

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Ramit Kochar, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 60 & 61/Ahd/2024
Asst. Years: 2017-18 & 2018-19**

M/s. Patel Kenwood Pvt. Ltd. Plot No. 100 to 103, Timber Market, GIDC, Gujarat-393002 PAN: AACCP0220G (Appellant)	Vs	Income Tax Officer, Ward-2(1)(1), Vadodara (Respondent)
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**Assessee Represented: Shri Mehul Shah, A.R.
Revenue Represented: Shri Santosh Kumar, Sr.D.R.**

Date of hearing : 22-07-2024
Date of pronouncement : 09-10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against separate appellate orders both dated 21.11.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the separate assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2017-18 and 2018-19. Since common issue is involved in both the appeals, the same are disposed of by this common order.

2. ITA No. 60/Ahd/2024 relating to the Asst. Year 2017-18 is taken as the lead case. Brief facts of the case is that the assessee is a company engaged in the business of imported wood and Eco-friendly particle Boards. For the Asst. Year 2017-18, assessee filed its Return of Income on 04-10-2017 declaring total income of Rs.1,52,49,840/-. The case was selected for scrutiny assessment. The Assessing Officer noticed that the purchases made from M/s. Laxmi Enterprises as bogus transaction. Therefore Ld AO issued a summon u/s. 133(6) of the Act on 06-12-2019, however there was no response from M/s. Laxmi Enterprise. Therefore the assessee was issued a letter dated 14-12-2019 to the assessee company to produce the key persons of M/s. Laxmi Enterprises. In reply, the assessee submitted that the authorized person of M/s. Laxmi Enterprise visited the office of the Assessing Officer in response to u/s. 133[6] notice dated 06-12-2019. However the Ld AO held that the Representative of M/s. Laxmi Enterprises did not furnish any relevant document, hence no statement was recorded u/s. 131 of the Act. Since M/s. Laxmi Enterprises is listed as a defaulter in the website of Gujarat Sales Tax and Commercial Tax Department, the purchases of Rs.43,95,474/- made from M/s. Laxmi Enterprises was treated as bogus and added as the income of the assessee. Similarly, the assessee has taken 3 Flats Near VIP Road, Vesu, Surat and paying rental income of Rs.1,60,000/-, 1,44,000 and 1,44,000/- per month to the Co-owners. The AO noticed that the Co-owners of the property are covered u/s. 40A(2)(b) being related parties, why the rent paid of Rs. 22,40,000/- be disallowed.

2.1. In response, the assessee replied that three Flats were taken on monthly rentals, which are used as guest house for the Representative of Vendors and Customers visiting the company and senior staffs of the assessee company for their residential accommodation. Thus the assessee justified the rent paid as reasonable considering the location of the property, various amenities provided and fully furnished Flats located in the prime location of the city. However the AO on verification of Fair Market rental value in “99acres.com” and other rental websites determined the excess rent paid of Rs.20,19,750/- as follows:

Sr. No.	Particulars	Total value of rent as per FMW for months	Rent amount given by assessee for five months	Excess Unreasonable amount
1	Flat No.A-10 Avenue 77, Near VIP Road, Vesu, Surat	Rs. 22025 x 5 = 1,10,125/-	Rs.8,00,000/-	Rs. 8,00,000/- (Forged Rent agreement)
2.	Flat No. F-8 Avenue 77, Near VIP Road, Vesu, Surat	Rs. 22025 x 5 = 1,10,125/-	Rs.7,20,000/-	Rs.6,09,875/-
3	Flat No. G-8 Avenue 77, Near VIP Road, Vesu, Surat	Rs. 22025 x 5 = 1,10,125/-	Rs.7,20,000/-	Rs.6,09,875/-
Total		Rs.3,30,375/-	Rs.22,40,000/-	Rs.20,19,750/-

3. Aggrieved against the addition, assessee filed an appeal before Ld. CIT(A). After considering the submissions of the assessee, the Ld. CIT(A) confirmed the addition relating to bogus purchase by observing that the proof of delivery of the goods namely transport invoices, Consignment Note, copy of Waybill and mode of

transportation not produced by assessee to establish the genuineness of the purchase transaction and thereby confirmed the addition made by Assessing Officer by observing as follows:

“In the light of the above, even though the assessee has submitted the copy of invoice and payment particulars but it has not been able to submit any details or any evidence as for the proof of delivery of the goods like transport invoices, Consignment Note, copy of Waybill/Road Permit, if applicable, nor any proof of the payment for such transportation which clearly indicates that the assessee could not establish the genuineness of the transaction. Considering the submission made and after perusal of the documents submitted and taking into account the entire conspectus of this case, I see no reason to interfere from the findings of the assessing officer regarding the said disallowance made in the assessment order u/s 143(3). Hence, this ground of appeal is dismissed.”

3.1. Regarding the excess rent paid, the Ld. CIT(A) after considering the documents submitted by the assessee restricted the disallowance to 50% of the rent paid as unreasonable by observing as follows:

“On the perusal of the submission made by the assessee and considering the documents submitted/relied by the appellant, it is seen that the assessee has contended that the said property was used for business purpose of the company and in support of the same, it submitted the copy of the rent agreement, payment evidence of rent being made through banking channel, and submitted comparable rent near the area. Furthermore, the appellant relied on various judicial pronouncements and the same has been carefully considered.

Considering the fact that the rentals towards property in the same area can be different based on the structure and facilities in the said property and submission made and after perusal of the documents submitted and taking into account the entire conspectus of this case, I restrict the said disallowance to 50% of the rent paid Hence, this ground of appeal is Partly Allowed.”

5. Aggrieved against the same, assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making disallowance of Rs.43,95,474/- on account of bogus purchase.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in partly confirming the action of assessing officer in restricting disallowance to 50% i.e. Rs.10,09,875/- on account of rent paid for furnished residential accommodation for senior staff of the company and representatives of vendors and customers visiting the company.

3. It is therefore prayed that disallowance made by the assessing officer and confirmed by CIT(A) may please be deleted or the matter may please be set aside to the file of CIT(A).

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

6. Ld. Counsel Shri Mehul Shah appearing for the assessee filed two Paper Books containing various details including Ledger account of M/s. Laxmi Enterprise, Copy of bills at Page Nos. 155 to 166 of the Paper Book, Stock statement as on 31-03-2017 and relevant bank statements evidencing payment made to M/s. Laxmi Enterprise. Screenshot of Gujarat State VAT Department in the case of M/s. Laxmi Enterprises.

6.1. Further Ld. Counsel drawn our attention to the copy of bills at Page Nos. 160 onwards of the Paper Book wherein the details of invoice, date, time of issue, time of removal, mode of transportation with vehicle number, quantity of the goods with applicable VAT Taxes produced before us. One such sample invoices reproduced as follows:

Name & Address of Registered person issuing invoice LAXMI ENTERPRISE PLOT NO. 2301/1, G.I.D.C. INDL. ESTATE ANKLASHWAR - 393 002, GUJARAT (INDIA) PHONE NO. 98245 63528, 99742 22266		Importer / First Stage / Second Stage Dealer Invoice Issue of Invoice U/R 11 of C.Ex.Rules-2002 and / or U/R 9(5) of CENVAT Credit Rules - 2004 White - Original for Buyer White - Duplicate for Transporter White - Triplicate for Assessee White - Quadruplicate - Extra					
C. Ex. Regn. No. : AADFL0407FED002 Range : I-ANK Division: I-ANK Commissionerate : BHARUCH (G.S.T.) T.I.N. No. : 24211002565 (C.S.T.) T.I.N. No. : 24711002565		Invoice No. : EX-142	Invoice Date: 22.09.2016	Time of Issue: 10.00 AM	Time of Removal: 10:30 AM		
Name & Address of Consignee/Buyer : PATEL KENWOOD PVT LTD NH NO 8 AT MOTI NAROL, TAL MANGROL, DIST SURAT. GUJARAT		Tariff Classification : 29336100 RG 23 D Entry No. : PAYMENT TREM'S : 60 DAYS Mode of Transport : BY ROAD Vehicle No. : GJ 16 Z 7542 P. O. No. : P. O. Dt. : C. Ex. Regn. No. : Range : Division: Commissionerate : (G.S.T.) T.I.N. No. : 24210900603 (C.S.T.) T.I.N. No. :					
Sr. No	Description of Goods	Marks & Nos.	Quantity	Rate	Per	Rs.	
1	MELAMINE	2000 BAG X 25 KG	< 5000	< 97.00	KG	< 485000.00	
Details of Central Excise Duty Passed on :						Sub Total	485000.00
Rate of Duty : 12.5 CVD % Duty per MT (Rs.) : 11875.00						Excise	59375.00
Duty in Words Rs 59375.00 . Fifty Nine Thousand Three Hundred Seventy Five Only						VAT 4 %	21775.00
Amount in Words Rs. : Five Lac Seventy One Thousand Five Hundred Ninety Four Only.						Add VAT 1%	5443.75
						RD OFF +	0.25
						Grand Total	571594.00
Sr. No	Description of Goods	Assessable Value	Rate of Duty	Amount			
1	MELAMINE	475000.00	12.50%	59375.00			
Supplier's Invoice Details :							
Name & Address : SAGAR CHEMICALS C. Ex. Regn. No. : AAGFS1174DXD001 Invoice No. : 690 Quantity : 10 Mt			GST NO : 24040700680 CST NO : 24540700680 Range with Full Add. : MAHESANA SAMARPAN BULDIND Division: MAHESANA I Commissionerate : AHMEDABAD Entry and Page No. : RG 23 D :				
Importer's / Manufacturer's Invoice Details :			C. E. Regn. No. : AAACG7996CXM002 Range : V Division: I I Range Add: V Commissionerate: ANAND				
Name & Address : GSFC LTD GSFC LTD PO FERTILIZER NAGAR BARODA, BARODA.		Description of Goods : MELAMINE		Identification Marks & Nos. BAGS		CET SH.No. 29336100	
BILL No : ME/46 DATE : 21.09.2016	Quantity /UOM 10 MT	Ant of Duty per Mt 11875	Assessable Value : 950000	Amount of Duty Paid (Words & Figure): 118750.00 ONE LAC EIGHTEEN THOUSAND SEVEN HUNDRED FIFTY.			
Edu.Cess @ 2% (In Words & Figure)			S.&H.Cess @ 1%(In Words & Figure) :				
CERTIFICATE							
(a) Imported goods covered under this invoice were - * M/S. who have imported the said goods.			(c) Received from M/s SAGAR CHEMICALS who are the First stage dealer of M/s SAGAR CHEMICALS				
(b) Received directly from the factory /depot / consignment agent / authorised premises of M/s. GSFC LTD.			For M/s. LAXMI ENTERPRISE AUTHORISED SIGN.				
SUBJECT TO ANKLASHWAR JURISDICTION							

6.2. Further Ld. Counsel drawn our attention to the VAT Department defaulter notice at Page No. 36 & 37 of the Paper Book, wherein it is categorically held that M/s. Laxmi Enterprise failed to file the monthly returns for the month of February and March 2017. Thus the Ld. Counsel submitted in the official website of VAT Department, details of M/s. Laxmi Enterprise clearly stated the non-filing of monthly returns as a defaulter and nowhere its categorized M/s. Laxmi Enterprise as bogus entity. However Ld. CIT(A) confirmed the addition on the basis that transport invoices, Waybill and transportation details are not submitted by the assessee, thereby confirmed the addition. Ld Counsel submitted that since the goods purchased by the assessee is of huge quantity, it is mandatorily required to be transported through vehicles like Tempo/lorry only. Whereas the lorry details with registration number are clearly reflecting in the invoice issued by M/s. Laxmi Enterprises. Further the invoice carries the full address with phone numbers, GST Registration Number and time of removal of the goods with vehicle numbers are very much available. The assessee made payments through banking channels with M/s. Laxmi Enterprises. Thus there is no question of treating the above transaction as bogus and the addition made by the A.O. and confirmed by the Ld. CIT(A) are liable to be deleted.

7. Similarly on the question of rental payments made to the Flats, the assessee produced copy of the rental agreements entered with the landlords and also their respective ITRs disclosing the above rents in their respective returns at Page Nos.179 to 375 of the Paper Book and bank statements evidencing the rent paid to the

landlords at Page Nos. 382 to 391 of the Paper Book. Ld. Counsel further drawn our attention to the comparable market rental price of the property from various rental websites. Thus pleaded considering the carpet area of the apartment with fully furnished facilities, the rent paid by the assessee company is equivalent to the market price prevailing in the VIP Road, Vesu, Surat. Thus the partial disallowance made by Ld. CIT(A) is also liable to be deleted.

8. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same.

9. We have given our thoughtful consideration and perused the materials available on record. Regarding treatment of bogus purchase, the Ld. A.O. simply relying on the State VAT Department Portal treated the sales as bogus, whereas the Ld. CIT(A) held that the assessee failed to furnish the transportation details of the goods purchased from M/s. Laxmi Enterprise. The undisputed fact in the present case is that the payments are made by the assessee through banking channels. Further perusal of invoice issued by M/s. Laxmi Enterprise makes it very clear date, time and removal of goods with mode of transportation with vehicle number and appropriate VAT Taxes [copy reproduced at para 6.1 herein above]. The invoice also carries Purchase Order (PO) number and date. But without making any enquiry of the invoices filed by the assessee, the Ld AO only on the pretext that M/s. Laxmi Enterprises is shown as a defaulter in the State VAT Department Website, thereby the Ld AO treated the purchase made by the assessee as bogus.

Whereas Ld CIT(A) on the ground on non-submission of the transportation details confirmed the addition.

9.1. In our considered view, the addition made by the Lower Authorities are without proper verification of facts, but just on the basis of suspicion, surmises and unverified information on records. Further it seen from the assessment order that the representative of M/s. Laxmi Enterprises appeared before the Assessing Officer however his submission is not recorded on the ground that no evidences submitted by the AR. It is in this context, the Ld.AO and after verification of the website of the Commercial Tax Department treated the purchase as bogus and added Rs.43,95,474/- as the income of the assessee which in our considered view is liable to be deleted.

9.2. Further the findings given by Ld CIT[A] is also baseless and without verification of records placed before him on the ground of non-submission of the transportation details. We have already discussed the copy of invoice and contents thereon including the Transport details, thus the findings made the Ld CIT[A] is also without verification of records and the addition made thereon are liable to be deleted. Moreover, both the authorities below failed to make enquiries as were required in the matter.

10. Further reliance is placed by the assessee in the case of CIT -Vs.- M.K. Brothers 163 ITR 249 (Guj.) and CIT Vs. Nangalia Fabrics Pvt. Ltd. 40 Taxmann.com 206 (Guj.) and various other decisions. The Hon'ble jurisdictional High Court held that when purchases were supported by bills, entries made in books of

account and payments made by cheque, said purchases could not be held as bogus purchases.

10.1. Respectfully following the above judicial precedents, we have no hesitation in deleting the addition made by the Assessing Officer and confirmed by Ld. CIT(A) the purchase of goods from M/s.Laxmi Enterprise as bogus. **Thus the Ground No.1 raised by the assessee is hereby allowed.**

11. The second ground namely rent paid to the furnished residential accommodation. The Ld. CIT(A) restricted the addition to 50% is on adhoc basis. There are various factors in valuing rent of a property namely the location, facilities like Garden, Club house, GYM, common amenities, etc. It is undisputed fact that the Flats were taken on rent for the assessee's customer stay as well as for residential accommodation of senior staff of the assessee company. The above Flat were fully furnished which was not considered by the Ld. CIT(A). For invoking section 40A(2)(b) of the Act, onus to prove the unreasonableness is on the Assessing Officer only. After ascertaining the fair market price, services and facilities available in the society and then to make such disallowance. Moreover, both the authorities below to make requisite enquiries in the matter. Further the very same Assessing Officer for the subsequent Asst. Year 2018-19 has not made such disallowance while passing regular assessment order u/s. 143(3) dated 05-02-2021. Thus in our considered view the disallowance of 50% confirmed by Ld. CIT(A) is liable to be deleted. **Thus the Ground No. 2 raised by the assessee hereby allowed.**

12. Remaining Ground Nos. 3 & 4 does not require specific adjudication, since they are general and consequential in nature.

13. In the result, the appeal filed by the assessee is hereby allowed.

ITA No. 61/Ahd/2024 for Asst. Year 2018-19

14. The solitary ground raised by the assessee in this case, is disallowance of Rs.2,40,000/- made on account of bogus purchase from M/s. Laxmi Enterprises. This issue is already adjudicated by us in paragraph nos. 9 to 10.1 of this common order in ITA No. 60/Ahd/2024. The facts in the above case are identical, therefore following the above decision, the disallowance made by the Lower Authorities are hereby deleted.

15. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 09-10-2024

Sd/-

**(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Ahmedabad : Dated 09/10/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद