

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY.S, ACCOUNTANT MEMBER

ITA 4143/Mum/2023
(Assessment year 2008-09)

Shri Rameshkumar Sanghvi M/s Orient Metal Industries 23/8, 3rd Panjarapole Lane, CP Tank, Mumbai-400 004 PAN : AEEPS0340H	vs	Income-tax Officer-19(3)(1), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Vimal Punamiya
Respondent by : Shri R.R. Makwana, JCIT
Date of hearing : 24/04/2024
Date of pronouncement : 29/ 04/2024

ITA 4214/Mum/2023
(Assessment year 2009-10)

Shri Kalpesh Rameshbhai Vyas 15/A, Gr.Floor, Laheri Building 4th Khetwadi Lane, Opp Recreation PARK, Mumbai-400 004 PAN : AAPPV4037K	vs	Income-tax Officer-2(1), Thane
APPELLANT		RESPONDENT

Assessee by : Ms. Mona Makwana
Respondent by : Shri R.R. Makwana, JCIT
Date of hearing : 25/04/2024
Date of pronouncement : 29/04/2024

ORDER

PERBENCH:

Both these appeals of the different assessees were filed against the order of the National Faceless Appeal Centre, Delhi (NFAC)[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2008-09 in the case of Shri **Rameshkumar Sanghvi** dated 21/09/2023 and 2009-10 in the case of **Shri Kalpesh Rameshbhai Vyas** dated 03/11/2023.

The impugned orders were emanated from the order of the Ld.Income-tax Officer-19(3)(1), Mumbai order passed under section 143(3) read with section 147, date of order 30/03/2015 in the case of Shri Rameshkumar Sanghvi and Ld.Income-tax Officer-2(1), Thane, order passed under section 143(3) read with section 147, date of order 02/12/2016 in the case of Shri Kalpesh Rameshbhai Vyas.

2. In the outset both the appeals have samename of fact and have a common issue. For brevity both the appeals are taken together during adjudication. The ITA 4143/Mum/2023 is the lead case.

ITA 4143/Mum/2023

3. The assessee has taken the following grounds:-

"1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition made by Assessing Officer of Rs.2204441/- to the total income of the appellant which is calculated @ 25% on alleged non-genuine purchases of Rs.8817762/-.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming that purchases made by the appellant to the extent of Rs. 88177627-from the parties mentioned in the assessment order is non-genuine and thereby erred in confirming rejection of books of accounts of the appellant under section 145(3) of the Act.

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming initiation of proceeding under section 147 of the Act by issuing notice under section 148 of the Act in as much as reasons recorded by Assessing Officer depict mere suspicion and no tangible material is available in possession of the Assessing Officer.

4. The learned Commissioner of Income Tax (Appeals) erred in confirming assessment order made under section 143(3) rws 147 of the Act which is illegal, bad-in-law, ultra virus and without allowing reasonable opportunity of the hearing, and without appreciating facts, submission and evidences in their proper perspective, without providing copies of material relied upon and without providing cross examination, is liable to be annulled.

On the facts and in the circumstances of the case and in law the assessment made under section 143(3) rws 147 of the Act and issuance of notice under section 148 of the Act is without jurisdiction in as much as the learned Assessing Officer failed to record his satisfaction that there is failure on the part of the appellant to disclose fully and truly all material facts necessary for the assessment.

The learned Commissioner of Income Tax erred in confirming charging of interest under section 234A, 234B and 234C and 234D of the Act."

4. The brief fact of the case is that the assessee is a trader and is engaged in dealing in ferrous and nonferrous metals in the name and style of M/s Orient Metal Industries as proprietor. The return was filed under section 139(1) of the

Act. The return processed under section 143(1) of the Act. The scrutiny proceeding was initiated and assessment was framed under section 143(3) of the act on dated 24/12/2010. After receiving the information from DGIT(Inv), the Ld.Assessing Officer initiated the proceedings under section 148 of the Act. Finally, the order was passed under section 143(3) read with section 147 on dated 30/03/2015. The addition was made @25% of the bogus purchases, which works out to Rs.22,04,441/-. The aggrieved assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, assessee filed an appeal before us.

5. The Ld.AR filed a written submission, which is kept in the record. The appeal was filed by challenging both on legal and on merit. The Ld.AR had not pressed the legal ground during the time of hearing before the Bench. The Ld.AR placed a calculation which is reproduced as below:-

“Alleged party for addition

<i>Sr.No.</i>	<i>PARTIES NAME</i>	<i>AMOUNT (Rs.)</i>
1.	<i>Champion Steel (India)</i>	<i>14,70,346</i>
2.	<i>Shubham Metal Corporatyion</i>	<i>47,56,902</i>
3.	<i>Raj Star Metal Industries</i>	<i>25,90,517</i>
<i>TOTAL</i>		<i>88,17,762</i>

Comparison of GP Ratios to M/s Mohammad Haji Adam and Co ITA No.1004 of 2016

<i>Particulars</i>	<i>Genuine Purchases</i>	<i>Alleged bogus Purchases</i>
<i>Sales</i>	<i>1,64,03,561</i>	<i>90,99,865</i>
<i>Closing Stock</i>	<i>89,376</i>	

(A)	1,64,92,937	90,99,865
Opening Stock	4,54,236	
Purchases	1,51,60,896	88,17,762
(B)	1,56,15,132	88,17,762
GP (a-b)	8,77,805	2,82,103
Gp Ratio	5.667%	3.101%

G.P. of genuine purchases	5.66%
Less : G.P. of Bogus purchases	3.10%
Addition to be confirmed	2.56%”

Ld.AR placed that the bogus purchases of Rs.88,17,762/- is already declared by the assessee in books of account. The gross profit was declared @3.10%. The gross profit of the genuine purchases was 5.66%. So, the Ld.AR prayed for restricting the addition of balance GP i.e. 2.56% on the bogus purchases. The Ld.AR relied on the order of the co-ordinate bench of ITAT, **Mumbai Bench “D”** in the case of **Murtuza Abdul Gaffar Khan vs NFAC, Delhi** in **ITA No.2698/Mum/2023** for A.Y. 2011-12, dt. Of pronouncement **15/03/2024**. The relevant paragraph is extracted as below:-

“09. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact clearly shows that assessee is a trader in MST tubes and pipes. Based on sales tax department enquiry and consequent report of DGIT, assessee was found to have indulged into purchases from tainted parties as per Sales Tax Department. Two parties are identified and total of such purchases was ₹1,15,86,557/-. The learned Assessing Officer made an addition to the extent of 100% of the same, which was confirmed by the learned Commissioner of Income tax (Appeals). Before us, the assessee has given a quantitative chart along with the value to show that alleged bogus purchases are amounting to ₹1,15,86,557/- for 1,89,475 kgs, which were sold for Rs.,1,22,08,684/- of identical kgs. Bills of purchases and bills of sales were also correlated. The assessee has also submitted the stock register before us. Assessee has also produced before

the lower authorities the details such as invoices, payment through banking channel, confirmation of accounts and other details for purchase of goods. Undeniably, the parties who notices under section 133 (6) of the act were returned, assessee also did not produce the parties. However as held by the honourable Bombay High Court in case of Mohmd. Hail Adam & company (supra) where sales are not disputed; no discrepancy between purchases shown by the assessee and the sales declared; only the addition should be restricted to the extent of bringing the gross profit on purchases at the same rate of other genuine purchases, On this mandate, it was found that assessee has given the quantitative sales corresponding to the quantitative purchase, which is from alleged bogus suppliers. The resultant gross profit from alleged bogus purchase and sales is 5.096%, The gross profit ratio without alleged bogus purchase and corresponding sales is 5.407%, which will result into addition of 0,3% of alleged bogus purchases of ₹1,15,86,557/~which would be minuscule. Looking at the minuscule amount of addition to be retained, we find it a reasonable and just to delete the addition and allow appeal of the assessee.”

6. The Ld.AR further relied on the order of the Hon'ble **High Court of Judicature at Bombay OOCJ. The PCIT vs M/s Mohammad Haji Adam and CoITA No.1004 of 2016 date of order 11/02/2019.** The relevant paragraph is reproduced as below:-

“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the GIT (A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of v JW.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

" So far as the question regarding addition of Rs.3,70,78,1257- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,1257-which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

7. The Ld.DR argued and supported the orders of Revenue authorities.
8. We heard the rival submission and considered the documents available on the record. The assessee is a trader of ferrous and nonferrous metal. The assessment was completed under section 143(3) and the gross profit of the traders in the business lines at 5.66% is duly accepted by the Ld.Assessing Officer. In the assessment under section 143(3) / 147 was completed and the entire bogus purchases of Rs.88,17,762/- was taken and @25% was added back. The assessee submitted that the sale value of the bogus purchases amount to Rs. 90,99,865/- and purchase value amount to Rs. 88,17,762/-. So, the GP works out to Rs.2,82,103/- and the G.P.Ratio is @3.10%. The assessee submitted books of account, purchase bills, sale bills, transaction through banking channels and the sale was totally declared in MVAT returns which were filed before the Id. Assessing Officer and the Id. CIT(A). The GP of the genuine purchase is @5.66% and GP of bogus purchase is @3.10%. So, the balance@ 2.56% of bogus purchases is only to be added and

is restricted for addition. In our considered view, we set aside the appeal order and the addition is restricted to gross profit @2.56% on the bogus purchase.

9. Accordingly, the appeal of the assessee is allowed on the terms indicated above.

ITA 4214/Mum/2023

10. Related to this appeal the Id. AR submitted the calculation, reproduced as below. The Id. AR prayed for restricting GPR @2.86% on bogus purchase.

“ Alleged party for Addition

<i>Kotsons Impex Pvt Ltd</i>	<i>3126989</i>
<i>Dhruv Sales Corporation</i>	<i>13052752</i>
<i>Deep Enterprises</i>	<i>1316222</i>
<i>Trimurti Enterprises</i>	<i>7727937</i>
<i>Atlas Enterprises</i>	<i>4223606</i>
<i>Shree Sai Trading and Co</i>	<i>4195256</i>
<i>Omkar Trading and Co</i>	<i>6089907</i>
<i>Shree Nakodaji Impex</i>	<i>12360218</i>
<i>Skand Industries</i>	<i>873218</i>
<i>Centurial Sales Corporation</i>	<i>208354</i>
<i>Entech Enterprise</i>	<i>2813472</i>
<i>Nidhin Impex Pvt Ltd</i>	<i>4679376</i>
<i>Nidhin Impex Pvt Ltd</i>	<i>4679376</i>
<i>RK Ispat</i>	<i>5276092</i>

Comparison of GP Ratio to M/s Mohammed Haji Adam and Co ITA No.1004 of 2016.

Particulars	Genuine Purchases	Bogus Purchases
<i>Sales</i>	<i>144283309</i>	<i>57665944</i>
<i>Closing Stock</i>	<i>3747000</i>	
<i>(A)</i>	<i>148030309</i>	<i>57665944</i>

Opening Stock	43671200	
Purchases	72721617	55943363
Direct Expenses	3200184	
(B)	139593001	55943363
GP (A-B)	8437308	1722582
GP Ratio	5.84%	2.98%

GP of Genuine Purchases = 5.84%

GP of Bogus Purchases = 2.98%

Addition to be restricted to = 2.86%

11. The ITA No. 4143/Mum/2023 is mutatis mutandis applicable to ITA No. 4214/Mum/2023 except the G.P.ratio and follows accordingly.

12. In the result, **ITA No.4143/Mum/2023&ITA No.4214/Mum/2023** are allowed.

Order pronounced in the open court on 29th day of April, 2024.

Sd/-

(PADMAVATHY. S)
ACCOUNTANT MEMBER
Mumbai, दिनांक / Dated: 29/04/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

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.

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BY ORDER,

(Asstt.Registrar), ITAT, Mumbai

