

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"A" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2731/Mum./2023**

**(Assessment Year : 2021-22)**

**DCIT, CC-3(2)**

Room No. 1913, 19<sup>th</sup> Floor  
Air India Building, Nariman Point  
Mumbai-400021

..... Appellant

v/s

**Arun Jain**

11, Vikash Park, Jalpankhi  
Co-op, HSG, Society Ltd,  
Juhu Tara Road, Juhu,  
Mumbai-400049  
PAN – AAFPJ0335G

..... Respondent

Assessee by : Shri Jay Bhansali  
Revenue by : Shri Sunny Kachhwaha

Date of Hearing – 30/05/2024

Date of Order –07/06/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 09/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-51, Mumbai, [*learned CIT(A)*], for the assessment year 2021-22.

2. In its appeal, the Revenue has raised the following grounds:–

*"1. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made u/s 69A amounting to Rs.3,95,15,327/- on account of sales made to M/s. Gulathi Enterprises reflected against the PAN of the assessee.*

*2. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.91,07,200/- proved to be bogus purchases, without considering the statement recorded from key persons who have confirmed that the purchases in question are in the nature of accommodation entry."*

3. The issue arising ground no. 1, raised by Revenue, pertains to deletion of addition made u/s 69A of the Act on account of sales of M/s. Gulathi Enterprises.

4. The brief facts of the case pertaining to this issue, as emanating from the records, are: The assessee is an individual and is carrying on the business of trading in scrap, pipes, hot/cold rolled steel coils, steel plates and related products through his proprietary concern, i.e. GSP International. For the year under consideration, the assessee filed its return of income on 02/03/2022 declaring a total income of Rs.18,17,080/-. The return filed by the assessee was selected for complete scrutiny through CASS and statutory notices u/s 143(2) as well as section 142(1) of the Act were issued and served upon the assessee. During the assessment proceedings, it was observed that an amount of Rs.3,95,15,327/- has been shown as sales in the GST return of the assessee. Accordingly, the assessee was asked to show cause as to why the sales of Rs.3.95 crore should not be treated as part of the assessee's sales. In response thereto, the assessee submitted that M/s. Gulathi Enterprises had fraudulently applied the GST number under the PAN of the assessee. It was further submitted that the assessee has filed complaint with Police and Department of GST. Thus, it was submitted that the sales of Rs.3.95 crore pertaining to M/s. Gulathi Enterprises have wrongly been included in the GST

return of the assessee. The assessee also furnished copy of cancelled GST number of M/s. Gulathi Enterprises during the assessment proceedings. In order to ascertain the genuineness of the assessee's claim, the Assessing Officer ("AO") issued letter to the Commissioner of CGST and Central Excise seeking information in respect of transaction done through GST No.07AAFPJ0335G1Z5. Since no reply was received from the Commissioner of CGST and Central Excise, the AO vide order dated 28/12/2022 passed u/s 143(3) of the Act treated the transaction as assessee's transaction and made an addition of Rs. 3,95,15,327/- to the total income of the assessee on the basis that the assessee has failed to furnish any corroborative evidence regarding the said transaction and the treatment of the transaction, subsequent, to the cancellation of the GST number.

5. The learned CIT(A), vide impugned order, after taking into consideration the submission of the assessee and various documents filed in its support held that the transaction in the GST return of the assessee has not been confirmed/verified by any authority and there is no corroborative evidence to substantiate the figures mentioned in the GST return are in-fact belong to the assessee. The learned CIT(A) further held that there is no verification and bank statement under which the payment of such sales made were received and there is also no third party verification to whom the sales were effected by M/s. Gulathi Enterprises. The learned CIT(A) also took into consideration, the fact that one hand the AO has taxed the sales of Rs.3.95 crore pertaining to M/s. Gulathi Enterprises, but on the other hand, the AO has not granted the deduction for purchases of Rs.5.37 crore pertaining to M/s. Gulathi

Enterprises. Accordingly, the learned CIT(A) deleted the addition of sales of M/s. Gulathi Enterprises u/s 69A of the Act in the hands of the assessee. Being aggrieved, the Revenue is in the appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, since the sales of the assessee as per the GST return was higher than in the sales as per the Profit and Loss Account of the assessee, the AO asked the assessee to reconcile the two items. As per the return, out of total turnover of Rs.26.89 crore as per GST return, turnover of M/s. Gulathi Enterprises was Rs.3.95 crore and after the excluding such turnover pertaining to M/s. Gulathi Enterprises, the balance turnover tallies with the Profit and Loss Account. It has been the submission of the assessee that the M/s. Gulathi Enterprises had fraudulently applied GST number under PAN of the assessee, and accordingly, the turnover of M/s. Gulathi Enterprises is getting reflecting in its GST return. It is evident from the record that in this regard the assessee had filed complaint with Police Department as well as the Department of GST. It is further evident from the record that the GST Department has even cancelled the GST number of M/s. Gulathi Enterprises. However, since the AO did not receive any response from the Department of GST to its letter seeking information in respect of transaction done through GST number issued in the name of M/s. Gulathi Enterprises, the AO proceeded to make the addition of the entire sales of Rs.3.95 crore in the hands of the assessee. From the perusal of the record, we find that the assessee furnished the letter as well as police complaint during the assessment proceedings and also furnished the cancellation of GST

certificate of M/s. Gulathi Enterprises. Further, from the copy of the letter of the AO to the Commissioner of CGST and Central Excise, forming part of the paper book from pages 156-157, we find that the same is dated 08/12/2022 and the assessment order was passed on 28/12/2022. Thus, the Department of GST had only 20 days to respond to the aforesaid letter by the AO. However, it is undisputed that no response was received from the Department of GST. Be that as it may, it is evident from the record that the AO did not conduct any other inquiry as noted by the learned CIT(A) in para no. 8.10 of the impugned order. Further, it is also evident from the record that the assessee furnished all the relevant documents and took all the necessary steps as could have been taken by the victim of the GST fraud. Undeniably, it is also fact on the record that the purchases relating to M/s. Gulathi Enterprises amounts of Rs.5.37 crore, while the sales are just Rs.3.95 crore, and even if it is assumed to be treated as transaction done by the assessee, no addition is warranted as the sales are anyway lesser than the purchases under the relevant GST number. Further, it is also evident from the record that the assessee has also satisfactorily proved before lower authorities that the GST number assigned to it is different from the GST number of M/s. Gulathi Enterprises. Therefore, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) deleting the addition of sales of M/s. Gulathi Enterprises u/s 69A of the Act in the hands of the assessee. As a result, the ground no. 1, raised in Revenue appeal is dismissed.

7. The issue arising in ground no. 2, raised in Revenue appeal, pertains to deletion of addition on account of bogus purchases.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has shown purchases of Rs.4,55,36,000/- from M/s. Ankit International. On the basis of search action u/s 132(4) of the Act carried out on 13/07/2017 in the case of M/s. Viraj Profile Ltd, wherein it was found M/s. Viraj Profile Ltd has claimed purchases in the names of various parties, which are not genuine purchase and accommodation entities, the assessee was asked to show cause as to why the purchases claimed of Rs.4,55,36,000/- from M/s. Ankit International, proprietary concern of Shri Pranav Jain, in the year under consideration should not be disallowed and added to the total income of the assessee. In response thereto, the assessee submitted that during the search action in the case of M/s. Viraj Profile Ltd on 13/07/2017, M/s. Ankit International from whom M/s. Viraj Profile Ltd had been alleged to have made bogus purchases was also covered under the survey action u/s 133A of the Act. However, the search took place on 13/07/2017 and the assessee has made purchases from M/s. Ankit International during in the financial year 2020-21, which is around 3 – 4 years, after the date of search, and therefore, the findings of the search are not at all relevant to the purchases made from M/s. Ankit International. The assessee further submitted that he is a trader in steel and whatever purchases were made from M/s. Ankit International have been sold to various parties, and the unsold stock has been disclosed as a part of closing stock of Rs.1,93,40,000/-, while the total purchases amount to Rs.4,55,36,000/-. During the assessment proceedings, the assessee also furnished ledger copy of M/s. Ankit International in the books of GSP International and also furnished

the invoice of purchases as well as the bank statement showing payment made to M/s. Ankit International. The assessee further submitted that Shri Pranav Jain, proprietary concern of M/s. Ankit International, duly responded to the notices issued u/s 133(6) of the Act as well as summons issued u/s 131 of the Act. The AO vide order dated 28/12/2022, passed u/s 143(3) of the Act did not agree with the submissions of the assessee and on the basis of the statement of various persons, including the employee of M/s. Ankit International, statement of Shri Pranav Jain, statement of Sr. Manager of M/s. Viraj Profile Ltd, recorded during the search and survey action conducted in the year 2017 & 2018 held that the assessee is in the practice of procuring accommodation entries for the inflated purchases shown by it. It was further held that from the facts unearthed, it came to fore that the assessee has created a network of entities for availing accommodation entries for its bogus purchases. The AO further held that the many of the directors/proprietors of the entities do not even know what type of materials is being sold from their entities and do not know the modus operandi of business conducted by their entities. Accordingly, the AO held that the purchases claim in the name of M/s. Ankit International is bogus and the assessee has not received any material from the party whose invoices have been kept on record. Accordingly, by considering the gross profit at @ 20% on the alleged bogus transaction of Rs.4,55,36,000/- from M/s. Ankit International, the AO made an addition of Rs.91,07,200/-as unexplained expenditure and added the same to the total income of assessee u/s 69C of the Act.

9. The learned CIT(A), vide impugned order, deleted the addition on account of alleged bogus purchases from M/s. Ankit International on the basis that the AO has relied upon the statement recorded during the search and survey action conducted in the year 2017 & 2018 and the said statement cannot be relied upon since it is old and much before the date of the present transaction in the year under consideration. For reaching the aforesaid conclusion, the learned CIT(A) also considered the reply of Shri Pranav Jain to the notice issued u/s 133(6) of the Act and the reply to the summons issued u/s 131 of the Act. Being aggrieved, the Revenue is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. From the record, it is evident that search u/s 132 of the Act was carried out on 13/07/2017 in the case of M/s. Viraj Profile Ltd, wherein it was found that the M/s. Viraj Profile Ltd had claimed purchases in the names of various parties which are not genuine purchases and were accommodation entries. Further, survey action u/s 133A of the Act was carried out simultaneously on the assessee's proprietor firm M/s. GSP International, M/s. Ankit International and M/s. SPA Heights Pvt. Ltd. During the aforesaid search and survey action, the statement of directors/proprietors of these entities were recorded, wherein some of them stated that their entities were engaged in providing accommodation entries on account of providing bogus sales details to Viraj Group on commission basis. Further, the Sr. employees of Viraj Group had accepted that the purchases from these entities are accommodation entries made in books of the accounts of M/s. Viraj Profiles Ltd and no material was received against these entries. It is further evident from

the record that the AO on the basis of the aforesaid search action and statement recorded came to the conclusion that the purchases shown by the assessee from M/s. Ankit International during the year under consideration are bogus. Undisputedly, it is evident from the record that the statements considered by the AO, as noted from pages 5 – 14 of the assessment order, were recorded on dates 13/07/2017, 14/07/2017, 19/07/2017 and 11/08/2018. Thus, it is evident that none of these statements pertain to the year under consideration. Further, it is evident from the record that during the assessment proceedings in order to examine the genuineness of the transaction, the AO issued notices u/s 133(6) of the Act as well as summons issued u/s 131 of the Act to Shri Pranav Jain, proprietor of M/s. Ankit International. We find that the notices and summon were duly responded by Shri Pranav Jain along with furnishing the corroborative evidences in respect of the sales made to the assessee. However, it is evident from the record that the AO did not find any fault with the evidences so furnished. Therefore, we find that the findings of the AO in para no. 4.19 and 4.20 and 4.21 of the assessment order are just based on the evidences and statements recorded during the search and survey action conducted in the year 2017 & 2018, and none of the findings are on the basis of evidences furnished by the assessee for the transaction undertaken in the year under consideration. Therefore, we find no infirmity in the findings of the learned CIT(A) in holding that the AO has not mentioned any adverse evidence against M/s. Ankit International for the year under consideration, and the entire thrust of the AO is on evidences gathered during the search of M/s. Viraj Profile Ltd, which took place much

before in 2017. Accordingly, the findings of the learned CIT(A) on this issue are upheld, and ground no. 2, raised by Revenue is dismissed.

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

Order pronounced in the open Court on 07/06/2024

**Sd/-**  
**NARENDRA KUMAR BILLAIYA**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 07/06/2024**

Vijay Pal Singh, (Sr. PS)

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

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