

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3574/Mum./2023

(Assessment Year : 2016-17)

Income Tax Officer Ward-12(2)(1)
Room No.145, 1st Floor, AayakarBhawan,
Churchgate, Mumbai-400020

..... Appellant

v/s

Hari Steel Industries Ltd
B-708 MangalArambh, Off
S. V. Road, Kora Kendra Borivali (W),
Mumbai-400092
PAN – AABCH1174N

..... Respondent

Assessee by :Shri Anil Thakrar

Revenue by :Shri Biswanath Das

Date of Hearing – 25/04/2024

Date of Order – 06/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 06.09.2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. In its appeal, 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) erred in allowing the appeal of the assessee by deleting the addition of Rs.29,98,22,000/-, without appreciating the fact that the assessee failed to*

prove the genuineness and creditworthiness of the purchases from M/s. Kasturi Commodities Pvt. Ltd by not providing the requisite supporting documents/details during the assessment proceedings.”

3. The only dispute raised by the revenue, in the present appeal, pertains to the deletion of addition made on account of bogus purchases made by the assessee.

4. The brief facts of the case, as emanating from records, are: The assessee is engaged in the business of trading and distribution of Iron and Steel Products. For the year under consideration, the assessee filed its return of income on 16.10.2016 declaring a total income of Rs.4,25,280/-. On the basis of information received from the Investigation Wing that the assessee has received funds of Rs.29,82,60,232/- from M/s. Kasturi Commodities Pvt. Ltd, which is an accommodation entry provider and is not engaged in genuine business activity, notice u/s 148 of the Act was issued on 31.03.2021 and proceedings u/s 147 of the Act were initiated. As per the information received from the Investigation Wing, M/s. Kasturi Commodities Pvt. Ltd does not have any actual business or financial creditworthiness and is engaged in providing accommodation entry in return of commission which proves that the transaction reflected in the assessee's account is a sham transaction. In response to the show cause notice issued during the assessment proceedings, the assessee submitted that it had made purchased transactions with M/s. Kasturi Commodities Pvt. Ltd and has not received any amount of Rs.29,82,60,232/- but has rather paid for the purchases made from M/s. Kasturi Commodities Pvt. Ltd., during the year and for opening balance. In this regard, the assessee also furnished confirmation of accounts from M/s. Kasturi

Commodities Pvt. Ltd and a copy of the bank statements. The Assessing Officer ("AO") vide order dated 30.03.2022 passed u/s 147 read with section 144B of the Act did not agree with the submission of the assessee and held that the assessee has failed to file documentary evidence that it had a business transaction with M/s. Kasturi Commodities Pvt. Ltd. The AO further held that M/s. Kasturi Commodities Pvt. Ltd does not have any actual business or financial creditworthiness and is merely an accommodation entry provider. Accordingly, the AO concluded that the assessee had made a sham transaction, by taking bogus accommodation entries for purchases from M/s. Kasturi Commodities Pvt. Ltd amounting to Rs.29,98,22,000/- to inflate the cost to reduce the profit for the year under consideration.

5. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the impugned addition on the basis that the AO has not controverted any of the documents submitted by the assessee and the financials of M/s. Kasturi Commodities Pvt. Ltd shows that it is a genuine business entity having sufficient creditworthiness. The learned CIT(A) further held that the AO has not discharged its onus of disproving the transaction between the assessee and M/s. Kasturi Commodities Pvt. Ltd. The learned CIT(A) also noted that the AO, although made the impugned addition on bogus purchases, however, no comments have been made on the nature of sales made by the assessee. Being aggrieved, the Revenue is in appeal before us.

6. During the hearing, the learned Departmental Representative vehemently relied upon the order passed by the AO and submitted that no

document has been furnished by the assessee to prove the purchase from M/s. Kasturi Commodities Pvt. Ltd.

7. On the other hand, the learned Authorised Representative ("*learned AR*") by referring to the financial statement of M/s. Kasturi Commodities Pvt. Ltd submitted that it has reserves and surplus of Rs.7.67 cr and a turnover of 238.38 cr during the relevant financial year. The learned AR further referred to the ledger confirmation of M/s. Kasturi Commodities Pvt. Ltd to prove the purchase transaction with the assessee.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of information received from the Investigation Wing, pursuant to the search conducted in the case of M/s. Kasturi Commodities Pvt. Ltd, that the assessee has received funds from M/s. Kasturi Commodities Pvt. Ltd which is not engaged in genuine business activities, proceeding u/s 147 of the Act were initiated in the case of the assessee. From the perusal of the orders passed by the lower authorities, it is evident that as per the information received, M/s. Kasturi Commodities Pvt. Ltd is a corporate entity engaged in shipbreaking activity at Alang, Gujarat as well as trading in Iron and Steel material/scrap at Darukhana, Mumbai. As per the assessee, it has not received any amount from M/s. Kasturi Commodities Pvt. Ltd and rather it made the payment for purchases from M/s. Kasturi Commodities Pvt. Ltd. From the perusal of the ledger confirmation of M/s. Kasturi Commodities Pvt. Ltd for the financial year 2015-16, forming part of the paper book from pages 1-3, we find that apart from the purchases made by the assessee during the year from M/s. Kasturi Commodities Pvt.

Ltd., there is an opening balance of Rs.1,81,53,294/- as on 01.04.2015. Further, as per the aforesaid ledger confirmation, there is also a closing balance Rs. 2,31,75,021/-. Therefore, from the above, it is evident that the assessee made the purchases from M/s. Kasturi Commodities Pvt. Ltd not only in the year under consideration but also in the preceding year. Thus the payment claimed to be made by the assessee is not only for the purchases made during the year but also the past purchases made from M/s. Kasturi Commodities Pvt. Ltd. Further, contrary to the claim of the AO that M/s. Kasturi Commodities Pvt. Ltd does not have any actual business or financial creditworthiness, we find from the audited financial statement of M/s. Kasturi Commodities Pvt. Ltd for the year ending 31.03.2016, forming part of the paper book pages 4-13, that it has a total turnover of Rs.238.38 cr and surplus of Rs.7.67 cr during the year under consideration. Further, we find that it has an inventory of Rs.112.11 cr as on 31.03.2016 as compared to 70.13 cr as on 31.03.2016. Further, from the copy of the ITR acknowledgement of M/s. Kasturi Commodities Pvt. Ltd for the assessment year 2016-17, we find that M/s. Kasturi Commodities Pvt. Ltd declared a total income of Rs.2,11,51,530/-. Thus, we find no merits in the finding of the AO that M/s. Kasturi Commodities Pvt. Ltd has no financial creditworthiness.

9. From the audited financial statement of the assessee for the assessment year 2016-17, we find that the assessee made total purchases of Rs.69,64,16,782/- during the year under consideration. Further, the assessee has earned a total turnover of Rs.74.82 cr from its operations. It is evident from the record that the Revenue has not disputed the sales made by the

assessee and only considered the part purchase, i.e. from M/s. Kasturi Commodities Pvt. Ltd., as bogus. We further find that the inventory of the assessee were Rs.99,16,139.11 as on 31.03.2016. The summarized trading results of the assessee, as noted by the learned CIT(A), are as under: -

| <i>Particulars</i> | <i>Amount (in Rs)</i> | <i>Particulars</i> | <i>Amount (in Rs.)</i> |
|----------------------|-----------------------|----------------------|------------------------|
| <i>Opening Stock</i> | <i>4,68,18,118</i> | <i>By Sales</i> | <i>74,82,82,579</i> |
| <i>Purchases</i> | <i>69,64,16,782</i> | <i>Closing Stock</i> | <i>99,16,139</i> |
| <i>Gross Profit</i> | <i>1,49,63,818</i> | | <i>75,81,98,718</i> |
| <i>Total</i> | <i>75,81,98,718</i> | <i>Total</i> | <i>75,81,98,718</i> |

10. Thus, from the perusal of material placed on record, it is evident that the assessee was having regular transactions with M/s. Kasturi Commodities Pvt. Ltd in respect of its business of trading in Iron and Steel. We further agree with the findings of the learned CIT(A) that the AO has neither reproduced the statement of the director of M/s. Kasturi Commodities Pvt. Ltd nor has highlighted the part wherein it is stated that the assessee is the beneficiary of bogus purchases. It is pertinent to note that in the present case, the identity of M/s. Kasturi Commodities Pvt. Ltd has not been doubted by the Revenue and only the genuineness and creditworthiness of the purchases have been disputed by the Revenue. Since in the present case, the assessee has made the purchases from M/s. Kasturi Commodities Pvt. Ltd, therefore, the examination of the creditworthiness of M/s. Kasturi Commodities Pvt. Ltd is of no relevance. On the other hand, the assessee has furnished sufficient documents to prove its financial creditworthiness which has not been disputed by the Revenue. In the present case, apart from placing reliance on the information received from the Investigation Wing, the Revenue has not brought any material on record, not even an iota of aforesaid information, to

disprove the genuineness of the transaction between the assessee and M/s. Kasturi Commodities Pvt. Ltd., which is continuing from the preceding year. Therefore, in view of the material available on record, we find no infirmity in the impugned order passed by the learned CIT(A) deleting the addition made by the AO. As a result, the sole ground raised by the Revenue is dismissed.

11. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED:

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai