeal], National Faceless Appeal Centre [NFAC], Delhi, is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.

2. On the facts and in circumstance of the case and in law, the Hon'ble CIT[A] has erred in Confirming the addition at the rate 10% of the suspicious purchases even though all the Necessary evidence was filed during the course of assessment proceedings.

3. The appellant craves leave to add to amend or alter the above grounds as may be deemed necessary."

3. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of construction contracts. For the assessment year 2009-10, the assessee filed its return of income on 04/09/2009 declaring a total income of Rs. 2,94,17,271 and for the assessment year 2010-11, the assessee filed its return of income on 07/09/2010 declaring a total income of Rs. 1,17,24,267. The aforesaid returns filed by the assessee were processed under section 143(1) of the Act. Subsequently, on the basis of the information received from the office of DGIT (Investigation), Mumbai about the assessee being involved in taking accommodation entries from the hawala dealers listed by the Maharashtra Sales Tax Department, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued to the assessee. In response to the aforesaid notice, the assessee filed a letter submitting that the returns originally filed may be treated as returns filed in response to the notice issued under section 148 of the Act. During the assessment proceedings, the assessee was asked to furnish details of goods purchased, copies of bills raised by these parties, stock register, details of banks, etc. In response thereto, the assessee filed a copy of the return of income and ledger account and copies of the profit and loss account and

balance sheet. The assessee submitted that the purchases are genuine and submitted copies of the ledger account in respect of these suppliers. It was also submitted that the assessee is a civil contractor and the materials purchased were used in the civil construction work. It was also submitted that the payments to the parties have been made by account payee cheque and the bank account statements were also furnished.

4. The Assessing Officer ("AO") vide assessment orders passed under section 143(3) read with 147 of the Act did not agree with the submissions of the assessee and held that the person from whom the assessee is claiming to have purchased goods have admitted that they have issued only bills. It was further held that the purchases made from these parties are not supported by actual delivery of goods, i.e. delivery challans, lorry receipts, mode of transportation, etc. It was further held that the assessee did not purchase the material from the party mentioned in the sale bills and the said purchases were debited in the books of accounts mainly with the intention to reduce the taxable profits. Accordingly, the AO disallowed 12.5% of the alleged bogus purchases for the assessment year 2009-10 and 10% of the alleged bogus purchases for the assessment year 2010-11. The learned CIT(A), vide separate impugned orders, dismissed the appeals filed by the assessee. Being aggrieved, the assessee is in appeals before us.

5. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of

the assessee for the assessment years 2009-10 and 2010-11 were initiated. Further, notice issued under section 133(6) by the AO to these entities was also returned unserved. It is evident from the record that the AO has also not made the addition of the entire amount of the alleged bogus purchases made from the said suppliers and has restricted the disallowance to 12.5% and 10% for the assessment years 2009-10 and 2010-11, respectively. It is the claim of the assessee that it is in the business of construction contracts and the invoices were raised by these parties in respect of building materials which were used by the assessee in the construction activity undertaken by it. Further, it is the claim of the assessee that all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee was neither able to produce the parties nor could furnish the documents as directed by the AO. Even before us, no such details are available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, it is evident from the record that the Revenue has not doubted the usage of materials for construction contract work undertaken by the assessee. Further, it cannot be doubted that without the purchase of material, the assessee cannot carry out the construction work. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entities and materials purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage. Therefore, in view of the peculiar facts of the present case, we deem it appropriate to restrict the disallowance to 8% of the disputed purchases in both assessment years. We

find that the same is also in line with the judgment of the Hon'ble jurisdictional High Court in PCIT vs Paramshakti Distributors Ltd. in ITA No. 413 of 2017 decided on 15/07/2019. As a result, grounds raised by the assessee in both appeals are partly allowed.

6. In the result, both appeals by the assessee are partly allowed.

Order pronounced in the open Court on 31/01/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 31/01/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai