

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 3115/MUM/2024
(Assessment Year : 2010-11)**

**ITA No. 3114/MUM/2024
(Assessment Year : 2011-12)**

**ITA No. 3116/MUM/2024
(Assessment Year : 2014-15)**

M/s. Metal Tube & Rolling Mills 1 st Floor, Metal Tube, Marol Maroshi Road, Andheri(East), Mumbai-400059.	Vs.	Income Tax Officer-24(2)(1) Room No. 618, Piramal Chambers, Lalbaug, Mumbai-400012.
PAN/GIR No. AAEFM9353N		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Smt. Mahita Nair Sr. DR
Date of Hearing	06/08/2024
Date of Pronouncement	29/10/2024

आदेश / ORDER

PER BENCH:

The facts of all the three appeals are almost similar and issues are partly identical. The decision on facts and law for one appeal for any assessment year would answer the issue involved in the other two years. However the distinct issues in each appeal are

being decided by this common order for the sake of brevity. The facts only in ITA No. 3115/MUM/2024 are being narrated as under:

ITA No. 3115/MUM/2024
(Assessment Year : 2010-11)

1. This appeal has been preferred against the impugned order dated 10.04.2024 passed in Appeal no. CIT(A), Mumbai-36/10226/2013-14 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2010-11, wherein learned CIT(A) has allowed assessee's appeal only in part.
2. (i) The brief facts related to this appeal state that assessee is a partnership firm engaged in the business of manufacturing and processing of tubes, pipers, rods, strips, plates, bars, sections, etc. Assessee firm e-filed its return of income for A.Y. 2010-11 on 27.09.2010, declaring total income at Rs. Nil. The return was processed u/s. 143(3) of the Act. The case was selected for scrutiny under CASS. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. After considering the assessee's submissions, learned assessing officer made disallowance of Rs. 4,07,597/- pertaining to the purchase of raw material from four different parties tabulated as under:

No.	Name of the party	Amount
1)	M/s. Vitarag Trading Co.	Rs. 48,762/-

2)	M/s. Seva Enterprises	Rs. 85,556/-
3)	M/s. Sampark Steels	Rs. 1,73,160/-
4)	M/s. Motion Traders Pvt. Ltd.	Rs. 1,00,119/-
	Total	Rs. 4,07,597/-

(ii) These entities/sellers were all found to be included in the list of bogus entities as reported by DGIT, Mumbai in Maharashtra VAT Scam case. Learned assessing officer found these Hawala operators/entities raised bogus bills and upon receipt of cheque against the bogus bills, the amounts have been withdrawn by such operators in cash and admittedly returned to the beneficiary in cash after deducting of the commission. Learned assessing officer treated Rs. 4,07,597/- as unexplained expenditure u/s. 69C of the Act and added in the assessee's income which has been confirmed by learned CIT(A).

(iii) On the basis of information received from joint director of income tax (I & CI), Mumbai, it was learned that during verification of cash deposit of Rs. 88,79,220/- in the savings account of one Mr. Mahendra Shantilal Vora, his statement was recorded on 01.02.2013, wherein Mr. Mahendra Shantilal Vora submitted that the cash deposits along with other deposits in the bank account pertained to M/s. Metal Tubes & Rolling Mills (assessee) and M/s. Rasiklal Kantilal & Co. only. Assessee submitted before learned assessing officer that the source of amount deposited by Mr. Mahendra Vora is owned by M/s. Rasiklal Kantilal & Co. which has made settlement petition to the

settlement commission on 18.03.2013. Learned assessing officer was however not satisfied with the submission of the assessee and added above amount to the income of the assessee u/s. 69A of the Act which was confirmed by learned CIT(A) to the extent of Rs. 49,70,000/- only and remaining Rs. 39,09,220/- was deleted.

(iv) Learned assessing officer also disallowed assessee's claim of donation to the extent of Rs. 23,001/-, motor car expenses and depreciation to the extent of Rs. 38,011/- miscellaneous expenses to the extent of Rs. 48,856/-, staff & worker welfare to the extent of Rs. 16,843/-, telephone expenses to the extent of Rs. 21,907/- and excess depreciation on lorry & tempo to the extent of Rs. 15,074/-, (Total of Rs. 1,63,692/-), which was deleted by learned CIT(A).

(v) Learned assessing officer further treated interest of Rs. 5,26,497/- received on FDR and interest of Rs. 5,03,918/- received on loans and advances as income from other sources and not part of business income. Learned CIT(A) confirmed addition of Rs. 5,26,497/- but directed AO to give credit of Rs. 2,79,308/- as interest paid on bank loans and Rs. 29,96,433/- as interest paid on unsecured loans against the claim of Rs. 20,92,920/- made by assessee in P&L account against business and to treat the entire interest of Rs. 14,30,009/- (5,26,497/- + 9,03,512/-) as interest income earned under the head income from other sources.

3. The appellant assessee has approached this tribunal on the following grounds:

“ 1. Disallowance of Rs. 4,07,597/- u/s 69C. pertaining to the purchase of raw materials from four different parties

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition made by Ld. AO of Rs. 4,07,597/- by disallowing the purchase of raw materials from four different parties, without appreciating the facts of the case as submitted in the right perspective.

2. Addition of Rs. 49,69,802/- u/s 69A under the head of "Undisclosed Cash Deposits" on cash deposits to the account of Mahendra Vora.

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in partly confirming the addition made by Ld. AO on account of cash deposit of Rs. 49,69,802 out of Rs. 88,79,022/-.

3. Addition on account of interest income & unsecured advances amounting to Rs. 14,30,009/-

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition made by Ld. AO on account of interest income & unsecured advance amounting to Rs. 14,30,009/-.”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
5. None responded for the assessee, however learned DR is present on behalf of revenue. Perused the records and heard learned DR. The appeal is being disposed off ex-parte on merit.
6. As regards first issue raised in this appeal, it is noticed that the assessee made purchases of raw materials for an amount of Rs. 4,07,597/- from four entities tabulated in para 2(i) above. These entities were found to be bogus entities on the basis of the information received by assessing officer from DGIT, Mumbai. These entities are said to have never sold any goods, but have issued bogus bills to the beneficiary on commission basis. The bogus bills have been raised by the said Hawala operators and upon receipt of cheque against the bogus bills, the amounts have been withdrawn by these entities in cash and is said to be returned to the beneficiary in cash. Learned CIT(A) has noticed that assessee made similar

purchases from tainted entities for a much bigger volume in the immediately preceding assessment year. It was further found by learned CIT(A) that one of the group entities namely M/s. Rasiklal Kantilal & Co. had also resorted to such purchases from these tainted entities. According to revenue, assessee has purchased goods from grey market. We notice that the assessee failed to furnish details regarding the transport of such goods such as Toll tax receipts, Weigh bridge receipts etc. Appellant assessee has also failed to point out any error in the impugned order, hence, learned CIT(A) has rightly upheld the above addition. The first issue is thus decided against the assessee.

7. As regards the second issue raised in the second ground of appeal, the relevant part of impugned order passed by learned CIT(A) reads as under:

“ 2.2. The assessee has explained before the AO that there is no denial of the fact that cash was paid in the bank account of that individual. However, it also claimed that the entire cash deposited of Rs. 88,79,220/-, was made by Group entity M/s. Rasiklal Kantilal & Co. The said Group entity has not only owned up such cash deposit, but also has offered the same as unaccounted income before the Hon'ble Settlement Commission in a petition u/s. 245C of the Act. Such application was also accepted by the Hon'ble Commission and an order u/s. 245D(4) was passed accepting such offer. The assessee claimed the same cash had been rotated through that of the assessee firm and therefore, since it has already been taxed, so any further addition would tantamount to double taxation. Therefore, such addition may be deleted.

2.3. I have perused the extract of cash deposit and withdrawal in the bank account of Shri Mahendra Vora and I have also seen the individual ledger of that gentleman in the accounts of the assessee firm. From the individual ledger, I find that the said individual had a credit balance of Rs. 4,00,000/- as on 01/04/2009. During the year, the assessee received further Rs. 41,70,000/- from the individual on various dates and the assessee had deposited Rs. 49,70,000/- in the bank account of Shri Vora on various dates. The closing balance as on 31st March was a debit balance of Rs. 4,00,000/- in the account. I have further perused the extract of deposits as submitted before me, being the extract of savings bank account of Shri Vora and compared the same with the ledger of Shri Vora with the assessee firm. On such comparison, I find most of the entries of receipt and payments in cash by the assessee

firm from Shri Vora is not matching with the bank account extract of Shri Vora, as submitted by the assessee firm themselves during the appeal proceedings.

2.4. Therefore, I have grave doubt that the amount offered before the Hon'ble Settlement Commission and the amount found in the ledger of the assessee firm with Shri Vora are the same. Therefore, I do not find merit in the submission of the assessee firm to accept that the cash deposited in the bank account of Shri Vora was of the Group Associate Entity, M/s. Rasiklal Kantilal & Co.

2.5. Therefore, I am ready to accept the proposition of the AO. However, I also find that during the year, as per the ledger, the amount of cash paid to Shri Mahendra Vora by the assessee to be Rs. 49,70,000/- and therefore, I propose to sustain the addition only for Rs. 49,70,000/- u/s. 69A and the balance amount of Rs. 39,09,220/- may be deleted.

2.6. Therefore, the ground of appeal is partly allowed and addition of Rs. 49,70,000/- is confirmed.”

8. We notice that learned CIT(A) has elaborately modified AO's addition to the extent of Rs. 49,70,000/- only u/s. 69A as cash paid to Mr. Mahendra Vora by the assessee and the balance of Rs. 39,09,220/- has already been deleted. We are not inclined to interfere in the impugned order. The second issue is accordingly decided against the assessee.
9. The third and last ground raised by the assessee is with regard to treatment of Rs. 14,30,009/- on account of interest income and unsecured advance as income from other sources instead of treating it as income from business. The relevant paras 4.1 to 4.7 of the impugned order read as under:

“ 4.1. The last issue raised in the appeal was against consideration by the AO on interest received on fixed deposits and unsecured advances for Rs. 10,30,415/-, as income from other sources and not part of income from business.

4.2. The AO found that the assessee has received interest of Rs. 5,26,497/- on FDR and Rs. 5,03,918/- on loans and advances given. He found that the assessee is not in the business of advancing loans to others and therefore, such income should be treated as Income from Other Sources,

4.3. The assessee claimed that the interest on FDRs made with bank, was for Rs. 5,26,497/- and such FDRs were made under compulsion to have margin money against secured loans, raised from banks. It paid interest of Rs. 2,79,308/- on such secured loans and therefore, by adjusting the gross interest receipt against the interest paid, the net figure was shown as credit of interest income in the P/L account of such earning, which was part of the business only. Similarly, the assessee claimed

that it had unsecured loans, on which the interest paid was Rs. 29,96,433/- and it earned interest of Rs. 9,03,512/- on loans advanced as unsecured loans to various other parties including Group/Associate entities. Therefore, the net interest of Rs. 20,92,920/- (29,96,433/- 9,03,512/-) was debited in the P/L account and charged the same against business income. Therefore, the action of the AO, claimed by the assessee firm is not correct. I have perused the submissions and found that the AO has not properly analyzed the issue in the assessment order.

4.4. The assessee bank has secured bank loans for business of Rs. 77,81,042/- against which interest was paid for Rs. 2,79,308/-. Whereas the total amount of FDR made by the assessee firm with banks including Co-operative Banks was for Rs. 1,20,08,373/- on which the interest earned was Rs. 5,26,497/-. Had it been the case as proposed by the assessee firm, that they were under compulsion to make FDR to secure bank loans, such FDR could never exceed the amount of secured loan taken from the bank. Therefore, I do not find the FDRs made with the bank are entirely relatable to procure the secured loans. Therefore, the Fixed Deposit interest of Rs. 5,26,497/- cannot be held to be part of business income and it has to be treated as Income from Other Sources.

4.5. In case of unsecured loans from other parties, it is seen that the assessee has received unsecured loan of Rs. 7,14,75,893/- for which it paid interest of Rs. 29,96,433/-. Again, it has advanced unsecured loan to various Group entities for Rs. 2,87,24,788/-, on which it has earned interest of Rs. 9,03,512/-. In the balance sheet, I find that partner's capital account was for Rs. 1,55,06,884/- and the value of sundry debtor is Rs. 6,67,77,842/-. The assessee had unsecured loan of Rs. 7,14,75,893/- and the amount of loans and advances (including non-interest-bearing advances) was for Rs. 3,23,54,153/-. It had a total turnover during the year of Rs. 22,95,30,253/-. Therefore, the unsecured loans taken for the business is found to be reasonable and relatable to business, but the advances made as unsecured loan for Rs. 2,87,24,788/-, most of which was advanced to Group entities, is found not exactly relatable to the conduct of core business of the assessee firm. Rather such advancement of loan was purely financial transaction, unrelated to the business. Therefore, the entire interest received against such loan for Rs. 9,03,512/- should be treated as income from Other Sources, not relatable to business.

4.6. Having said so, the interest paid against bank loans for Rs. 2,79,308/- and interest paid on unsecured loan for Rs. 29,96,433/- must be given credit as expenditure, relatable to the business.

4.7. The AO is directed to recast the income from business by allowing the entire interest payment of Rs. 32,75,741/- (29,96,433/- + 2,79,308/-) against the claim of Rs. 20,92,920/- by the assessee in the P/L account against business and treat the entire interest earned for Rs. 14,30,009/- (5,26,497/- + 9,03,512/-) as interest income earned under the head "Income from Other Sources."

10. On perusal of the findings arrived at by learned CIT(A), we notice that learned CIT(A) has given credit of the interest paid against bank loans to the tune of Rs. 2,79,308/- and interest paid on unsecured loan for Rs. 29,96,433/- as expenditure relatable to the business, hence the interest of Rs. 9,03,512/- has been worked out as earning from the advanced unsecured loans of Rs. 2,87,24,788/- to various group entities by the assessee. It is further observed by learned CIT(A) has rightly treated the FD interest of Rs. 5,26,497/- as income from other sources with acceptable rational given in para 4.4 of the impugned order as reproduced above. We do not find any error of fact or law. The third and last ground raised in the appeal is accordingly decided against the assessee and in favour of the revenue. The impugned order is thus sustained. The assessee's appeal is liable to be dismissed.

ITA No. 3114/MUM/2024
(Assessment Year : 2011-12)

11. This appeal has been preferred against the impugned order dated 10.04.2024 (impugned order wrongly mentioned as assessment order dated 28.03.2014 in form-36) passed in Appeal no. CIT(A), Mumbai-36/10211/2014-15 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2011-12, wherein learned CIT(A) as partly allowed assessee's appeal by deleting

the addition of Rs. 90,36,611/- but confirmed the addition of Rs. 1,26,55,000/- (enhanced addition Rs. 1,27,20,000/-) u/s. 68 of the Act against which, the appellant assessee is under appeal before this Tribunal.

12. The relevant part of para-5 of the impugned order, confirming addition reads as under:

“.....On the second ground of addition for which assessee was aggrieved, was treatment of Rs. 1,26,55,000/-, alleging the said sum to be deposited by the assessee firm in the savings bank account of one Shri Mahendra Vora. The AO in his assessment order have found that the assessee has received a total sum of Rs. 1,26,55,000/- from Mr. Vora on different dates, as deposited through self cheques in assessee's bank account with Dena Bank, Gulalwan Branch. The assessee has also paid back to Shri Vora, the aggregate sum of Rs. 1,27,20,000/- through self cheques by depositing it in Mr. Vora's savings bank account. On analysis of the said transactions and after examination of Shri Vora u/s. 131, the AO concluded that the money received by the assessee firm through the bank account of Mr. Vora belonged to assessee himself and he went on to add Rs. 1,26,55,000/- in the hands of the assessee u/s. 68 of the Act.

The assessee before the AO also pleaded that Mr. Vora himself has admitted that the money advanced by him to the assessee firm belonged to M/s. Rasiklal Kantilal and Co. which was rotated through his bank account and extended to the assessee. The assessee also stated that the said Rasiklal Kantilal and Co. has already owned up such cash in its application for settlement of income before Hon'ble Settlement Commission and the Commission had accepted such offer. However, the AO was not convinced with such submission of the assessee and concluded that such money belongs to the assessee. I have perused the ledger of Shri Mahendra Vora as appearing in the accounts of the assessee along with the extract of cash deposits in the savings bank account of Shri Vora. As found in AY 2010-11, where similar issue was examined, I find that exactly in similar way, the dates of payments as reflected in the ledger with amounts of receipts as well as payment, as reflected in the books of accounts of the assessee is not exactly matching with that of the extract of the savings bank account passbook of Shri Vora. And, therefore, the statement that the deposits made in the bank account of Shri Vora is of cash of Rasiklal Kantilal and Co. and such cash was rotated through the bank account of Shri Vora to pass on to the assessee firm is not accepted. As per the ledger, the assessee made payment of Rs. 1,27,20,000/- in cash to Shri Vora. As per the ledger of AY 2010-11, there was closing debit balance of Rs. 4,00,000/- standing against the name of Shri Vora, receivable by the assessee firm from him. However, in the ledger submitted for AY 2011-12, the opening balance is shown as NIL. Therefore, the transaction seems very dubious and I hold that the entire payment made to Shri Mahendra Vora is nothing but unaccounted cash of the assessee, passed on to Shri Vora from time to time. Therefore, I propose to enhance the addition from Rs. 1,26,55,000/- to Rs. 1,27,20,000/- and treat such payment as unaccounted money in the hands of the assessee u/s. 69A. Therefore, ground of appeal of the assessee is rejected.”

13. After going through the impugned order we find that learned CIT(A) has rightly approved the learned assessing officer's conclusion that the money received by the assessee from the bank account of Mr. Vora belonged to the assessee itself. Learned CIT(A) has thus rightly affirmed the said addition in the hands of assessee. We therefore do not find any reason to interfere in the impugned order. The impugned order is thus sustained. The appeal is liable to be dismissed.

ITA No. 3116/MUM/2024
(Assessment Year : 2014-15)

14. This appeal has been preferred against the impugned order dated 09.04.2024 passed in Appeal no. CIT(A) 36, Mumbai/11129/2016-17 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2014-15, wherein learned CIT(A) has partly allowed assessee's appeal but confirmed partial addition of Rs. 7,84,571/- against which, assessee is in appeal.

15. We notice that learned assessing officer made additions of Rs. 1,93,83,443/- u/s. 41(1) of the Act, which was deleted by learned CIT(A). Learned assessing officer also disallowed 10% addition of the 11 kinds of different expenses Rs. 2,74,09,472/- to the tune of Rs. 27,40,947/- (miscellaneous, Rs. 8,37,755/-, + Electricity, Rs. 17,28,850/-, + Repairs and Maintenance, Rs. 13,72,710/-, + Fees expenses, Rs.

6,17,855/-, + Gratuity, Rs. 22,80,826/-, + Bonus, Rs. 4,50,555/-, + Stores, Rs. 89,18,073/-, + Gas purchase, Rs. 66,83,617/-, + Kasar, Rs. 8,97,451/-, + Retrenchment compensation, Rs. 29,60,692/-, + Discount, Rs. 6,61,088/-). However, learned CIT(A) has sustained only part of disallowance @ Rs. 7,84,571/- and deleted the balance amount of Rs. 19,56,376/-.

16. The relevant part of para-4 of the impugned order confirming the above referred addition reads as under:

“ During the course of the appeal, the assessee has submitted full details of the ledgers of the account heads of expenditures and each item has been explained properly.

On perusal of the furnished document, it seems that the adhoc disallowance is unreasonable on part of the AO.

Having said so, it is also seen from the submitted ledgers that the assessee have debited a sum of Rs. 6,17,855/- towards fees expense. Such fees expense is mostly towards consultancy fees paid to advocates. From the details of the ledger, I find that at least in six occasions of payment to different parties, inspite of the payment exceeding the maximum limit, for which the tax is not to be deducted at source u/s. 194J, the assessee firm has failed to deduct such tax at source. The amount involved in payment to these six entities/individuals was Rs. 4,22,080/-. Therefore, I find that the said sum qualifies for disallowance for deduction u/s. 40(a)(ia). Further, in the ledger of discounts allowed for a total sum of Rs. 6,31,682/-, I find that there are certain entries where no mention of the party to whom such discounts were allowed. The aggregate sum of such discount without the name of the buyer is found to be Rs. 3,62,491/-. Therefore, such discount is treated as doubtful.

The rest of the expenditures claimed in the P/L account are accepted and allowed to be deducted as legitimate expenditure.

Therefore, out of the disallowance of Rs. 27,40,947/-, a sum of Rs. 7,84,571/- is sustained and the balance amount of Rs. 19,56,376/- is deleted.

The ground is, therefore, partly allowed.”

17. We find that learned CIT(A) has passed speaking and well-reasoned order and has confirmed part of addition of Rs. 4,22,080/- only to the extent of payment exceeding the

maximum limit for which the TDS was not deducted u/s. 194J. This apart, partial confirmation of Rs. 362,491/- has been made only against specific entries, where the parties were not identified and to whom discount were allowed. Learned CIT(A) has left no stone unturned in taking out the grain from the chaff. We accordingly uphold the impugned order. The appeal is liable to be dismissed.

18. In the result, the assessee's appeals no. 3115/MUM/2024, 3114/MUM/2024 and 3116/MUM/2024 are dismissed. Let the copy of this order be placed on the records of each appeal.

Order pronounced on 29.10.2024.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 29/10/2024

Anandi Nambi, *Steno*

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,

(Asstt. Registrar)
ITAT, Mumbai