

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"H (SMC)" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITAs No. 4276 & 4278/MUM/2024**  
(Assessment Years : 2009-10 & 2011-12)

**Manek Metal Industries,**

1 Jyoti Studio Compound,  
Kennedy Bridge, Nana Chowk,  
Mumbai - 400007  
PAN – AAAFM0609F

..... Appellant

v/s

**ITO, 19(2)(3),**  
Mumbai.

..... Respondent

Assessee by : Shri S.L. Jain  
Revenue by : Shri Pravin Salunkhe, Sr. DR

Date of Hearing – 02/12/2024

Date of Order – 06/12/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeals against the separate impugned orders of even date 26/06/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment years 2009-10 and 2011-12.

2. Since both appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard

together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2009-10 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2011-12.

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**Assessee's appeal – A.Y. 2009-10**

3. The only grievance of the assessee, in the present appeal, pertains to addition on account of alleged bogus purchases.

4. The brief facts of the case are that the assessee is engaged in the business of manufacturing and exporting stainless steel utensils and cutlery. For the year under consideration, the assessee filed its return of income on 14/08/2009 declaring a total income of INR 6,85,860. The return filed by the assessee was processed under section 143(1) of the Act. 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 INR 1,68,63,010, and accordingly, notice under section 148 of the Act was issued and served on the assessee. During the assessment proceedings, the assessee was asked to furnish the details such as purchase details, correct and complete addresses of the parties, invoices/bills, copy of ledger account, details of transportation of goods, i.e. lorry receipts, documentary evidence reflecting the relevant entries of having received such goods in the premises of the assessee and having consumed such goods, details of payment made to these parties, etc. In

response to the statutory notices issued under section 143(2) as well as section 142(1) of the Act, the assessee submitted purchase invoices of the specified parties, copies of bank statements evidencing payments made through proper banking channels by issuing account payee cheques in respect of all the parties, highlighting the relevant entries, a chart showing the details of purchases of the alleged parties, quantitative tally in respect of entire purchases from these parties and the corresponding sales. During the assessment proceedings, in order to ascertain the genuineness of the transaction of purchases of goods by the assessee, independent enquiry was conducted by issuing notice under section 133 (6) of the Act to the parties concerned. However, the notices were returned unserved by the postal authorities. Therefore, during the assessment proceedings, the assessee was asked to produce the parties for examination in order to ascertain the genuineness of the purchase/expense. However, the assessee could neither produce the said parties nor submit any new address of these parties.

5. The Assessing Officer ("AO") vide order dated 13/03/2015 passed under section 143(3) read with section 147 of the Act disagreed with the submissions of the assessee and held that the assessee has not furnished relevant documentary evidence in respect of receipt of the material claimed to have been purchased from the alleged parties. Further, the assessee neither produced the parties from whom the purchases were claimed to be made for verification nor furnished addresses of these parties but simply furnished copies of ledger accounts in the books of the assessee, purchase bills and assessee's bank statement showing the payment made through the bank. The

AO held that payment through account payee cheque itself is not sacrosanct, in a case where the genuineness of the transaction is in doubt. The AO referred to various judicial pronouncements, wherein it has been held that in cases of non-existent parties from whom the purchases are shown to have been made, only part of such purchases can be disallowed, in the cases where the corresponding sales are treated as genuine, or alternatively the profit embedded in such sales can only be brought to tax. Accordingly, by applying the profit margin of 25% on the non-genuine purchases of INR 1,68,62,010, the AO made an addition of INR 42,15,753 to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the addition made by the AO. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, pursuant to the receipt of information from the DGIT(Investigation), Mumbai, proceedings under section 147 of the Act were initiated in the case of the assessee on the basis that the assessee is a beneficiary of bogus purchase bills amounting to INR 1,68,63,010. Accordingly, in order to verify the genuineness of the transaction, the AO directed the assessee to produce the party and prove the genuineness of the purchases made from the said parties. In response, the assessee submitted the copies of ledger account, purchase bill and bank statement reflecting payments.

8. As evident from the record, the AO also made independent enquiry by issuing notices under section 133(6) of the Act to the concerned parties. However, these notices were returned unserved. Further, the assessee failed to produce any document to substantiate the mode of receipt of the goods and to establish that the assessee has received actual delivery of goods from the alleged parties. Further, the assessee also could not coordinate the purchases with the corresponding sales. However, the AO following the judicial pronouncements, wherein it has been held that in cases of non-genuine purchases, only part of such purchases can be disallowed, in cases where the corresponding sales are treated as genuine, restricted the disallowance on account of non-genuine purchases to 25%. Thus, it is evident that in the present case, the AO only doubted the purchases from the alleged bogus parties in the absence of documentary evidence and the entire sales are not in dispute. 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. Thus, 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.

9. As regards the quantification of the profit element embedded in making such bogus/unsubstantiated purchases by the assessee, we find that the

Hon'ble Jurisdictional High Court in PCIT v/s M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019) held that the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases. Thus, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court in M. Haji Adam & Co. (supra), we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. No order shall be passed without affording the assessee a reasonable opportunity of hearing. Accordingly, the impugned order is set aside and the grounds raised in the assessee's appeal are allowed for statistical purposes.

10. In the result, the appeal by the assessee for the assessment year 2009-10 is allowed for statistical purposes.

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11. Since similar grounds have already been adjudicated in the assessee's appeal for the assessment year 2009-10, our findings/conclusions rendered therein shall apply mutatis mutandis to the present case. Accordingly, the

impugned order is set aside and the grounds raised in the assessee's appeal are allowed for statistical purposes.

12. In the result, the appeal by the assessee for the assessment year 2011-12 is allowed for statistical purposes.

13. To sum up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 06/12/2024

**Sd/-**  
**AMARJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06/12/2024**

*Prabhat*

*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