

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2089/MUM/2024
Assessment Year: 2009-10**

Quartet Thermal Engg. Pvt. Ltd.,
Room No. 2 Road No. 31 Gandhi
Market Sion West,
Mumbai-400022.

PAN NO. AAACQ 0125 B
Appellant

Asst. CIT-8(1)(2),
Room No. 624, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. M. Subramaniam
Revenue by : Mrs. Mahita Nair, Sr. DR

Date of Hearing : 07/08/2024
Date of pronouncement : 23/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 11.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, raising following grounds:



1. *On the facts and in the circumstances of the case and in law, the proceedings initiated u/s 147 of the act is invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law, the order passed u/s 143(3) r.w.s. 147 of the act is invalid and bad in law.*
3. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the action of the learned A.O. in making an addition of an amount of Rs.31,41,752/- as 'Bogus purchase'.*

2. Briefly stated, facts of the case are that the assessee is a manufacturer of industrial furnace and its controlling systems. For the year under consideration, the assessee filed return of income on 29.09.2009 declaring total income at Rs.11,68,751/-. In view of information received from the Director General of Income-tax (Investigation), Mumbai that the assessee had obtained bogus purchases bills amounting to Rs.31,43,752/- from 8 parties, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Income-tax Act, 1961 (in short 'the Act'), which was duly served upon the assessee. In the assessment order passed u/s 147 r.w.s. 143(3) of the Act, the Assessing Officer added total amount of allege bogus purchases amounting to Rs.31,42,752/-.

3. On further appeal, the Ld. CIT(A) also upheld the disallowance relying on the decisions referred in the impugned order.

4. We have heard rival submission of the parties and perused the relevant material on record. We find that in the case of the assessee in assessment year 2011-12 identical issue of bogus purchases



from sales tax tainted dealers (i.e. hawala dealers) has been decided observing as under:

“5.3. We find that though the assessee appeared to have made purchases from two tainted dealers as detailed supra, those purchases have been duly recorded in the stock register maintained by the assessee which has been submitted before the lower authorities. These materials have been duly consumed by the assessee in the manufacturing process. Pursuant to the said consumption, the finished product has been produced and sale of those finished goods have also been made by the assessee in the instant case. We find that the ld. AO had absolutely not disputed the quantitative details submitted by the assessee in respect of opening stock purchases, consumption, closing stock of raw materials and production of finished goods, sale of finished goods and closing stock of finished goods while completing the assessment. We also find that the consumption details and sales reported by the assessee have been accepted by the lower authorities. Hence, it would be totally unfair to add 100% value of purchases. However, the assessee could not prove the genuineness of the purchases beyond reasonable doubt by producing those suppliers before the ld. AO. In these type of cases, it would be just and fair that only the profit element embedded in the value of such tainted purchases be brought to tax. But we find from page 43 of the paper book filed by the assessee containing GP chart that assessee had reported the following GP in the past years as under:-

A.Y.	GP%
2007-08	18.99%
2008-09	18.21%
2009-10	18.63%
2010-11	15.92%
2011-12	18.06%

5.4. We find that this Tribunal has been consistently holding that profit percentage of 12.5% on the value of disputed purchases would meet the ends of justice. Since in the instant case, the profit declared by the assessee itself is much more than 12.5%, we hold that no further addition is required to be made in the peculiar facts and circumstances of the instant case. Accordingly, we direct the ld. AO to delete the disallowance of Rs.8,89,868/- made on account of bogus purchases. Accordingly, the ground No.3 raised by the assessee is allowed.”

4.1 Before us, the Ld. counsel for the assessee has filed a chart of the comparative gross profit from assessment years 2007-08 to 2011-12 which is reproduced as under:



QUARTET THERMAL ENGG CO P LTD										
COMPARATIVE STATEMENT										
ACCOUNTING YEAR	2007-08	%	2008-09	%	2009-10	%	2010-11	%	2011-12	
SALE OF GOODS	5,27,47,110		4,88,25,663		5,34,43,773		7,31,38,702		7,35,08,778	
LABOUR CHARGES	12,36,200		7,15,000		8,67,237		5,58,350		5,50,241	
	5,39,83,310		4,95,40,563		5,43,11,010		7,36,97,052		7,40,59,019	
OP STOCK	26,35,795		47,74,453		22,23,208		66,23,675		38,30,950	
PURCHASES	4,18,55,735		3,48,88,295		4,39,09,683		5,21,51,905		5,76,36,680	
	4,44,91,530		3,96,62,748		4,61,32,891		5,87,75,580		6,14,67,630	
CLOSING STOCK	47,74,453		22,23,208		66,23,675		38,30,950		95,00,375	
CONSUMPTION OF RAW MATERIALS	3,97,17,077	75.30	3,74,39,540	76.68	3,95,09,216	73.93	5,49,44,630	75.12	5,19,67,255	70.70
LABOUR CHARGES	33,56,605	6.22	23,24,932	4.69	37,50,971	6.91	53,83,648	7.31	75,31,300	10.17
TRANSPORT, OCTROI, FREIGHT	6,60,035	1.22	7,56,281	1.53	9,30,872	1.71	16,33,862	2.22	11,81,999	1.60
	4,37,33,717	82.74	4,05,20,753	82.90	4,41,91,059	82.55	6,19,62,140	84.65	6,06,80,554	82.46
Gross Profit										
	1,02,49,593	18.93	90,19,910	18.21	1,01,19,951	18.63	1,17,34,912	15.92	1,33,78,465	18.06

4.2 On perusal of the above chart, we find that in the year under consideration the assessee has declared gross profit rate of 18.63%, which being more than the gross profit rate accepted by the Tribunal(supra) in the assessment year 2011-12 i.e. 18.06% therefore, following the above finding of the Tribunal no further addition is justified in the case of the assessee on the bogus purchases. Accordingly, we direct the Ld. Assessing Officer to delete the disallowance of Rs.31,42,752/- made on account of bogus purchases. The ground No. 3 of the appeal of the assessee is allowed. Since, we have already allowed the appeal of the assessee on the merit, therefore, ground No. 1 and 2 of the appeal challenging the validity of the reassessment are merely rendered academic and therefore, same are left open for adjudication.



5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23/09/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/09/2024
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai