

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
& SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA Nos. 3599 & 3604/MUM/2023
Assessment Years : 2011-12 & 2010-11

Rahul Impex, 36, Sagar Palazio, Andheri Kurla Road, Sakinaka Junction, Andheri (East) Mumbai 400 072.	Vs	ITO Ward 26(2)(5) Mumbai
PAN : AAFFR5958M (Appellant)		(Respondent)

Appellant by : Shri Satish Modi
Revenue by : Smt Mahita Nair (Sr. DR)

Date of Hearing : 21.08.2024	Date of Pronouncement : 03.09.2024
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ORDER

Per Sandeep Singh Karhail, Judicial Member:

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 09/08/2023 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment years 2010-11 and 2011-12.

2. Since both appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard

together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2010-11 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2011-12.

ITA No. 3604/Mum./2023
Assessee's appeal – A.Y. 2010-11

3. In this appeal, the assessee has raised the following grounds: –

"1. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing officer u/s 143(3) r.w.s. 147 of the Act without appreciating the facts of the case.*

2. *The Learned Assessing Officer erred in exercising jurisdiction u/s 147 of the Act, without confronting the evidences relied upon by him to the Assessee.*

3. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing officer in disallowing an amount of Rs. 49,13,180/- on account of alleged bogus purchase without appreciating the facts of the case.6. The Learned Assessing Officer erred in initiating penalty proceedings under Section 271(1)(c) of the Act.*

4. The brief facts of the case are that the assessee is a partnership firm and is in the business of trading in iron and steel and other ferrous and non-ferrous products. For the year under consideration, the assessee filed its return of income on 23/08/2010 declaring a total income of INR 11,50,689. The return filed by the assessee was processed under section 143(1) of the Act. Reassessment proceedings under section 147 of the Act, were initiated in the case of the assessee based on information received from the Sales Tax Department through DGIT (Investigation), Mumbai that the assessee

has taken entries of non-genuine purchases to the tune of INR 49,13,180, and accordingly, notice under section 148 of the Act was issued and served on the assessee. In response to the statutory notices issued under section 143(2) as well as section 142(1) of the Act, the assessee submitted a copy of the return of income along with its annexures, tax audit report and part details. The assessee also submitted the ledger account of the alleged parties, purchase bills, and bank statements reflecting payments. The assessee submitted that the purchases were genuine and from parties who had valid VAT and CST registration at the time of purchase. It was further submitted that the payments have been made by cheque and all are genuine purchases. During the assessment proceedings, in order to ascertain the genuineness of the transaction of purchases of goods by the assessee, independent enquiry was conducted by issuing notice under section 133 (6) of the Act to the parties concerned. However, the notices were either remained unanswered or were returned unserved by the postal authorities. It was further noticed that the assessee has not produced any documentary evidence of the mode of receipt of goods to establish that the assessee has received actual delivery of goods from the alleged parties. Further, the assessee also did not produce the parties for verification and also did not file any supporting evidence like delivery challans, transport bills, etc.

5. The Assessing Officer ("AO") vide order dated 21/12/2017 passed under section 143(3) read with section 147 of the Act did not agree with the

submissions of the assessee and held that the assessee has not furnished relevant documentary evidences in respect of receipt of material claimed to have been purchased from the alleged parties. Further, the assessee also did not produce the parties from whom the purchases were claimed to be made for verification. The AO further held that there is no documentary evidence to correlate the purchases with corresponding sales. Accordingly, the AO treated the entire purchase of INR 49,13,180 as bogus and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the addition made by the AO. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, pursuant to the receipt of information from the DGIT (Investigation), Mumbai, proceedings under section 147 of the Act were initiated in the case of the assessee on the basis that the assessee is a beneficiary of bogus purchase bills amounting to INR 49,13,180. Accordingly, in order to verify the genuineness of the transaction, the AO directed the assessee to produce the party and prove the genuineness of the purchases made from the said parties. In response, the assessee submitted the copies of ledger account, purchase bill and bank statement reflecting payments. The assessee further submitted that the purchases are genuine from the parties who had valid VAT and CST registration at the time of purchase.

8. As evident from the record, the AO also made independent enquiry by issuing notices under section 133(6) of the Act to the concerned parties. However, these notices were returned unserved. Further, the assessee failed to produce any document to substantiate the mode of receipt of the goods and to establish that the assessee has received actual delivery of goods from the alleged parties. Further, the assessee also could not coordinate the purchases with the corresponding sales. Accordingly, the AO treated the entire purchase transaction as bogus and held that the assessee did not purchase the material from the parties mentioned in the sale bills. The AO further held that the assessee has failed to correlate the purchases with corresponding sales. At this stage, it is pertinent to note that the AO has only doubted the purchases from the alleged bogus parties in the absence of documentary evidence and the entire sales are not in dispute. We find that before the lower authorities, the assessee was neither able to produce the parties nor could furnish the documents as directed by the AO. Even before us, no such details are available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. Thus, it appears to be a case of bogus bills arranged from the aforesaid entities and materials purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage.

9. During the hearing, the learned AR relied upon the decision of the coordinate bench in the case of the assessee firm's own partner, wherein the coordinate bench vide order dated 17/12/2020 passed in Smt. Vijalaxmi Ramesh Upadhyay v/s ACIT, restricted the disallowance to 5% of the alleged bogus purchases by following the decision of the Hon'ble Jurisdictional High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019. Accordingly, the learned AR submitted that in the present case disallowance should be restricted to 5% of the alleged bogus purchases. However, we find that in the present case, the assessee has declared a gross profit @25.10%, therefore following the aforesaid decision of the Hon'ble Jurisdictional High Court the addition in the present case cannot be restricted to 5% of the alleged bogus purchases. Thus, respectfully following the decision of the Hon'ble Jurisdictional High Court in PCIT v/s Mohammad Haji Adam, IT no.1004 of 2016, judgment dated 11/02/2019, we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the genuine purchases. We further direct that if the gross profit rate on bogus purchases is higher than the genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. No order shall be passed without affording a reasonable opportunity of being heard to the assessee. Accordingly, the grounds no. 3-5 raised in the assessee's appeal are allowed for statistical purposes.

10. Ground No. 1 is general in nature and therefore need no separate adjudication.

11. Ground No. 2 was not argued during the hearing, therefore the same is dismissed as not pressed.

12. Ground No. 6 raised in assessee's appeal pertains to levy of penalty under section 271(1)(c) of the Act, which is premature in nature and therefore is dismissed.

13. Ground No. 7 raised in assessee's appeal needs no separate adjudication in view of our findings rendered in ground No. 3-5.

14. In the result, the appeal by the assessee for the assessment year 2010-11 is partly allowed for statistical purposes.

ITA No. 3599/Mum./2023
Assessee's appeal – A.Y. 2011-12

15. In this appeal, the assessee has raised the following grounds: –

"1. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing officer u/s 143(3) r.w.s. 147 of the Act without appreciating the facts of the case.

2. The Learned Assessing Officer erred in exercising jurisdiction u/s 147 of the Act, without confronting the evidences relied upon by him to the Assessee.

3. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing officer in disallowing an amount of Rs. 57,03,572/- on account of alleged bogus purchase without

appreciating the facts of the case. 6. The Learned Assessing Officer erred in initiating penalty proceedings under Section 271(1)(c) of the Act.”

16. Since similar grounds have already been adjudicated in assessee's appeal for the assessment year 2010-11, our findings/conclusions rendered therein shall apply mutatis mutandis to the present case.

17. In the result, the appeal by the assessee for the assessment year 2011-12 is partly allowed for statistical purposes.

18. To sum up, both appeals by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 3rd September, 2024

Sd/-
(Narendra Kumar Billaiya)
ACCOUNTANT MEMBER
Mumbai, Date : 3rd September, 2024.

Sd/-
(Sandeep Singh Karhail)
JUDICIAL MEMBER

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai

By Order

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai