

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 794/Ahd/2023
Assessment Year 2010-11**

Mukesh Sumermal Sanghvi A/22, GR Goragandhi Place, 122, Khetawadi Back Road, Mumbai, Maharashtra-400004 PAN: AJMPS6622F (Appellant)	Vs	The ITO, Ward-4(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Amit Kothari, A.R.
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 20-02-2024
Date of pronouncement : 10-05-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 13.09.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2010-11.

2. The brief facts of the case is that the assessee is an individual and Proprietor of M/s. Silicon Metal Inds engaged in the business of trading of all types of Ferrous and non-Ferrous Metal. For the Asst. Year 2010-11, the assessee filed its original Return of Income declaring total income of Rs. 5,26,250/-. The return was processed u/s. 143(1) accepting the Returned Income. Thereafter the assessment reopened by issuing a notice u/s. 148 of the Act dated 30.03.2017, on the ground that information received from the Sales Tax Department, it is noticed that assessee is one of the beneficiary and obtained bogus bills for purchases amounting to Rs.1,03,12,596/- from the following six parties:

Sr. No.	Name of the party from whom bogus billing for purchases made	Particulars of Transactions	
		F.Y.	Amount
1	Suraj Steel India	2009-10	5,21,538/-
2	Suraj Steel India	2009-10	9,59,104/-
3	Goodluck Impex India	2009-10	5,66,280/-
4	Citizen Enterprises	2009-10	16,94,757/-
5	Vatika Metals Pvt. Ltd.	2009-10	29,37,006/-
6	Vatika Metals Pvt. Ltd.	2009-10	36,33,912/-
		Total	1,03,12,596

3. In response to 148 notice, the assessee requested to treat the original return in compliance to the notice and submitted before the A.O. various purchases made by the assessee with the details of bills, purchase register, confirmation from the parties, etc. However the same was rejected and the Assessing Officer made an addition of Rs.1,03,12,596/- as non-genuine purchase expenses and added as the income of the assessee and demanded tax thereon.

4. Aggrieved against the appellate order, the assessee filed an appeal before Ld. CIT(A). After detailed submission, the Ld. CIT(A)

deleted the additions made in the case of Vatika Metals Pvt. Ltd. of Rs. 29,37,006/- and the balance amount of Rs. 73,75,590/- was confirmed.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT(A) has erred in upholding the order passed by ld. AO u/s 143(3) r.w.s 147. The order so made is bad in law and bad on facts and is contrary to the principles of natural justice.

2. The Ld. CIT(A), has erred in upholding additions of Rs.73,75,590/- which is bad in law and bad on facts. The ld. CIT(A) has erred in not properly appreciating the facts and circumstances and the addition so sustained on different grounds is bad in law and bad on facts.

4 The appellant craves leave to add, alter, amend or vary from the above the above grounds of appeal at or before the time of hearing

6. At the outset, the Ld. Counsel Shri Amit Kothari appearing for the assessee submitted that he is not pressing Ground No. 1 namely reopening of assessment. As far as Ground NO. 2 is concerned, the Ld. Counsel submitted that in the case of Suraj Steel India, the purchases were made on 02.03.2009 of Rs.3,50,338/- and on 16.03.2009 of Rs.1,71,200/- both in totaling to Rs.5,21,538/-. Both purchases are made in the previous assessment year namely 2009-10. The assessee also produced before us confirmation of accounts and account statement in the books of the assessee at page nos. 70 to 72 of the Paper Book. Thus pleaded the addition made by the Assessing Officer in the present Asst. Year 2010-11 is not sustainable in law.

6.1. Similarly in the case of Good Luck Impex India, the purchases of Rs.5,66,218/- made in the Asst. Year 2009-10 and part payment made in March, 2009 and remaining payment made in the Asst. Year 2010-11, account copy of the entire payment details is placed at Page No. 74 of the Paper Book. Since no purchases were made during the year, no addition on this account. Similar is the case of Citizen Enterprises of Rs.16,94,753/-, the account confirmation submitted by the party is available at Page No. 82 of the Paper Book and all the payments were made through banking channels. Thus claimed the three additions made in the case of Suraj Steel India, Good Luck Impex India and Citizen Enterprises are liable to be deleted.

6.2. Another addition of Rs. 9,51,104/- in the case of Suraj Steel India, the purchases were made on 23.05.2009 of Rs.5,29,431/- and on 01.06.2009 of Rs.4,29,673/-. Copy of the purchase register and account statement, entry in stock register of the above invoices are placed at Page Nos. 71, 73, 111, 138, etc. of the Paper Book. The Assessing Officer has not disputed the subsequent sales being made and the profit on such sales is accepted by the A.O. The A.O. also not disputed source of payment. Thus the above addition made by the A.O. is not correct in law.

6.3. Addition of Rs.36,33,912/- from Vatika Metals Pvt. Ltd., the assessee submitted above purchases are made during the Asst. Year 2011-12, copy of the account statement and confirmation from the party are placed at Page Nos. 78 & 79 of the Paper Book and corresponding payments were made through banking

channels. Thus the ld. A.O. is not correct in making the additions for this Asst. Year 2010-11 and the addition is liable to be deleted.

7. Per contra, Ld. Sr. D.R. Shri Atul Pandey appearing for the Revenue supported the order passed by the Lower Authorities. However he could not contravert that the purchases made by the assessee are all pertaining to the Asst. Year 2010-11. Thus the Ld. D.R. pleaded to uphold the addition made by the Assessing Officer.

8. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. As it is seen from the Paper Book, the purchases made by the assessee are not pertaining to the present Asst. Year 2010-11 in the case of Suraj Steel India of Rs.5,21,538/-. Also in the case of Good Luck Impex India of Rs.5,66,280/- and Citizen Enterprises of Rs.16,94,753/-. Thus the additions made in the present Asst. Year 2010-11 is not sustainable in law and the same liable to be deleted.

8.1. In the case of Vatika Metals Pvt. Ltd., the purchases were made in the subsequent Asst. Year namely A.Y. 2011-12, so therefore the addition cannot be made in the present Asst. Year 2010-11, the same is liable to be deleted. Regarding the remaining addition of Rs.9,59,104/-, the same were purchased on 23.05.2009 and 01.06.2009 and the above purchases were duly entered in the stock register of the assessee, which are available at various pages of the Paper Book and all the payments were made through account payee cheques. Having the sales not been disputed by the Assessing Officer and the profit on sale of such transaction is

accepted by the A.O. The above addition made by the A.O. is liable to be deleted.

8.2. The Hon'ble Bombay High Court in the case of the PCIT Vs. Vishal P. Mehta in ITA No. 456 of 2018 dated 30.09.2022 held as follows:

13. We have considered the rival submissions made by the counsel for the parties and gone through the records before us.

14. This Court in the case of Principal Commissioner of Income Tax (Supra) considering the provisions of section 69 C of the Act, which reads as follows:-

"16. The first appellate authority while deleting the addition made by the AO under s. 69 C held that AO did not doubt the sales and stock records maintained by the assessee. By submitting confirmation letters, copies of invoices, bank statement, payment order, payment by account payee cheques etc. assessee had proved that sale and purchases had taken place. By highlighting the fact that all the payments against the purchases were made through banking channel by way of account payee cheques, the first appellate authority held that source of expenditure was fully established by the assessee beyond any doubt. He has further recorded that during appellate proceedings the assessee had furnished complete quantitative details of the items of goods purchased during the year under consideration and their corresponding sales."

Thereafter, on considering the order passed by the Tribunal and noting that the Tribunal has arrived at concurrent findings with ones arrived at by the Commissioner of Income Tax, to the effect that the purchases made by the assessee could not be doubted on the basis of production of purchase bills as well as invoices, challan-cum tax invoices in respect of purchases and extracts of stock ledgers showing entry/exit of materials has concluded in paras 18 and 19, as under:

"18. We are in agreement with the view expressed by the Tribunal. In fact, Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities.

19. This Court in the case of CIT Vs. Nijunj Eximp Enterprises (P) Ltd. (2015) 372 ITR 619 (Bom); wherein an identical fact situation arose did not interfere with the order passed by the Tribunal and held that no substantial question of law arose from such order. It was held that merely because the suppliers had not appeared before the AO, no conclusion could be arrived at that the purchases were not made by the assessee,"

15. In our opinion, the CIT as well as ITAT have concurrently concluded, on a matter of fact that the transactions entered into by the assessee were genuine, supported by material such as stock entries and payments made through cheques through proper banking channels. Both these authorities have concurrently concluded that the assessee had made purchases materials and reflected the same materials to various authorities in a Stock Register. We see no reason to conclude otherwise and accordingly find no infirmity with findings and conclusions arrived at by the CIT or with the concurrent view taken by the Tribunal on this matter. The judgment rendered in Principal Commissioner of Income Tax (supra) applies in all vigor to the facts of the present case. No substantial question of law as envisaged under section 260 (A) of the Act arises in the present matter. Accordingly, we dismiss the appeal.”

9. Respectfully following the above judicial precedent, the additions made by the Assessing Officer are hereby deleted.

10. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 10-05-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 10/05/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद