

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1125/Mum/2024 (A.Y. 2010-11)

Abrar Husain Syed 50 M/S Steel Tube Corporation, Ghoghari Mohalla, Mumbai-400 003.  PAN : AYQPS9487H (Appellant)	Vs.	ITO-18(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Vimal Punamiya, AR
Department by	Shri R.R. Makwana, DR
Date of Hearing	11.06.2024
Date of Pronouncement	29.07.2024

ORDER

1. This appeal is filed by the assessee appellant against the appellate order passed by the additional Commissioner of income tax/joint Commissioner of income tax (appeals) – 1, Jaipur (the learned CIT – F for assessment year 2000 – 11 dated 23/2/2024 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 dated 3/3/2016 passed by the income tax officer Ward – 18 (1) (1), Mumbai (the learned AO) is dismissed.
2. Assessee aggrieved with the same is in appeal before us.
3. Facts of the case shows that assessee is an individual who is a trader, filed his return of income on 23/9/2010 at a total income of ₹ 233,634/-. This return of income was accepted as it is. Subsequently to us found that assessee has obtained the benefit of the accommodation bills from 2 different parties amounting to ₹ 968,724 which are named in Maharashtra sales tax enquiry and in turn informed to the assessing officer by the DJ investigation Mumbai and

therefore notice under section 148 of the act was issued on 24/9/2014. The assessee was provided with the reasons recorded. Assessee informed the assessing officer wide letter dated 21/4/2014 that the return in response to notice under section 148 of the act has been filed on 23/9/2010. Subsequently statutory notice under section 143 (2) was served upon the assessee on 28/4/2014. The assessee was asked to justify the genuineness of the purchases. Assessee filed 20 meant any information to the learned assessing officer and therefore the learned assessing officer made an addition of ₹ 968,724/- under section 69C of the income tax act by passing an assessment order under section 147 read with section 144 of the income tax act on 3/3/2016 determining total income of the assessee at ₹ 1,202,358/-.

4. Aggrieved, assessee preferred an appeal before the learned CIT – A. The learned CIT – A noted that the order under section 143 (3) of the act was passed on 3/3/2016 whereas the appeal before him was filed on 9/file/2016 which is beyond the statutory time limit provided for filing of the appeal. Therefore the appeal was found to be delayed. The assessee submitted a reason stating that that assessee was not aware about the filing of the appeal to ignorance of the previous accountant and therefore there is a change in the accountant and now the appeal as been filed. The assessee also submitted that this is the first year of filing of the appeal electronically however the manual appeal is filed in time. The learned appellate authority under the delay. Subsequently he issued 7 notices to the assessee however nobody turned up and therefore he decided the appeal on the merits of the case dismissing the appeal of the assessee.
5. Aggrieved, assessee is in appeal before us contesting the issue on the merits of the case that that the assessee has produced the invoices, payments are made through account paychecks, without purchase and sales could not have taken place and the books of accounts of the

assessee are audited. In view of this it was stated that hundred percent of such purchases could not have been added to the total income of the assessee the learned authorized representative relied upon several judicial precedents. He further produced the item by stock register maintained by the assessee.

6. The learned departmental representative vehemently submitted that the assessing officer was not provided with the all the details and further the assessee did not appear before the learned CIT – A therefore all these evidences cannot be considered year. Even otherwise it was submitted that the addition made by the learned lower authorities are correct because assessee has failed to prove the genuineness of the purchases.
7. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The issue here is that the assessee is found to have been the beneficiary of the bogus purchases from 2 traders wherefrom it was found that assessee has purchased invoices but has not purchased the goods and therefore the learned assessing officer on enquiry as assessee failed to produce enough evidences, made an addition to the extent of hundred percent of such purchases to the total income of the assessee. In appeal before the learned CIT – A assessee did not appear on seven occasions therefore the order of the learned CIT – A was passed ex parte confirming the addition. Now before us the assessee states that though assessee has purchased goods from allegedly bogus suppliers but has enough evidences to show the genuineness of the purchases. However we find that when the parties are mentioned into the bogus hawala racket of Maharashtra sales tax authorities and informed to the assessing officer by the director-general of investigation, Mumbai, we find that the genuineness of the purchases cannot be accepted. However even if the genuineness of the purchases cannot be accepted, then the natural course would be to make an addition to the extent of the profit

involved in such bogus purchases which is less than the net profit shown from genuine purchases. This is so because the intention of the bogus purchases would be to reduce the profits of the assessee. By this mechanism the profits of the assessee are taxed from tainted purchases to the extent of profit on by the assessee from one tainted purchases. This is also the mandate of the decision of the honourable Bombay High Court in case of Mohammad Haji Adam & co. In view of these facts, we direct the learned assessing officer to tax amount of profit out of the above bogus purchases in accordance with the decision of the honourable Bombay High Court. The assessee is directed to furnish such information within 90 days from the date of this order to the learned assessing officer, the learned AO after examination, may confirm the addition to the extent of difference in the gross profit as held by the honourable Bombay High Court. Thus we direct the learned assessing officer to delete the addition of bogus purchases made at the rate of hundred percent of such purchases and to retain net profit of the differential amount as indicated above.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 29<sup>th</sup> 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.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai