

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 3506/Mum/2023 (A.Y.2011-12)**

**Vijay Kumar Mansukhlal Mehta,**

156, Cooper Compound,  
T. P. Street, Kumbhar Wada,  
6<sup>th</sup> Lane, Mumbai-400 004  
PAN: AGAPM3179N

..... Appellant

Vs.

**ITO 19(3) (5)**

Piramal Chamber,  
Mumbai

..... Respondent

&

**ITA No. 3749/Mum/2023 (A.Y.2011-12)**

**ITO 19(3) (5)**

Piramal Chamber,  
Mumbai

..... Appellant

Vs.

**Vijay Kumar Mansukhlal Mehta,**

156, Cooper Compound,  
T. P. Street, Kumbhar Wada,  
6<sup>th</sup> Lane, Mumbai-400 004  
PAN: AGAPM3179N

..... Respondent

Appellant by : Shri Vimal Punmiya, Ld. AR

Respondent by : Smt. Usha Gaikwad, Ld. DR

Date of hearing : 14/02/2024

Date of pronouncement : 26/02/2024

## ORDER

### PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of Ld. CIT (A), National Faceless Appeal Centre (NFAC), Delhi dated 21.08.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:-

1. *On the facts and circumstances the Ld. CIT erred in confirming addition of Rs. 53,15,596/- being 6.5% of total bogus purchase of Rs. 8,17,78,409/-.*
2. *The Ld. CIT erred in charging interest under section 234A, 234B, 234C and 234D of the Act*
3. *The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing*

2. The revenue has raised the following grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 6.5% as against addition made by the Assessing Officer @ 12.5% on account of bogus purchases of Rs. 8, 17,78,409/-, by ignoring the fact that the Sales Tax Department, Maharashtra has proved beyond doubt that parties declared as hawala traders were involved in providing accommodation entry of purchases/sales and the assessee was one of the beneficiary of accepting accommodation entry for the purchases. ?"*
2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 6.5% as against addition made by the Assessing Officer @ 12.5% on account of bogus purchases of Rs. 8, 17,78,409/-, by ignoring the fact that assessee could neither the quantity tally of day to day purchases, Sales, Stocks and corresponding values nor could produce the parties for verification in spite of opportunity provided by the Assessing Officer ?"*

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 6.5% as against addition made by the Assessing Officer @ 12.5% on account of bogus purchases of Rs. 8,17,78,409/-, without appreciating the fact that the Assessing Officer has given detailed reasoning for quantifying the additions and Ld. CIT(A) has erred in not providing the adequate reasons for pegged down the addition @ 6.5% as against 12.5% of bogus purchases?"

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in restricting the addition @ 6.5% as against addition made by the Assessing Officer @ 12.5% on account of Bogus purchases of Rs. 8,17,78,109/, even after acknowledging that appelland made cash purchase indicating the suspicious nature of transactions ?

5. This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No.3 of 2018 dated 11.07.2018 as amended vide F.No.279/Misc. 142/2007-ITJ(Pt) dated 20.08.2018."

6. The appelland craves leave to amend or alter any grounds or add a new ground which may be necessary?"

3. The brief facts of the case are that the assessee filed his return of income u/s. 139(1) of the Act on 30.09.2011 declaring total income of Rs. 9,06,100/-. Return of the assessee was processed u/s. 143(1) of the Act. Subsequently, a communication was received from the office of DGIT (Inv.) wherein an information received from Sales Tax Department pertaining to assessee was shared and names of the parties involved in bogus billing were furnished to the office of AO as under:-

Sr. No.	Name of the party	Amount
1	POLARIS SALES AGENCY PRIVATE LIMITED	2,377,426/-
2	BSR MULTITRADE TRADING PRIVATE LIMITED	9,461,437/-
3	SURAJ STEEL INDIA	4,522/-
4	CHOKSI BROTHERS	10,092,943/-

5	S. S. ENTERPRISES	5,731,377/-
6	POOJA METAL & ALLOYS	7,754,919/-
7	LAXMI METAL (INDIA)	1,071,455/-
8	SIDDHIVINAYAK PIPE & FITTINGS	1,107,687/-
9	JAY IMPEX	2,524,137/-
10	AGAM ENTERPRISES	3,324,072/-
11	RONAK INDUSTRIES	3,372,337/-
12	NAVRATAN METAL IMPEX	3,512,669/-
13	RAJGALA TRADERS PVT LTD	3,560,146/-
14	PIONEER METALS & ALLOYS	5,118,349/-
15	SHANTI PIPES & TUBES	7,080,293/-
16	KAMALNAYAN EXIM PRIVATE LIMITED	7,400,417/-
17	SHANTI FORGE AND FITTINGS PRIVATE LIMITED	8,284,223/-
	Total	8,17,78,409/-

4. In view of the above information, case of the assessee was reopened and a notice u/s 148 of the Act was issued on 21.03.2016. The AO furnished the reasons also alongwith the notice issued u/s. 148 of the Act. In response to this notice, assessee filed a letter dated 03.05.2016 stating that the return filed earlier u/s. 139(1) of the Act be treated as return filed in response to the notice issued u/s. 148 of the Act. The assessee is engaged in trading of ferrous and non-ferrous metal. As per the information received from Sales tax Department, the assessee has shown purchases of Rs. 8, 17, 78,409/- from the above mentioned parties during the financial year relevant to assessment year 2011-12. During the course of investigation, the sales tax department has found that the said concern were not doing genuine business of purchases and sales and merely indulge in providing accommodation bills. To verify the genuineness of purchases made by the assessee notice u/s. 133(6) was sent to the above mentioned parties by speed post. However, the notices sent to the party could not be served and returned un-

served by postal authorities with the remarks 'not known' or 'no such address' or 'left' etc.

5. In the light of above information, assessee was asked to produce the said party for examination alongwith the delivery challans, transport receipts, octroi receipts, receipt of weigh bridge, excise gate pass, etc. But, assessee failed to comply with above directions of the AO, resultantly the AO made an adhoc addition @ 12.5% on alleged bogus purchase amounting to Rs. 8,17,78,409/- resulted in an addition of Rs. 1,02,22,302/-. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A), who in turn reduced this addition made by AO by 6% i.e. addition sustained upto Rs. 53,15,596/-. Assessee being further aggrieved with the order of Ld. CIT (A) preferred the present appeal before us.

6. We have carefully gone through the order of AO, order of Ld. CIT (A), order of Coordinate Bench in assessee's own case vide ITA No. 3393/Mum/2017 and submissions of the assessee alongwith grounds raised before us. We observe that on similar set of facts for A.Y. 2009-10, Coordinate Bench confirmed the addition on account of bogus purchase @ 6.5% and that has been duly accepted by the assessee and there is no further appeal by the assessee (as there is no evidence of further appeal produced before us). Hence in the light of the decision of Coordinate Bench (supra), duly accepted by the assessee, we also follow the same ratio and addition @ 6.5% sustained by the Ld. CIT (A) is confirmed. In view of

above, we are not inclined to interfere in the order of Ld. CIT (A) and same is confirmed. **Resultantly, ground no. 1 raised by the assessee is dismissed.**

7. Ground no. 2 pertains to charging of interest u/s 234A, 234B, 234C and 234D of the Act. For this ground, we find that return of income filed by the assessee was well in time, hence no interest u/s. 234A can be charged and as far as interest u/s. 234C is concerned i.e. fastened to returned income and cannot be disturbed by any further action, hence same is also not applicable in the case of assessee. Interest u/s. 234B and 234D are consequential in nature. In view of above, we direct the AO to delete the interest charge u/s 234A and 234C of the Act, if charged by virtue of this GP addition. **Resultantly, ground no. 2 raised by the assessee is partly allowed.**

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

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9. In this appeal, revenue raised total 4 substantive grounds which are inter-related and parallel to ground no. 1 raised by the assessee in his appeal. As ground no. 1 of the assessee's appeal has been adjudicated (supra), we do not see any reason to adjudicate the grounds raised by the revenue as the result will be the same as adjudicated in assessee's appeal (supra). **Resultantly, grounds raised by the revenue are dismissed.**

10. **In the result, appeal of the Revenue is dismissed.**

**11. In the net result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.**

Order pronounced in the open court on 26<sup>th</sup> day of February, 2024.

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 26/02/2024

*Dhananjay, Sr. PS*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai