

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.260/Mum./2024

(Assessment Year : 2009-2010)

**Manohar Manak Alloys
Private Limited**

44, Manak House, C. P. Tank,
Mumbai – 400004.
PAN-AAACM2688K

..... Appellant

v/s

DCIT, Circle 4(2)(2),

Aayakar Bhavan, M. K. Road,
Mumbai – 400020.

..... Respondent

Assessee by : Shri Rajkumar Singh

Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 29/08/2024

Date of Order – 10/09/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

1. The present appeal has been filed by the assessee challenging the impugned orders dated 15/12/2023 passed under section 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 2009-10.

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

1. "*That on fact and circumstances of the case and in law the Id. CIT (Appeal) has erred in upholding the validity of reassessment proceeding initiated under section 147 of the Income Tax Act, 1961 by the Id. Assessing Officer to reopen the already concluded assessment earlier u/s.143(3) of the Act merely on change of opinion and borrowed satisfaction. In view of the same*



appellant prays that impugned reassessment proceeding initiated by issue of notice u/s.148 and consequent reassessment order passed u/s.143(3) r.w.s.147 being bad in law and without jurisdiction therefore may be quashed.

2. *That on facts of the case and in law the Id. CIT (Appeal) has erred in sustaining the made by Id. Assessing Officer to the extent of Rs.35,86,547/-being 12.5% of the total alleged hawala purchases of Rs.2,86,92,372/-. Appellant prays that balance addition retained by Id. CIT (Appeal) at Rs.35,86,547/-may also be deleted.*
3. *That both the above appeal ground raised hereinabove are independent ground and without prejudice to each other."*

3. During the hearing, the learned Authorised Representative ("learned AR") at the outset wishes not to press ground no. 1 challenging the invocation of jurisdiction under section 147 of the Act. Accordingly, ground no.1 raised in assessee's appeal is dismissed as not pressed.

4. The issue arising in ground no. 2 raised in assessee's appeal pertains to the addition of Rs.35,86,547 on account of alleged bogus purchases made by the assessee.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is trading in ferrous and non-ferrous metals. For the year under consideration, the assessee filed its return of income on 30/09/2009 declaring a total income of Rs.68,44,134. The return filed by the assessee was selected for scrutiny and vide order dated 21/12/2011 passed under section 143(3) of the Act the total income of the assessee was assessed at the returned income. 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 Rs.2,86,92,372, and accordingly, notice under section 148 of the Act was issued and served on the assessee. In response to the above notice, the assessee filed a letter stating that the original return of income filed on 30/09/2009 declaring a total income of Rs.68,44,124 be construed as the return filed in response to the notice issued under section 148 of the Act. Subsequently, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, notice under section 133(6) of the Act was also issued to the parties from whom the assessee alleged to have made bogus purchases. However, these notices were returned by the postal authorities with the remark on it as "*unclaimed/left*". Accordingly, the assessee was asked whether the assessee company wanted to say anything in this context and requested to produce the parties. Further, in order to prove the genuineness of the purchases from the parties in question, the assessee was asked to produce the purchase invoices, delivery challans, transport receipts, bank statements showing payment and nexus with the sales using register, stock register, etc. Further, the assessee was asked to produce transfer receipts, stock register, acknowledgement of receiving goods from the parties in question, patterns of payment to these parties viz of the payments to the parties, etc. In response to the same, the assessee furnished part details.

6. The Assessing Officer ("AO") vide order dated 31/03/2015 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 failed to produce the parties from whom it has alleged to have made the purchases. Further, the assessee neither produces any purchase parties nor any broker for examination. It was further held that the assessee has also failed to produce the supporting documents, i.e. proper delivery challan, transport receipt, storekeeper register or acknowledgement of receiving goods from the bogus parties. The AO further held that the assessee has bought material from the open market from undisclosed parties which are declared as bogus by the Sales Tax Authorities. Accordingly, by applying the peak credit theory, the AO made an addition of Rs.1,36,47,218.

7. The learned CIT(A), vide impugned order, following the decision of the Hon'ble Gujarat High Court in CIT v/s Smith P Sheth, 356 ITR 451, upheld the addition on account of bogus purchases to the extent of 12.5% of the impugned purchases being the gross profit margin embedded in such purchases. Accordingly, the learned CIT(A) upheld the addition amounting to Rs.25,86,547, being 12.5% of Rs.2,86,92,372. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of the assessee were initiated. Further, notice issued under section 133(6) by the AO to these entities was also returned unserved. It is evident from the



record that the AO has also not made the addition of the entire amount of the alleged bogus purchases made from the said suppliers and applying the peak credit theory made an addition of Rs.1,36,47,218. The assessee claims that it is in the business of trading in ferrous and non-ferrous metals. Further, it is claimed that all the payments were made by account payee cheque. However, 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. Therefore, 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. During the hearing, the learned AR placed reliance upon the decision of the coordinate bench of the Tribunal in *Mafatlal Harakchandji Bothra v/s ITO*, in ITA No. 2395/Mum/2023, dated 23/10/2023. We find from the perusal of the aforesaid decision that while deciding a similar issue in the case of a taxpayer who was engaged in a similar business, the coordinate bench restricted the addition to 5% of the non-genuine purchases. Therefore, in view of the peculiar facts of the present case and respectfully following the decision of the coordinate bench cited supra, we deem it appropriate to restrict the disallowance to 5% of the disputed purchases. We find that the same is also in line with the judgment of the Hon'ble jurisdictional High Court in *PCIT vs Paramshakti Distributors Ltd.* in



ITA No. 413 of 2017 decided on 15/07/2019. Accordingly, ground no.2 raised in assessee's appeal is partly allowed.

9. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 10/09/2024

Sd/-
PADMAVATHY S
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 10/09/2024

Karishma J. Pawar, (Stenographer)

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.*

By Order

Assistant Registrar
ITAT, Mumbai