

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 340/Mum/2024 (A.Y. 2009-10)

Bharat Kumar Anraj Bhansali Room No. 10, 3 rd Floor. Saraswat Building Banganga Road Walkeshwar, Mumbai-400 006. PAN : AAEPB8134C (Appellant)	Vs.	ITO, Ward 19(1)(2) Matru Mandir 2 nd Floor Tardeo Road Mumbai-400 007. (Respondent)
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Assessee by	Shri Ravi Gupta
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	29.07.2024

ORDER

1. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre (NFAC) Delhi (the learned CIT – A) for assessment year 2009 – 10 dated 24/2/2023 wherein the appeal filed by the assessee against the assessment order passed under section 147 with section 148 read with section 144 of the income tax act, 1961 dated 28/3/2015 was dismissed.
2. Therefore, the assessee is aggrieved with the same has preferred this appeal raising several grounds.
3. The fact of the case shows that the assessee is an individual where he filed his return of income declaring total income of Rs. 164,870 as he is dealing as a trader in Farah's and nonferrous metal. The name of the assessee appears as a beneficiary in obtaining accommodation entries and hawala bills from non-existing entity is discovered by Maharashtra sales tax department and information passed on to the assessing officer by the director general of income tax, investigation

Wing, Mumbai that assessee has made purchases of Rs. 3,620,179/- from one party namely Sai Kripa metallic traders. Therefore, the notice under section 148 was issued on 19/2/2014 which was not responded to. Further notices under section 142 (1) were issued to the assessee and there was no response. Therefore, the learned assessing officer passed an assessment order wherein he made an addition on account of nongenuine purchases of Rs. 3,620,179 to the returned income of the assessee of Rs. 164,870/- and determined the total income of the assessee at Rs. 3,785,049/- by passing an assessment order under section 144 read with section 147 of the income tax act.

4. Assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A wherein appellant also did not file any information before him and therefore learned CIT – A found that there is no material to interfere with the assessment order. The appeal of the assessee was dismissed.
5. The assessee is in appeal before us. The learned authorized representative reiterated the grounds of appeal challenging the reopening of the assessment stating that there is no independent application of mind by the AO before reopening of the assessment. The opportunity of cross examination was not afforded to the assessee. On the merits he submits that a hundred percent of the addition of the alleged bogus purchases is beyond any comprehension because only the profit element would have been added. It was further stated that opportunity of hearing is not provided to the assessee before the AO as well as before the learned CIT – A.
6. The learned departmental representative vehemently submitted that assessee has been provided enough opportunities before the lower authorities, assessee did not avail of these opportunities therefore the claim of the learned authorized representative that the proper opportunities before the learned AO and the learned CIT appeal is not given is absolutely false. On the issue of reopening of the assessment

it was submitted that there is a tangible material in the form of information received that assessee has obtained the bogus invoices from one party. The assessee failed to prove the genuineness of such purchases; several details were asked of them were filed before the learned assessing officer therefore it shows that the reasons recorded by the learned assessing officer are correct. On the issue of cross examination, he submits that when the assessee has failed to prove the genuineness of the purchases itself independently, neither the statement of the hawala operators were used for making the addition and therefore there is no need of granting cross examination opportunity to the assessee. On the issue of the taxability of profit in the hands of the assessee, it was submitted that unless assessee proves that the material has gone into the sales, the profit cannot be attributed in the hands of the assessee as income and the whole purchase should be added. He therefore submitted that there is no error in the order of the learned lower authorities.

7. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Admittedly in this case, the information was received that assessee is one of the beneficiaries of obtaining accommodation bills of bogus purchases from one party. There is tangible material, information available from the sales tax department as well as the director general of income tax investigation. Assessee did not respond to the notice under section 148 of the act. He did not file the return of income as well as did not file any objection before the learned AO. Therefore, no fault can be found in the reopening of the assessment. Further the opportunity of cross-examination does not hamper the case of the assessee because the assessee on its own could not fulfil and show the genuineness of the purchases, therefore, there is no ground to entertain the argument of the learned authorized representative about failure on part of the assessing officer to grant an opportunity of cross-examination.

Further, the assessee is into the business of ferrous and nonferrous metal as a trader, therefore if there is a bogus purchase, and quantitative details are available, only the profit embedded therein is required to be taxed in the hands of the assessee. Honourable Bombay High Court in case of Monmouth Haji Adam has laid down the amount of addition required to be made in the hands of the assessee if the purchases are bogus. Therefore, we direct the learned assessing officer to make the addition to that extent only. For this purpose, as the information is not available before us, we are handicap and restore the issue back to the file of the learned assessing officer with a direction to the assessee to produce the net profit ratio of purchases which are not alleged to be bogus and net profit ratio of purchases which are alleged to be bogus. The learned assessing officer after examination may decide the issue afresh.

8. In the result, ground number 1, 2, 4 and 5 of the appeal are dismissed. Ground number 3 of the appeal is partly allowed.
9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29th July 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai :29.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//

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(Assistant Registrar)
ITAT, Mumbai