

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 2741/Mum/2023

(Assessment Year: 2011-12)

ITO-19(3)(1)
4th Floor, Room No.405,
Piramal Chambers, Lal baug,
Parel, Mumbai-400 012

Vs.

Sagar Steel Corporation
Ground floor 3/5, Sakar
Bhavan,
6th Khetwadi Lane,
Mumbai-400 004

(Appellant)

(Respondent)

PAN No. ABDFS3717N

Assessee by : Shri vimal Punmiya, AR
Revenue by : Shri Manoj Kumar Singh, DR

Date of hearing: 19.03.2024
Date of pronouncement : 22.03.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by The Income Tax Officer – 19 (3) (1), Mumbai (the learned AO) for assessment year 2011 – 12 against the appellate order passed by the National Faceless Appeal Centre (NFAC), Delhi (the learned CIT – A) dated 6/6/2023 wherein the appeal filed by the assessee against the assessment order passed under section 147 read with section 144 of The Income Tax Act (The Act) dated 6/12/2016 passed by the learned assessing officer, was partly allowed.
02. Following grounds of appeal are raised :-



"1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) was erred in restricting the addition made on account of bogus purchase to 12.5% of total bogus purchases ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase.

2. Whether on the facts and circumstances of the case and in law the Learned. CIT (A) has erred in admitting the new evidences without asking remand report from Assessing Officer as prescribed in rule 46B of Income tax Rule, 1952?

3. Whether on the facts and circumstances of the case and in law the learned CIT (A) has erred in deleting unexplained purchase amount which was added by the Assessing Officer as the assessee was not complied to any notices and purchase was made from the parties who has indulged in bills-trading without there being no actual trading activity?

4. whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer.

5. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in restricting the addition to 12.5% of the total bogus

purchases without examining the quantity tally of day to day purchases, sales, stocks and corresponding values.

6. *Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) was erred in deleting the addition made by the Assessing Officer amounting to ₹75,94,374/- without appreciating the ratio of the decision of the Hon'ble Supreme Court in case of N.K. proteins Ltd., wherein the court has held that when the purchases are from bogus suppliers the entire purchase are liable to be disallowed?*

7. *Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in deleting the addition made by the Assessing Officer without appreciating the facts that during the assessment proceedings assessee has failed to substantiate the sales corresponding to bogus purchases whereas the learned CIT (A) has relied on the case law's relevant to the cases wherein the assessee submitted its reply of bogus purchases and the correspondence sale with substantiate proof.*

8. *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."*

03. Brief facts of the case shows that assessee is a partnership firm filed return of income on 6/9/2011 at a total income of ₹ 906,720/-. The return was processed under section 143 (1) of the act , was not picked up for scrutiny.



Subsequently information was received from the office of the Director General Of Income Tax (Investigation) Mumbai in respect of assessee that assessee has shown purchases from seven parties amounting to ₹ 7,804,309/- which are mentioned as hawala dealers as per the Sales Tax Department, Maharashtra state. Assessee is one of the party which has obtained the benefit of this bogus sales for assessment year 2011 - 12. Therefore, notice under section 147 of the act was issued on 21/3/2016. Several other notices were issued. The assessee did not file any reply and therefore a show cause notice was issued under section 142 (1) of the act on 11/11/2016 asking the assessee to why the aforesaid purchases should not be treated as non genuine and added to the total income and also to produce the parties for the verification. The assessee was also required to explain why the book result should not be rejected under section 145 (3) of the act. As no reply has been filed by the assessee , the learned assessing officer was constrained to pass an order under section 144 of the act. The learned assessing officer further issued notices under section 133 (6) of the act by speed post to the various parties however no reply from any of the above parties have been received. Therefore the learned assessing officer passed an assessment order under section 144 read with section 147 of the act on 6/12/2016 making addition to the extent of hundred percent of such non genuine purchases. The total income of the assessee was assessed at ₹ 8,711,029/-.



04. Aggrieved, assessee preferred an appeal before the learned CIT – A challenging the action of reopening of the assessment as well as the addition on the basis of the merits of the case. The learned CIT – A upheld reopening of the assessment, however, with respect to the total addition of ₹ 7,804,309/- as bogus purchases, it was found that assessee has returned a gross profit of 9.81% which is reasonably very high. The learned CIT – A further noted that in assessee's own case for assessment year 2010 – 11 on similar set of facts addition made by the learned assessing officer on bogus purchases of ₹ 2,252,744/- the addition was restricted to the extent of 12.5% of such bogus purchases. He further noted that such decision was rendered after following the several judicial precedents. Accordingly he upheld the addition to the extent of 12.5% of the bogus purchases granting the relief to the assessee by deleting the addition to the extent of hundred percent of the bogus purchases.
05. Learned assessing officer is aggrieved and is in appeal before us.
06. The learned departmental representative supported the order of the learned assessing officer and submitted that when the assessee has failed to give any information to the assessing officer , there is no fault on the side of the learned assessing officer in making the addition to the extent of hundred percent of the bogus purchases.
07. The learned authorized representative submitted a paper book containing 81 pages wherein he submitted the

assessment order and appellate order for assessment year 2011 – 12 as well as the order of the learned CIT – A for assessment year 2010 – 11 to show that in assessment year 2010 – 11 on similar circumstances the addition was restricted to the extent of 12.5%. He further submitted another paper book containing 52 pages containing the copy of audit report and audited accounts of the assessee along with the Ledger account of simple copy of purchases and sales bill of alleged bogus parties. Stock register is also submitted along with the bank statement showing that the payments to alleged bogus parties have been made by the account by cheque supported by sales bills. The learned authorized representative further placed a very lengthy written submission containing 38 pages on the issue. The same was reiterated before us.

08. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that assessee is a partnership firm engaged in the business as trader in ferrous and nonferrous metals. It filed its return of income disclosing total income of ₹ 906,720/-. The assessee is found to have indulged into bogus purchases from seven different parties amounting to ₹ 7,804,309. The assessee has submitted the copies of the purchase bills, Ledger accounts, bank statements, the Ledger of the various items purchased and as well as the quantitative details, stock register. On appeal, It is also stated by the learned CIT – A that assessee has disclosed gross profit of 9.81%, thus it is apparent corresponding sales is not disputed. The learned CIT – A upheld the addition to the



extent of 12.5% of bogus purchases following the decision of the honourable Bombay High Court in case of principal Commissioner of income tax versus Vishwashakti Construction in tax appeal number 1016 of 2018 dated 4/5/2023. The learned CIT – A while confirming the addition to the extent of 12.5% of the bogus purchases directed the learned assessing officer to allow deduction of gross profit already returned by the assessee in the regular books of account in respect of purchases made from the said alleged hawala bogus suppliers also. We find that the learned CIT – A has correctly upheld the addition to the extent of 12.5% when the complete stock register showing quantitative details along with undisputed sales are accepted. No infirmity was pointed out by the learned departmental representative that when learned CIT – A has followed the decision of the honourable Bombay High Court and retained the addition to the extent of 12.5% of the bogus purchases. In the result, we do not find any merit in the appeal of the learned assessing officer. Accordingly, all 8 grounds raised challenging appellate order of the learned CIT – A is dismissed.

09. In the result, appeal filed by the learned AO is dismissed.

Order pronounced in the open court on 22.03.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.03.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai