

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**

**&**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4858/Mum/2023  
(A.Y. 2011-12)**

Circumference Designs Pvt. Ltd. 402 Lake View Opp. Bandra Talao, Bandra West, Mumbai-400050	v/s. बनाम	ITO, Ward 12(1)(1), Aayakar Bhavan, Churchgate, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCC6040Q</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Rakesh K. Milwani
Respondent by :	Shri Nagnath Pasale

Date of Hearing	27.05.2024
Date of Pronouncement	30.07.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Additional Commissioner of Income-tax (Appeals), Kolkata-4 [hereinafter referred to as “Addl. CIT(A)”] dated 03.11.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

2. The assessee has raised following grounds of appeal:



*“1. Considering the facts and circumstances of the case and in law, exercise of jurisdiction u/s 147 of the Income Tax Act, 1961 (hereinafter, for the sake of brevity, referred to as 'the Act'), and the re-opening of assessment and issue of notice u/s 148 of the Act be considered as bad in law and void abinitio and the assessment made in pursuance thereof be declared as bad in law and void abinitio.*

*2. Considering the facts and circumstances of the case and in law, it is prayed that addition of Rs. 7,80,551 be deleted; alternatively reduced.*

*3. Considering the facts and circumstances of the case, such other and further reliefs be granted to the appellant, as may be considered and deemed necessary.”*

3. Brief facts of the case are that return declaring income of Rs. 27,67,000/- was filed on 28.09.2011 which was processed u/s 143(1) of the Act. Thereafter, on the basis of information received from the Investigation Wing regarding bogus purchase bills, the case was reopened u/s 147 of the Act. The purchases made by the assessee to the tune of Rs. 31,22,204/- from M/s. Banjara Enterprises were stated to be bogus as per the statements of the dealers recorded by the sales tax department. A notice u/s 133(6) was also issued by the AO to the said party. However, the same was received back unserved as the said party was not available at the given address. Thereafter the assessee was asked to produce the party along with relevant documentary evidences to establish the genuineness of these purchases. The assessee could not produce the concerned party and no evidence such as delivery challans, transport receipts etc. was furnished to prove that the purchases were actually made from M/s. Banjara Enterprises. The AO, therefore, came to the conclusion that the assessee had obtained accommodation entries to the tune of Rs. 31,22,204/-, and therefore,



he applied GP rate of 25% on the non-genuine purchases and made an addition of Rs. 7,80,551/- to the returned income.

4. The assessee filed an appeal before Ld. Addl. CIT(A) against the order u/s 143(3) and the same was dismissed vide order dated 03.11.2023.

5. Before us, the Ld. AR submitted that the notice u/s 148 was bad in law as there was no failure on the part of the assessee to disclose fully and truly all material and facts. In this regard, it is noticed that the case was processed u/s 143(1) of the Act. Subsequently on the basis of information received from the sales tax department through the Investigation Wing, the AO had sufficient reason to reopen the case of the assessee u/s 147 of the Act. As such the reopening of the case is held to be as per law and based on information available regarding the bogus purchases.

6. As regard the merits, the assessee has contended that if the GP rate of 25% on alleged bogus purchases is applied, the overall gross profit would become 46.68% which is impossible. Ld. DR, on the other hand, relied on the orders of lower authorities.

7. We have carefully considered the rival submissions. We hold that the overall GP rate of 25% as applied by the AO is reasonable. However the AO is directed to examine the assessee's claim that the material purchased had been used in the contrast executed by the company and requisite gross profit was declared by the assessee at the rate of 21.68%. We therefore direct the AO to



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apply the overall G.P. Rate of 25% but reduce the gross profit already declared by the assessee on the non-genuine purchase after due verification.

8. In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.07.2024.

**Sd/-**

**Sd/-**

**NARENDER KUMAR CHOUDHRY**

**RENU JAUHRI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 30.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**