

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 1403/Mum/2024
(Assessment Year: 2010-11)**

Quality Construction Co., 612, Tower A, Kohinoor City Mall, Kohinoor City, Kirol Road, off L.B.S. Road, Kurla (West), Mumbai-400070. PAN : AAAFQ0226E	Vs.	ACIT, Circle-22(3), Piramal Chambers, Mumbai.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Gyaneshwar Kataram, AR

Revenue / Respondent by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 27.11.2024

Date of Pronouncement : 05.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals), Mysore [in short 'the CIT(A)'] dated 31.01.2024 for AY 2010-11. The assessee raised the following grounds of appeal:

“1. In the circumstances and facts of our case, the Learned Addl./Jt. Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming the action of Ld. DCIT, Mumbai in upholding the re-opening assessment u/s 148 as valid. The Assessee states that reopening of assessment u/s 148 is void ab initio and illegal since it is not the opinion of the Assessing Officer to reopen the assessment but the reopening has been done on the basis of the information received from the office of DGIT(Inv.), Mumbai of the Income Tax Department and such reopening is not sustainable in law. The Learned Addl. / Jt. Commissioner of Income Tax

(Appeals), has erred in disregarding the decisions of Supreme Court and direct binding jurisdictional decisions which is binding upon him and without observing the principles of natural justice and without appreciating the facts and circumstances of the case.

2. In the circumstances and facts of our case, the Learned Addl. / Jt. Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming the action of Ld. DCIT, Mumbai in upholding the disallowance of alleged bogus purchases of Rs. 82,643/- @ 25% of total purchases of Rs. 3,30,571/- (in respect of 5 parties out of various purchase parties) on conjectures and surmises and alleging that the assessee has taken hawala bills amounting to sum of Rs. 3,30,571/- when the assessee explained that the assessee had not taken any hawala bills. The Learned Addl./Jt. Commissioner of Income Tax (Appeals), has erred in law and on facts in not considering the conclusive evidence submitted in its written submission and supporting paper book.

3. In the circumstances and facts of our case, the Learned Adll/Jt. Commissioner of Income Tax (Appeals), has erred in law and on facts in confirming the action of Ld DCIT, Mumbai in upholding the disallowance of TDS credit of Rs. 3.52.464-on the ground that no TDS return has been filed by the deductor and deposited the TDS and as result no TDS credit appearing in appellants account Le. Form 26AS despite the fact that the Assessee had submitted all the TDS certificates of Rs. 3.52.864 of the parties for which the Ld DCIT, Mumbai had not given the TDS credit. The Learned Addl./Jt. Commissioner of Income Tax (Appeals), has erred in law and on facts in disregarding the CBDT Instruction no 05/2013 dated 08/07/2013 directing the Assessing Officer to grant credit if Assessee submits the TDS certificates, no matter the same is not reflected in Form 26AS.

4. The Appellant crave leave to add, delete or substantiate any grounds of appeal at the time of hearing.”

2. The assessee is a partnership firm and filed the return of income for AY 2010-11 on 30.09.2011 declaring a total income of Rs. 2,35,56,767/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (the Act). The AO received information that the assessee was engaged in the practice of inflating the purchases by taking bogus bills from hawala parties without delivery of goods based on examination by Sales Tax Department on the sellers. The AO accordingly

issued notice under section 148 re-opening the assessment and completed the assessment by making an addition at 25% of the alleged bogus purchases. On further appeal, the CIT(A) confirmed the addition made by the AO. Before the CIT(A) the assessee raised a ground contending that the AO has not given a TDS credit to the tune of Rs. 3,52,864/-. However, the CIT(A) did not accept the submission of the assessee and dismissed the ground raised by the assessee in this regard.

3. The ld. AR submitted that the assessee is engaged in the construction business and the GP ratio in this line of business is not more than 12.5% as confirmed by the Hon'ble Bombay High Court in the case of PCIT vs. Suraj Infrastructure Pvt. Ltd. (2023) 156 taxmann.com 192(Bom.). With regard to the TDS credit, the ld. AR submitted that during the year under consideration the assessee got converted into a Private Limited Company and that the TDS was deducted in the name of the company. The ld. AR further submitted that the assessee in its capacity as partnership firm has offered the income on which tax is deducted at source and therefore the credit for the tax deducted should be granted to the assessee. The ld. AR also submitted that the successor company neither offered the income nor claimed TDS credit for the year under consideration.

4. The ld. DR on the other hand relied on the orders of the lower authorities.

5. We heard the parties and perused the material on record. On the issue of addition made towards bogus purchases, we notice that the Jurisdictional High Court in the case of Suraj Infrastructures Pvt. Ltd. (supra) has considered a similar issue in which the assessee is engaged in the same line of business and held that

“8. The ITAT in is impugned order had relied upon the judgments of Gujarat High Court in the case of Vijay Proteins Ltd. v. CIT [2015] 58 taxmann.com 44 and also in the case of CIT v. Smith P. Sheth [2023]. 38 taxmann.com 385/2019 Taxman 85 (Mag.)/356 ITR 451 and held that no

uniform yardstick can be applied the estimating gross profit on bogus purchases which is depending upon the facts of different cases. The ITAT held that the Co-ordinate Bench in number of cases has taken a consistent view and directed AO to estimate gross profit of 12.5% on alleged bogus purchases and therefore, in the case at hand also directed AO to estimate gross profit at 12.5% on the bogus purchases.

9. Even on merits, the ITAT found that the approach of AO for re-opening the assessment was not correct.

10. We find that the view taken by the ITAT is a reasonable and possible view and hence, no substantial question of law arises for our consideration.”

6. In view of the similarities in the facts in assessee's case respectfully following the above decision of Hon'ble Bombay High Court, we direct the AO to apply 12.5% on the alleged bogus purchases and delete the remaining addition. On the issue of TDS credit, in our considered view the issue requires factual verification and therefore we are remitting the issue back to the AO with a direction to examine the claim of the assessee based on evidences and give credit in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 05-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File

5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai