

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2634/Mum/2023
(A.Y. 2010-11)**

ITO-27(1)(5) Room No.410, 4 th Floor, Tower No.6, Vashi Railway Station, Mumbai – 400703	Vs.	J.V. Chem India, B Neelkanth Chhahya, R.B. Mehta Road Ghatkopar East Maharashtra – 400077
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABFJ4268L		
Appellant	..	Respondent

Appellant by :	S. Arunkumar
Respondent by :	None

Date of Hearing	28.02.2024
Date of Pronouncement	07.03.2024

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the revenue in electronic mode is directed against the order passed by the ld. CIT(A) for A.Y. 2010-11. The revenue has raised the following grounds before us:

- “1. whether on the facts and circumstances of the case, the Ld. CIT(A) has lied to appreciate the fact that the re-opening of assessment was done by the AO after taking prior approval and also recording the reasons that entire purchase of Rs. 21,15,881/- representing accommodation entries (as per information and investigation report received from DGIT (Inv.) Mumbai, based on information provided by Sales Tax Department), should have been disallowed.*
- 2. whether on the facts and circumstances of the case, the Id. CIT(A) erred in quashing the assessment proceeding with. at appreciating that in the case of bogus purchase transactions, Hon'ble Gujarat High Court upheld the disallowance of 100% in the case of N.K. Proteins which was subsequently confirmed by the Hon'ble Supreme Court.*

3. *whether on the facts and circumstances of the case, the Ld. CIT (A) being the fact finding Authority failed to adjudicate the matter on merits of the case in the backdrop of factual matrix and circumstantial evidence the instant case as elaborately discussed by the AO in the assessment order and also in reasons of reopening.*
4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in quashing the re- opening proceedings without appreciating the fact that inspite of not expressly declared in the reason for re-opening that the failure was on the part of the assessee to reason of re-opening to have disclosed truly and fully material facts relating to the assessment of the assessee, the same was understood from the reason for re-opening recorded.*
5. *The appellant prays that the order of the CIT(A) NFAC on the above grounds be set aside and that of the assessing officer restored.*
6. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

2. Fact in brief is that return of income declaring total income at Rs.14,11,190/- was filed on 29.09.2010 and assessment u/s 143(3) of the Act was completed on 26.03.2013 and after making addition of Rs.14,69,766/- being the peak of credit on account of accommodation entries taken by the parties. However, on perusal of record the assessing officer noticed that assessee has disclosed purchases from various parties. The AO stated that the assessee has not proved the genuineness of the purchases and notice issued u/s 133(6) of the Act have been returned back as non complied. Therefore, the AO was of the view that entire purchases to the amount of Rs.21,15,881/- should have been disallowed as against Rs.14,69,766/- assessed by the assessing officer. Therefore, the AO issued notice u/s 148 of the Act on 23.09.2016 as per the original assessment order passed u/s 143(3) of the Act. The assessing officer referred the information received from the DGIT (Inv) on the basis of detail provided by the Sales Tax Department that assessee had obtained accommodation entries in respect of the following parties:

Sr. No.	Name	Amount
1	International trade Agency	4,79,825
2	Growel Industries	2,42,060
3	Dev Enterprises	3,85,256
4	Alpesh Trading Co.	2,00,741
5	Sumukh Corporation	4,76,426
6	Shreeji Sales	1,04,853
7	Caprihans Trade Centre	1,58,080
	TOTAL	21,15,881

Since in the original assessment order passed u/s 143(3) of the Act the AO has assessed the peak of the unexplained purchase amount of Rs.14,69,766/- u/s 69 of the Act, therefore, for remaining part of the amount the case was reopened and stated that assessee has not produced the concern parties with relevant document to prove that the entire purchase made were genuine purchases. Therefore, the entire amount of purchases of Rs.21,15,881/- was added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that the condition precedent for invoking the provision of Sec. 147 of the Act were totally absent in this case as the assessment was made originally u/s 143(3) of the Act and the case has been reopened after the expiry of 4 years from the end of the relevant of the assessment year and it was not established that the income had escaped assessment because of failure on the part of the assessee to disclose fully and truly of material facts necessary for their investment.

4. Heard both the sides and perused the material on record. During the course of original assessment proceedings the assessing officer has determined the bogus purchases at Rs.14,69,766/- after confronting the information of obtaining accommodation entries from the aforesaid parties by the assessee. In the order u/s 143(3) the assessing officer has clearly referred the seven parties from whom the assessee has obtained the accommodation bills as per the information provided by

the Sale Tax Department. After analysing such information the AO had restricted the disallowance to the extent of peak purchase of Rs.14,69,766/-. On the basis of same information which were available at the time of original assessment u/s 143(3) the assessing officer had reopened the case that entire purchases to the amount of Rs.21,15,881/- should have been disallowed as against addition of Rs.14,69,766/- made by the assessing officer. In the copy of reason recorded the assessing officer has simply stated he has reason to believe that there is escapement of income to the balance amount of Rs.648,155/- as being difference in the total purchases amount of Rs.21,15,881/- and the amount of purchases already disallowed of Rs.14,69,766/- as per the original assessment order passed u/s 143(3) of the Act. In the reason recorded, nowhere assessing officer has mentioned that there was any failure on the part of the assessee to disclose fully and truly of material fact relating to its assessment. Therefore, after expiry of 4 year from the end of the relevant assessment year the income which has escaped assessment can be charged to tax only when there is failure on the part of the assessee to make a return u/s 139 of the Act or in response to notice issue sub-section (1) of Sec. 142 or Sec. 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. The AO has not brought on record any facts to demonstrate that there was failure on the part of the assessee to disclose fully and truly all material facts when the assessment was reopened in the case of the assessee u/s 147 of the Act after expiry of 4 years from the end of the relevant assessment year. It is also not in dispute that original assessment for the same assessment year was completed under section 143(3) of the Act on the basis of same information obtained from Sales Tax from the office of the DGIT (Inv.). Therefore, we don't find any reason to interfere in the decision of Id.

CIT(A) accordingly, all the ground of appeal of the revenue stand dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07.03.2024

Sd/-

(Kuldip Singh)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 07.03.2024

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.