

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1810/Ahd/2019  
Assessment Year 2011-12**

DCIT, Circle-4(1)(1), Ahmedabad  (Appellant)	Vs	Sagardeep Alloys Ltd. 205, Pittalaya Bumba, Nr. Madhuram Cinema, Gheekanta, Ahmedabad  PAN: AAKCS6034M (Respondent)
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**Revenue Represented: Shri Ashok Natha Bhalekar, Sr.D.R  
Assessee Represented: Shri Tushar Hemani, Sr. Adv. &  
Shri Parimalsinh B. Parmar, ARs.**

Date of hearing : 04-01-2024  
Date of pronouncement : 07-02-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 27.09.2019 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case the assessee was engaged in trading of ferros and non-ferrous metals and manufacturing of copper, pipe,

flat, etc. For the assessment year 2011-12 the assessee filed its Return of income on 31-08-2011 declaring total income of Rs.1,75,74,970/- The return was processed u/s.143(1) of the Act. Thereafter as per information received from DDIT(Inv) that the assessee made bogus purchases of Rs.5,08,67,899/- from paper entities of Mr. Jagadish N Patel and Mr. Palak Gajjar, who are as per the information received, deal in suspicious transactions in the nature of high value non-cash credits from various companies and immediate debits to other companies. Thus the assessment was reopened in the case of the assessee by issuing a notice u/s. 148 of the act on 31-3-2018.

2.1. In response the assessee filed its Return of income on 04-06-2018 and requested the AO to furnish copy of reasons recorded for reopening the assessment. The assessee filed its objection, which was disposed of by the AO. Thereafter based on the statements recorded by the Investigation wing of the two individuals namely Mr.Palak Gajjar of M/s. Urvish Trading Company and M/s. Swiss Impex Private Limited, and Mr. Jagadish N Patel of M/s. TPS Metal & Tube and M/s. TPS Metal & Tube Pvt Ltd have made sales aggregating to Rs.5,08,67,899/-to the assessee during the asst year 2011-12.

2.2. The assessee vide its letter dated 26-12-2018 addressed to the AO furnished ledger account of M/s. TPS Metal & Tubes, wherein purchase of scraps amounting to Rs.3,18,52,925/- and the sale of scraps amounting to Rs.52,56,836/- which were made through banking channels, with a closing balance of Rs.1,15,82,517/- which

is clearly reflected in the financial statement of the assessee. Vide letter dated 27-12-2018, the assessee clearly stated that three entities out of four entities [referred to in the reasons for reopening] were established in subsequent years and hence there is no question of purchase from such entities during the asst year 2011-12 namely M/s. Urvish Trading Company started in May 2012, M/s. Swiss Impact Private Limited incorporated on 17-09-2012 and M/s. TPS Metals & Tubes Pvt Ltd incorporated on 11-10-2012. Further the assessee submitted retraction affidavits of Mr. Palak Gajjar and Mr. Jagadish N Patel, Ledger copies of concerned parties, bank statements, Tax Audit report, and Audited Financials. However, the Ld. AO without considering the above details as well as documentary evidences made an addition of Rs.5,08,67,899/- on account of bogus purchase by the assessee and demanded taxes, there on.

3. Aggrieved against the reassessment order, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) after detailed verification of records held that there was no evidence that the assessee has indulged into any unaccounted purchase or sales in the case of M/s. TPS Metal & Tube in which case, assessment was reopened for the very same sales transaction were found to be genuine and thereby no addition was made by the concerned Assessing Officer while passing assessment order dated 28.12.2018 u/s. 143(3) r.w.s. 147 of the Act [which was reproduced at Page No 43 & 44 of his order]. Further Ld. CIT(A) held that if the purchases were duly supported by bills and payments were made through cheques and the other party also confirmed the

transaction, which cannot be doubted as held by the Jurisdictional High Court in the case of PCIT -Vs.- Tejua Rohitkumar Kapadia. Thus the Ld. CIT(A) deleted the addition of Rs.5.08 crores by observing as follows:

“....6.2 On perusal of written submissions filed herein above, appellant company has categorically stated that it had purchased of scrap of metal & copper for Rs 3,18,52,925 from TPS Metals & tubes, proprietorship concern of Shri Jagdish Nandlal Patel and net purchase made from such concern was only Rs 2,65,96,089 i.e. there were sales of difference material to this concern it was also stated that TPS Metals & Tube Private Limited was established on 11/10/2012 Shri Jagdish N. Patel which is proved from master data from MCA website. Similarly, appellant has claimed that Urvish trading corporation, proprietorship concern of Mr. Palak Gajjar was established in 2012 which was converted into Swiss Impex Pvt. Limited from 17/09/2012 which is evident from Master data from MCA website. It was also stated that during the year under consideration, appellant company has not purchased any goods from Urvish Trading Corporation. The appellant has also submitted ledger account of above concerns from its books of account. Though above facts are already on record of AO, AO has not rebutted such contention and not provided any working as to how he arrived at the purchases of appellant company from both concerns at Rs 5,08,67,899/- when the total purchases were only Rs 3,18,52,925/- from TPS Metals & tubes there were no purchases from Urvish Trading Corporation.

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.....The AO has not brought anything on record to prove that appellant has in fact purchased any goods from proprietorship concern of M/s Palak Gajjar Considering these facts, in any case, addition of bogus purchases cannot be made in excess of Rs 3,18,52,925/-.

5.4 It is observed that entire addition of bogus purchases are made in the hands of appellant on the basis of statement of two persons recorded in response to summons issued by DDIT (Inv), Unit 1(2). Ahmedabad, During the course of assessment proceedings, appellant has submitted ledger account of above concern along with bank statements reflecting payment by proceedings cheques made to above two concerns. The AO has not found any discrepancies in such details. During the course of appellate proceedings, the appellant have referred to reassessment order passed in cases of both the above persons wherein returned income was

assessed as such. The assessment of both these concerns were re-opened for the reasons of impugned transactions with appellant and same is evident from reassessment orders passed u/s 143(3) r.w.s 147 of the Act on 27/12/2018 in case of Palak Gajjar and 28/12/2018 in case of Jagdish N Patel.

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.....It is observed that entire addition of bogus purchase in the case of appellant is made based upon statements of above two persons recorded u/s 131 of the Act but such transactions are accepted to be genuine in the hands of sellers which is apparent from reassessment orders passed in above concerns wherein returned income filed by them is accepted.

5.5 It is further observed that in the impugned Assessment Order, AO has not brought anything on record to prove that appellant company has received cash against cheques given by them or even there is no admission on part of above two concerns that they have made cash payment to appellant company against cheques received against sales effected by them. The appellant company is engaged in the business of trading in ferrous & nonferrous metals and manufacturing of coppers, pipe, flat etc and sales by it along with books results are accepted to be correct by AO in assessment order.

When sales made by appellant which is corresponding in above purchases made by it is accepted to be correct, there is no reason for disallowing the entire purchases treating it as bogus more particular when AO has not doubted inventory movement including closing stock shown in Audited Annual Accounts

5.6 From the above discussion it is clear that on facts there is no evidence that the purchase made by the appellant to M/s. TPS Metals & Tubes P. Ltd earlier known as TPS Metal & Tubes are not genuine: the corresponding sales have not been doubted, the stock register and all other related account were not found to be incorrect there was no evidence that appellant has indulged in to any unaccounted purchases or sales and in the assessment of TPS reopened for the very same reasons the sales transaction were found to be genuine by the AO which is evident from the assessment order u/s 143(3) r.w.s. 147 dated 28.12.2015 copy of which was filed by me appellant and reproduced in the earlier part of this order. Further there were no purchases from Palak Gajjar proprietor Urvish Trading Corporation as appellant's contention stating this has not been controverted. It has been held by the Hon'ble High Court of Gujarat

in the case of Pr. CIT, Surat v. Tejua Rohitkumar Kapadia, Tax Appeal No. 691 of 2017 that if the purchases were duty supported by bills and payment were made by cheque and the other party also confirmed the transaction as well as when there is no evidence that the amount was recycled back to the assessee such purchase cannot be doubted Therefore, the action of AO adding the sum of Rs.5,08,67,899/- is not justified and the same is deleted. Related ground of appeal is allowed.”

4. Aggrieved against the same, the Revenue is in appeal before us raising the solitary Ground of Appeal as follows:

(1) Whether the Ld. CIT(A) was correct in deleting the addition on account of bogus purchases of Rs.5,08,67,899/-.

5. Ld. Sr. D.R. Shri Ashok Natha Bhalekar appearing for the Revenue supported the order passed by the Assessing Officer and pleaded to uphold the same.

6. Per contra, Ld. Senior Counsel Shri Tushar Hemani appearing for the assessee taken us through the Paper Book filed by the assessee. More particularly, assessee's letter dated 26.12.2018 wherein purchase of scraps of Rs.3.18 crores and sale of Rs.52,56,836/- made to M/s. TPS Metal & Tubes and the payments were through banking channels. Ld. Sr. Counsel also brought to our notice the retraction statements of Shri Palak Gajjar and Shri. Jagadish N Patel which was filed by the assessee vide its letter dated 14.09.2018 before the Assessing Officer (which are placed at Page Nos. 84 to 91 of the Paper Book). Thus Ld. Sr. Counsel submitted that the A.O. without verification of records and merely based on the statements recorded by the Investigation Wing of the department made the additions, which are rightly deleted by the Ld. CIT(A) after considering the reassessment orders passed in

the case of Jagdish N. Patel and Palak Gajjar. Thus the findings arrived by the Ld. CIT(A) does not require any interference and the appeal filed by the Revenue is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee and also the Revenue. It is clearly seen from the assessment order that the addition on account of bogus purchase of Rs.5,08,67,899/- were made based on the statements recorded by the Investigation Wing in the case of Shri Palak Gajjar, Proprietor of M/s. Urvish Trading Corporation and also Director of M/s. Swiss Impex Pvt. Ltd. and also the statement of Shri Jagdish N. Patel Proprietor of M/s. TPS Metal and Tube and also Director of M/s. TPS Metal & Tube Pvt. Ltd. which are involved in scrap business on paper only. Whereas Ld. CIT(A) has considered the entire facts on record and held that M/s.TPS Metal & Tube Pvt Ltd. was established only on 11.10.2012 which is proved from master data from MCA website. Similarly M/s.Urvish Trading Corporation, Proprietorship concern of Mr. Palak Gajjar was established in 2012 which was converted into M/s. Swiss Impex Pvt. Ltd. with effect from 17.09.2012 which is also evident from master data from MCA website. Thus there is no proof available with the Ld. AO that the purchases were made by the assessee from the above three firms. Whereas in the case of M/s. TPS Metal & Tubes, the assessee made a purchase of Rs.3,18,52,925/- and also made sale of scrap of Rs.52,56,836/- and the payments were made through banking channels which are filed before us at Page Nos. 175 to 177 of the Paper Book. The Ld. Assessing Officer further failed to consider the

retraction affidavits of Mr. Palak Gajjar and Mr. Jagdish N. Patel filed by the assessee before the Assessing Officer on 14.09.2018.

8. In our considered opinion the Ld. Assessing Officer proceeded to make an addition of Rs.5.08 crores as the bogus purchase in the hands of the assessee without considering the details and documents filed by the assessee. Whereas Ld. CIT(A) has reproduced the reassessment orders for the very same assessment year 2011-12 in the case of Mr. Palak Gajjar as well as in the case of Mr. Jagdish N. Patel wherein no additions were made in their respective hands on account of bogus sales by them. Thus the findings arrived by the Assessing Officer merely based on the statements recorded by the Investigation Wing is not sustainable in law. Therefore the factual findings recorded by the Ld. CIT(A) in his order does not require any interference. In the above circumstances, the ground raised by the Revenue is devoid of merits and liable to be dismissed.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 07-02-2024

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 07/02/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue

3. Concerned CIT

4. CIT (A)

5. DR, ITAT, Ahmedabad

6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद