

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2814/Mum/2023  
(A.Y. 2009-10)**

Megahertz Systems Private Limited, 251/253, Tardeo Court, Opp. Swati Snacks Tardeo Road Near Bhatia Hospital, Grant Road West, Mumbai – 400 007	Vs.	Asst. Commissioner of Income Tax, Circle 5(2)(2) Aayakar Bhavan, WRQH+C23, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AADCM8203F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Ms. Indira Adakil

Date of Hearing	23.01.2024
Date of Pronouncement	30.01.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, Delhi, dated 12.06.2023 for A.Y. 2009-10. The assessee has raised the following grounds before us:

- "1. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as "the Ld. CIT(A)" erred in passing order dated 12.06.2023 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") without considering the factual and legal matrix of the case.*
- 2. The Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without appreciating the fact that the impugned reassessment proceedings under section 147 was initiated in violation of the first proviso to section 147.*

3. *The CIT(A) failed to consider the fact that the impugned reassessment proceedings under section 147 was initiated merely relying on the information received from the Sales Tax Department without any independent application of mind on the information received, thus the assessment was reopened on the basis of borrowed satisfaction*
4. *The CIT(A) failed to consider the fact that the impugned reassessment proceedings under section 147 was initiated merely on surmises and conjectures without being in possession of any tangible material.*
5. *The Ld. CIT(A) erred in confirming the order of Ld. Assessing Officer disregarding the fact that the reopening of assessment was on the basis of vague, unclear and ambiguous reasons.*
6. *The Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without considering the fact that the impugned reassessment proceeding was completed by the Ld. Assessing Officer without providing the material or information in his possession and without providing any opportunity of cross examination of the witnesses relied upon by him and thus violating the law laid down by Honorable Supreme Court in the case of Kishanchand Chellaram v. CIT (1980) 125 ITR 713 and Andaman Timber Industries v. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006.)*
7. *The Ld. CIT(A) erred in sustaining the addition made by the Ld. Assessing Officer under section 69C of the Act amounting to Rs.2,55,904/- being 12.5% of alleged bogus purchases without appreciating the fact that expenditure being alleged bogus purchase was duly accounted in the books, the source was explained, the provision of section 69C are not applicable as there was no unaccounted expenditure.*
8. *The Ld. CIT(A) erred passing the order under section 250 dated 12.06.2023 without appreciating the fact that the reassessment proceeding was completed on the incorrect premises that the Appellant had not provided any substantial evidence in respect of the alleged bogus purchase transaction whereas, the Appellant had brought out enough evidence on record to substantiate the transaction yet the Assessing Officer proceeded with the reassessment proceedings without disproving any of the evidences provided by the Appellant and without bringing out any new evidence contrary to those provided by the Appellant merely on the basis of surmises and conjectures.*
9. *Without prejudice to above, the Ld. CIT(A) erred in passing an order dated 12.06.2023 holding the impugned addition @ 12.5% of alleged bogus purchase without appreciating the fact that even if the alleged purchases are considered to be bogus, the impugned addition should be restricted to the extent of difference between the gross profit rate on purchases alleged to be bogus and gross profit rate on normally accepted purchases.*
10. *All the above grounds are without prejudice to each other. The appellant craves leave to add, delete, alter or modify delete any grounds of appeal, if required.”*

2. Fact in brief is that return of income declaring total income of Rs.41,72,250/- was filed on 30.09.2009. The return was processed u/s 143(1) of the Act and subsequently the case was reopened by issuing of notice u/s 148 dated 03.03.2015 on the basis of information received from the sale tax department that assessee had made bogus purchases to the amount of Rs.20,47,232/- from the parties which were involved in providing accommodation bills to various entities. The assessee company was engaged in the business of dealing in computers and related parts. After perusal of the detail filed by the assessee the assessing officer observed that assessee had made purchases from the following parties which was listed by the sale tax department as accommodation entries providing entities.

Sr. No.	Name of the party	Amount of purchase	PAN
1.	R.K. Traders	17,04,730	BHWPS6408N
2.	Savita International	2,24,280	AAJPS7341H
3.	Aryen Sales Corporation	1,18,222	AAQPS2518D

On query, the assessee filed copies of ledger account of these parties and submitted that payment for purchases were made to these parties through account payee cheque only. However, AO had not agreed with the submission of the assessee and stated that aforesaid parties were not existed at the address provided by the assessee and the assessee had not furnished any information to establish the change of address of these parties. Therefore the AO observed that assessee failed to furnish the sufficient details to prove the genuineness of purchases made from the parties. However, the AO had agreed with the submission of the assessee that the assessee had received the goods against the corresponding sales made by the assessee. The AO also stated that there cannot be any sale without the purchases. The assessing officer observed that assessee has inflated its purchases as goods might have been purchased from the undisclosed parties, and there is embedded

undisclosed profit in the transaction of purchases which are made without bills on account of non-payment of sales tax etc. The AO further stated that against such purchases the assessee has obtained bills from the aforesaid Hawala operators. Therefore, the AO has made addition of 12.5 of total purchases of Rs.20,47,232/- to the amount of Rs.2,55,904/- being the profit elements embedded in such transactions to the total income of the assessee as unexplained expenditure u/s 69C of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard the ld. D.R and perused the material on record. In this case neither the assessee has attended nor filed any written submission. In spite of the fact that notice for the hearing was issued to the assessee on the following address as provided in Form No. 36 filed by the assessee before the ITAT:-

“251/253, Tardeo Court, Opp. Swati Snacks, Tardeo Road, Near Bhatia Hospital, Grant Road West, Mumbai”

However, the notice of hearing issued to the assessee on the aforesaid address given for communication by the assessee could not be served since the assessee was not existed at there as per the acknowledgment received from the Postal Authority with the remark “that the assessee has left from the aforesaid place.” The assessee has also not updated the address given for communication as per Form No. 36 of the appeal form filed before the ITAT. Under such circumstances the appeal filed by the assessee is adjudicated after hearing the ld. D.R and after perusal of material placed on record.

5. The assessee has raised ground no.2 to 4 on the issue of reassessment that reassessment proceedings initiated in the case of the

assessee were not based on any tangible material and the same was initiated in violation of the first proviso to Sec. 147 of the Act.

The assessee has not furnished any evidences/detail to demonstrate that reassessment proceeding initiated u/s 147 of the Act was not valid. In the case of the assessee no assessment u/s 143(3) of the act was made and the return filed was processed u/s 143(1) of the Act. It appears from the assessment order that assessing officer has analysed the information provided by the Sale Tax Department and found that assessee has made purchases from the parties who were found by the Sale Tax Department indulged in providing accommodation entries. At the stage of initiation of reassessment proceedings it is not required to be conclusively proven that income had actually escaped assessment. Considering the aforesaid facts and circumstances we don't find any merit in this ground of appeal of the assessee, therefore, ground no. 2 to 6 regarding reopening of assessment are dismissed.

**Ground No. 1:**

6. Being a general grounds of appeal it does not require any adjudication since we have dealt with the specific grounds of appeal filed by the assessee.

**Ground No. 7 to 9: Pertaining to merit of the addition of Rs.2,55,904/- being 12.5% of the bogus purchases made by the assessing officer:**

7. During the course of assessment the AO stated that assessee could not file sufficient details to establish the genuineness of transactions made with aforesaid three parties, however, interalia the AO concluded that assessee has received the goods against the corresponding sales made by the assessee. The AO has also agreed with

the proposition that there cannot be any sale without purchases. He also stated that assessee has received goods from sources known to the assessee but not disclosed to the Department. He further stated that in such cases purchase have been made from undisclosed party in the open market in cash and in such cases the purchase price will be significantly lower than the purchases made with bill on account of non-payment of sale tax etc. Therefore, the assessing officer has restricted the addition to the extent of 12.5% of profit element embedded in the total purchases of Rs.20,47,232/- made by the assessee from the aforesaid three parties to the amount of Rs.2,55,940/- as unexplained expenditure u/s 69C of the Act. We have also perused the submission of the assessee filed before the Id. CIT(A) wherein assessee has submitted that assessing officer has made addition of Rs.2,55,904/- by considering 12.5% as the gross profit margin of the assessee, however, the gross profit margin in the ordinary course of business was only around 7 to 8% which has already been offered to tax by the assessee. After taking into consideration all these facts and circumstances we direct the assessing officer to restrict the addition to the extent of 5% of the amount of the impugned purchases made from the three entities as discussed supra in this order since the assessee has already offered gross profit around 7 to 8% on such purchases accounted in the books of account of the assessee. Accordingly, this appeal of the assessee is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30.01.2024

Sd/-  
(Vikas Awasthy)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 30.01.2024

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.