

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3547/MUM/2024
(Assessment Year: 2011-2012)**

**Income Tax Officer,
Ward 12(3)(1), Mumbai**

Room No.145, Aaykar Bhawan,
Mumbai – 400020, Maharashtra.

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Appellant

Vs

Lashkaria Construction Private Limited

102, Diamond Apartment,
Near Air India Building,
New Link Road, Jogeshwari (West)
Mumbai – 400102. Maharashtra.
[PAN:AAACL6508R]

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Respondent

**C.O. No. 221/MUM/2024
(Assessment Year: 2011-2012)**

Lashkaria Construction Private Limited

Lashkaria, Anurag, Gr-1st Floor,
J. P. Road, Near Versova Metro Station,
Model Town, Andheri (West),
Mumbai - 400053. Maharashtra.
[PAN:AAACL6508R]

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Appellant

**Income Tax Officer, Ward 12(3)(1),
Mumbai**

Room No.145, Aaykar Bhawan,
Mumbai – 400020, Maharashtra

Vs

.....

Respondent

Appearance

For the Appellant/ Department : Shri Ram Krishn Kedia
For the Respondent/ Assessee : Shri Rakesh Doshi

Date

Conclusion of hearing : 21.10.2024
Pronouncement of order : 29.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue and Cross Objection

preferred by the Assessee is directed against the order, dated 17/05/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 27/12/2016, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2011-12.

2. The Revenue has raised following grounds of appeal :

- "1. *Whether on the facts and in the circumstances of the case and in law the law, the Ld. CIT(A) was justified in directing the Assessing Officer to restrict disallowance out of bogus/unproved purchases to 8% of such purchases without appreciating the fact that the assessee could not establish the genuineness of the transaction by producing eight parties from whom purchase to the extent of Rs.2,17,52,017/- were stated to have been made and an independent enquiry conducted by the Assessing Officer also revealed that these parties were non-existent and have been declared as hawala dealers by VAT department as they were found to be engaged in providing bogus bills without actual supply of goods and mere submission of copies of invoices, ledger account, bank statement etc. does not prove the genuineness of transaction?.*
2. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was justified in directing the Assessing Officer to restrict disallowance out of bogus/unproved purchases to 8% of such purchases without appreciating the fact that the assessee had applied the bogus purchases in work-in-progress and thus 92% of bogus purchases that remained loaded in WIP would also suppressed profit in absence of the Ld. CIT(A) direction to exclude it also?*

3. The Assessee has raised following grounds of appeal :

- "1. *On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in reopening the assessment under Section.147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
2. *On the facts and circumstances of the case as well as in Law,*

the Learned CIT(A) has erred in not giving the direction to reduce the 8% of the alleged bogus purchases from the value of work in progress, without considering the facts and circumstances of the case."

4. The relevant facts in brief are that in the present case the assessment under Section 143(3) of the Act was framed on the Assessee vide Assessment Order, dated 11/03/2014 whereby the income of the Appellant was assessed at 12,35,51,590/- after making addition of INR.5,84,43,750/- in respect of bogus purchased made from 29 identified parties on the basis of information received the Sales Tax Department. In appeal preferred by the Assessee against the Assessment Order the CIT(A) restricted the addition on account of bogus purchased to 10% of the aggregating purchase amount. Therefore, being aggrieved, the Revenue preferred the appeal before the Tribunal, while the Assessee filed Cross Objection. Vide common order, dated 31/08/2017, the Tribunal dismissed the appeal preferred by the Revenue (ITA No.1769/Mum/2016) and partly allowed the Cross Objections (C.O. No.192/Mum/2017). The Tribunal issued directions to the Assessing Officer to further reduce the addition on account of bogus purchases to 8% of the bogus purchases and to reduce the aforesaid amount from the value of work-in-progress (since all the purchases were included by the Assessee in work-in-progress).
5. In the meantime the re-assessment proceeding were initiated under Section 147 of the Act for the relevant Assessment Year 2011-12 by issuance of notice, dated 28/03/2016, under Section 148 of the Act. As per the reasons recorded for reopening the assessment, the re-assessment proceedings were initiated on the basis of information received from the Sales Tax Department regarding 37 entities indulging in providing bogus bills for sale of goods without actual delivery. During the re-assessment proceedings the Assessing Officer took note of the submission of the Assessee that addition on

account of bogus purchases in relation to 29 entities from which purchases were done aggregating to INR.5,84,43,750/- has already been made during the regular assessment proceedings. Therefore, the Assessing Officer proceeded to make addition on account of aggregating bogus purchased of INR.2,17,52,017/- from the balance 8 entities identified by the Sales Tax Department. Thus, vide Assessment Order, dated 27/12/2016, passed under Section 143(3) read with Section 147 of the Act addition of INR,2,17,52,017/- was made by the Assessing Officer on account of alleged bogus purchases.

6. Being aggrieved, the Assessee preferred the appeal before the CIT(A) challenging the validity of the re-assessment proceedings as well as addition made by the Assessing Officer on account of bogus purchased on merits. Vide order, dated 17/05/2024, the CIT(A) rejected the Assessee's challenge to initiation of re-assessment proceeding. Further, the CIT(A) granted relief to the Assessee by following the decision of the Tribunal in the Assessee's own case for the Assessment Year 2011-12 [*Common Order dated 31/08/2017 passed in ITA No.1769/Mum/2016 & C.O. No.192/Mum/2017*] whereby the Tribunal had restricted the additions made on account of bogus purchases during the regular assessment proceedings to 8% of the purchase cost. Thus, the appeal preferred by the Assessee was disposed off by the CIT(A) as partly allowed vide order dated 17/05/2024.
7. Being aggrieved with the relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal and the Assessee has filed the Cross Object against the order of CIT(A) upholding the validity of re-assessment proceedings. The Assessee is also aggrieved by the fact that the CIT(A) has not given directions for reduction of work-in-progress despite following the decision of the Tribunal.

8. Since the Cross Objection raised by the Assessee go to the root of the matter, we would first take up the cross objections raised by the Assessee.
9. We would first take up the Cross Objection No.1 raised by the Assessee whereby the Assessee has challenged the validity of the re-assessment proceedings on the ground that the Assessing Officer had initiated reopening of assessment for the Assessment Year 2011-12 without appreciating the correct facts and circumstances of the case.
10. During the course of hearing it was submitted by the Authorised Representative on behalf of the Assessee that the re-assessment proceedings have been initiated in the case of the Assessee on the basis of information received from the Sales Tax Department, Mumbai which was already available with the Assessing Officer at the time of framing the regular assessment. Therefore, in the absence of any fresh tangible material no re-assessment proceedings were initiated against the Assessee. It was further submitted that the issue related to bogus purchases were specifically examined and adjudicated upon during the regular scrutiny assessment proceedings. The addition made by the Assessing Officer on account of bogus purchases during the re-assessment proceedings are merely on account of change of opinion. It was also submitted that there was no failure on the part of the Assessee to disclose all primary facts as the details of purchases formed part of assessment record. It was also submitted that the reasons recorded in the re-assessment proceedings did not make any reference to the regular assessment framed under Section 143(3) of the Act. No enquiries/verification was carried out by the Assessing Officer before initiation of re-assessment proceedings and that there was no application of mind. On the strength of the aforesaid it was

submitted that the initiation of re-assessment proceedings under Section 147 of the Act was bad in law.

11. Per contra the Learned Departmental Representative submitted that fresh information was received from the Sales Tax Department, Mumbai on the basis of which re-assessment proceedings were initiated. In the reasons recorded, the Assessing Officer had specifically recorded that the Assessing Officer was not in the possession of modus operandi of the bogus accommodation entry providers at the time of framing the original assessment and therefore, it was concluded by the Assessing Officer that there was failure on the part of the Assessee to disclosed facts truly and fully necessary for framing assessment. It was contended on behalf of the Revenue that there was no application of mind on the part of the Assessing Officer in relation to the purchases made from 8 entities identified by the Assessing Officer during the re-assessment proceedings. Therefore, the contention of the Assessee that the re-assessment proceedings were initiated on account of change of opinion and in absence of fresh tangible material should be rejected. It was further submitted that the mere fact that reasons recorded did not make reference to the order passed under Section 143(3) of the Act cannot lead to a conclusion that there was no application of mind or that the Assessing Officer had proceeded to initiate re-assessment proceedings on the basis of incorrect understanding of the facts.
12. We have given thoughtful consideration to the rival submissions and perused the material on record. There is no dispute as to the fact that the additions on account of bogus purchases was made during the regular scrutiny assessment. It was also not disputed that list of 37 entities reproduced in reasons recorded for reopening assessment also contains the name of 29 entities identified by the Assessing Officer as accommodation entry providers during the

original assessment proceedings. Further, the aggregate amount of purchases of INR.8,01,95,767/- stated in the reasons recorded for assessment also included aggregate purchases of INR.5,84,43,750/- made from the aforesaid 29 entities in respect of which additions were made during the relevant scrutiny assessment. On the other hand, we find that the reasons recorded are silent as to the date on which information was received from the Sales Tax Department, Mumbai. While during the course of hearing the Learned Departmental Representative had submitted that re-assessment proceedings had been initiated on the basis of fresh information received from Sales Tax Department, Mumbai, there is no material on record from which the aforesaid inference can be drawn. It is settled legal position that the reasons recorded for reopening assessment are to be read as they have been recorded by the Assessing Officer. Neither any addition/substitution can be made to the reasons recorded nor can any inference be drawn. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission. Therefore, the reasons recorded must be self-explanatory disclosing application of mind by the Assessing Officer. Further, the reasons recorded must identify the link between the tangible material and formation of belief that income as escaped assessment. [*Hindustan Lever Ltd. vs. R.B. Badkar* 268 ITR 332 (Bom)].

13. In the present case the reasons recorded for reopening the assessment reads as under:

"Specific information was received in this office from the DGIT(inv), Mumbai that the assessee had made purchases from the following parties:

Sl. No.	Hawala Tin	Name of the Party	F.Y.	Amount
1 to 22	XX	XX	XX	XX
23	27450707752V	GLOBAL ENTERPRISES	2010-2011	22,41,739

24	27020708037V	VIJAYALAXMI TRADING CO	2010-2011	26,18,993
25	27360705522V	RAJ IMPEX	2010-2011	26,98,397
26	27870709170V	RAGHUPATI TRADING PVT LTD	2010-2011	30,31,344
27	XX	XX	XX	XX
28	27950750157V	RAJGURU METAL INDUSTRIES	2010-2011	7,04,664
29-33	XX	XX	XX	XX
34	27140562083V	KALASH METALS PVT LTD	2010-2011	12,01,113
35	XX	XX	XX	XX
36	27110714050V	SAGAR ENTERPRISES	2010-2011	33,31,490
37	27310709575V	SHIVAM ENTERPRISES	2010-2011	59,24,277
TOTAL				8,01,95,767

It was informed that the Sales Tax Department, Mumbai (Govt. Of Maharashtra) carried on detailed enquiries in respect of above parties and recorded statement, deposition affidavit etc of main persons of above concerns which established that these concerns are into providing bogus bills without actual delivery of goods.

Section 147 of the Act contemplates three primary conditions for the initiation of reassessment proceedings:

- There should be reason to believe, that
- Income chargeable to tax, has
- Escaped assessment

The undersigned has carefully applied his mind to the above information. The information so received gives a substantial basis for the information of a reason to believe to initiate reassessment u/s 147 of the Act. Further, there is no doubt on the fact that the above amounts to Income Chargeable to Tax and the benefit so arising to the assessee should have been offered to tax. Further, since this is fresh information received by the undersigned, there is escapement of assessment of such income. Also, since the above received information and this modus operandi was not in the possession of the undersigned earlier, it was reasonably concluded that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. Therefore, it is seen that the income of Rs 8,01,95,767/-chargeable to tax has escaped

assessment” (Emphasis Supplied)

14. On perusal of the above reasons recorded it becomes clear that the same do not provide details of the information received from the Investigation Wing/Sales Tax Department and/or the time at which such information received. Even during the appellate proceedings before us, the Revenue has failed to bring on record details of the aforesaid information. We note that while making addition on account of bogus purchases during the regular scrutiny assessment the Assessing Officer had made reference to the information received from the Investigation Wing in relating to Assessee indulging in the taking bogus accommodation entries from the entities identified by the Sales Tax Department, Mumbai. We also note that while the reasons recorded state that the Assessing Officer was not in the possession of the Assessing Officer at the time of framing of the original assessment, in the Assessment Order, dated 11/03/2014, passed under Section 143(3) of the Act, the Assessing Officer had made reference modus operandi accommodation entry providers and therefore, it cannot be said that the Assessing Officer had no knowledge of the same. The aforesaid facts support the contention of the Assessee that the re-assessment proceeding has been initiated on the basis of information available at the time of framing of regular assessment. The fact that reasons recorded do not make reference to be regular assessment framed under Section 143(3) of the Act supports the contention of the Assessee that the Assessing Officer had failed to apply his mind to assessment record before forming a belief that income had escaped assessment before initiating re-assessment proceedings under Section 147 of the Act. After due consideration to the facts and circumstances of the present case and on weighing varied probabilities, we find that preponderance lies in favour of the Appellant. Therefore, we hold that there was no fresh tangible

material with the Assessing Officer to initiate re-assessment proceedings under Section 147 of the Act; the re-assessment proceedings initiated in violation of provision contained in Section 147 of the Act are bad in law; and therefore, the Assessment Order, dated 27/12/2016, passed under Section 143(3) read with Section 147 of the Act is quashed.

15. In terms of paragraph 14 above Cross Objection No.1 raised by the Assessee is allowed while Cross Objection No.2 raised by the Assessee is dismissed as having been rendered infructuous. Since we have allowed the Cross Objection No.1 raised by the Assessee and quashed the Assessment Order dated 27/12/2016 passed under Section 143(3) read with Section 147 of the Act, the addition made by the Assessing Officer stand deleted. Therefore, the Grounds raised by the Revenue are dismissed as having been rendered academic.
16. In result, in terms of paragraph 15 above, the Cross Objections referred by the Assessee are partly allowed while the appeal preferred by the Revenue is dismissed.

Order pronounced on 29.11.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.11.2024
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai