

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**  
**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER**  
**AND**  
**SMT RENU JAUHRI, ACCOUNTANT MEMBER**  
**ITA No.3210/M/2023**  
**Assessment Year: 2013-14**

<b>Mystic Electronics Limited</b> 401-A, Pearl Arcade, Opp. P. K. Jewellers, Dawood Baugh Lane, Off J. P. Road, Maharashtra- 400058. <b>PAN: AAGCP1710R</b>	Vs.	<b>ITO Ward 10(3)(3)</b> Aaykar Bhavan, M.K. Road, Maharashtra- 400020.
<b>Appellant</b>	:	<b>Respondent</b>

**Present for:**

**Assessee by**

: Shri N. R. Agrawal

**Revenue by**

: R. R. Makwana, Sr. D.R.

**Date of Hearing**

: 07.11.2024

**Date of Pronouncement**

: 16.12.2024

**ORDER**

**Per Beena Pillai, JM:**

Present appeal filed by the assessee arises out of order dated 12/07/2023 passed by Ld. CIT(A)- 52 assessment year 2013-14 on following grounds of appeal:

1. *“The Id. CIT(A) erred in confirming the action of the AO in rejecting the books of account and estimating income for the year*

- at 1% of turnover by treating the same as bogus/accommodation entries.
2. In doing so, the Id. CIT(A) did not appreciate that
    - a. the AO could not have rejected the books of account without establishing the defects, incompleteness and inaccuracies in the accounts of the appellant as required u/s 145(3) of the Act.
    - b. merely because the purchase & sale parties could not be produced, the same cannot be a ground for rejection of books of account in as much as the plethora of evidence placed on record has not been found to be fabricated & bogus.
    - c. adverse inference cannot be drawn on the basis of some statement of director/employee of the appellant unless it is tested and even the same has to be considered in toto & not in part.
  3. In any event, the Id. CIT(A) in confirming the action of the AO relied on decision of his predecessor in office on similar issue for A.Y. 2015-16 which decision has now been overturned by the Hon. ITAT vide order dt. 24.07.2023.  
Your appellant, therefore, submits that due relief be allowed.  
Your appellant craves leave to add to alter, delete or amend all or any of the grounds of appeal at or before the date of hearing.”

**Brief facts of the case are as under:**

**2.** The assessee filed its return of income for year under consideration on 28/09/2013 declaring total income of Rs.12,84,050/-. The return was processed u/s. 143(1) of the act and the case was selected for scrutiny by issuing notice u/s. 143(2) and 142(1) of the act, to the assessee. In response to statutory notices, the assessee’s representative filed details and appeared in the assessment proceedings from time to time.

**2.1.** The Ld.AO noted that, assessee furnished details of sales amounting to Rs.68,91,87,129/- and purchases amounting to Rs.68,43,09,861/- during the year. The assessee was called upon to submit evidences in respect of the expenses of Rs.43,83,204/-. Vide submission dated 01/03/2016, the

assessee filed details of sales and purchases that have been reproduced in the assessment order in Para 4.

**2.2.** The Ld.AO issued summons u/s. 131 to the parties from whom purchases and sales were made by the assessee. The Ld.AO noted that none of the parties appeared and complied with the summons. It was noted that, in case of one M/s. Birla Sholka Edutech Ltd., written submissions was filed but none attended in person with its books of accounts. Similarly, M/s. Techno Satcomm India Pvt. Ltd., M/s. Omnitech Infosolutions Limited, M/s. Atcomaart Services Ltd., M/s. Nam Technologies Pvt. Ltd. and M/s. Ducon Technologies Pvt. Ltd. filed the written submission, but did not appear in person with the books of account. In respect of following parties the summons returned back unserved:-

- (a) M/s Tulip Telecom Limited.
- (b) M/s Areva Infosystems Pvt. Ltd.
- (c) M/s Sai InfoSystem (India) Limited
- (d) M/s Microqual Techno Limited
- (e) M/s Atrium Infocomm Pvt. Ltd.
- (f) M/s Spanco Limited
- (g) M/s Micro Retail Limited
- (h) M/s DPK Electrosales(India) Pvt. Ltd.
- (i) M/s Micro Secure Solutions Limited

**2.3.** The Ld.AO thus show caused assessee, as to why, the book result should not be rejected and profit be estimated. The

assessee was also asked to produce the parties from whom purchases and sales were made alongwith their books and accounts and primary supporting documents. As assessee was unable to comply with the requirement of producing the parties, the Ld.AO came to the conclusion that, the purchases and sales shown by the company remained unverified and unsubstantiated. It was thus held that, the assessee was engaged in providing accommodation entries on commissions basis. The Ld.AO further rejected the books of accounts and estimated the income in the hands of assessee at 1% on the alledged accommodation entries provided by the assessee.

**2.4.** The assessment order was passed by making addition of Rs.68,91,872/- in the hands of the assessee.

Aggrieved by the order of the Ld.AO assessee preferred appeal before the Ld. CIT(A).

**3.** The Ld. CIT(A) after considering the submissions of the assessee observed that, all the grounds taken up by the assessee are interlinked with each other. However, the Ld. CIT(A) has only decided the issue based on the observations of its predecessor for assessment year 2015-16. He thus dismissed the grounds raised by the assessee.

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this *Tribunal*.

**4.** At the outset, the Ld.AR submitted that, this issue has been considered by *Coordinate Bench of this tribunal* for assessment

year 2015-16 in ITA No. 929/Mum/2020. He submitted that Ld. CIT(A) for the year under consideration dismissed the issue relying on the observations of its predecessor for assessment year 2015-16 and therefore the issue stands clearly covered it by the order of this *Tribunal* for assessment year 2015-16.

**4.1.** Ld.DR on the contrary, submitted that, the sales and purchases made by the assessee remain unverified for the year under consideration. He relied on the observations of the Ld.AO/Ld. CIT(A).

We have perused the submissions advanced by both sides in light of records placed before us.

**5.** It is noted that, the similar addition was made by Ld.AO, confirmed by the Ld. CIT(A) for assessment year 2015-16. This *Tribunal* vide order dated 24/07/2023 deleted the addition by observing as under:-

*12. Ground No. 3 with its sub-grounds pertains to rejection of books of accounts applying provisions of section 145(3) of the Act. We have gone through the order of AO, order of the Ld. CIT(A) and submissions of the assessee. It is observed that to reject books result, AO is duty bound to specify the defects in the books of accounts maintained by the assessee. We have gone through para C- 2 vide page no. 18 of the assessment order wherein the AO has applied section 145(3) of the Act. For sake of ready reference, we are reproducing the relevant para of assessment order mentioned (supra) as under:-*

*Addition on account of bogus turnover on estimate basis @ 1%*

*C-2.1 As discussed in the modus operandi, the penny stock scrips are shown to carry out some form of trading in shares or other commodities so as to create some credentials in its books. The assessee company following this the same modus, has shown fictitious sales at Rs. 23.44 Crore out of bogus purchases booked at Rs. 23.42 crore. All these transactions and figures are fictitious, non genuine and manipulated with sole intention to record desired turnover so as to support the artificial spurt shown in the price of the penny stock at various timelines.*



C-2.2 In view of the above discussion, the books of account of the assessee company for the year under consideration are hereby rejected u/s. 145 of the IT Act, since the same do not reflect true and correct trade results. Accordingly, the profit for the is estimated at Rs.23,44,406/-being 1% of total turnover of company shown under the head income from operation' at Rs. 23,44,40,568/- during the year under assessment Since the assessee has furnished inaccurate particulars and concealed its income, penalty u/s. 271(1)(c) is hereby initiated for the same.

13. With reference to the above findings of AO in the assessment order, it is clearly established that AO was not able to make out the case as required to apply the provisions of section 145(3) of the Act. The findings of AO are cursory in nature may be relevant for other purposes, but to apply section 145, a detail reasoning with specific defects pointed out during the assessment proceedings has to be mentioned and then only provisions of section 145(3) can be applied and the same are missing in the present case.

14. In his order, Ld. CIT (A) confirmed the action of AO and held as under vide para 7.6 page 44 of the appeal order:-

7.6 The assessee has objected to the rejection of the books and estimation of an income on the ground that the reasons recorded in the show cause notice were different from the ones in the assessment order. It is observed that in the show cause notice the AO had pointed out that there are no agricultural activities being carried out at Rajasthan and there is also no warehouse existing as was being claimed. It was also pointed out that the purchase/sale parties do not have any creditworthiness. Accordingly, the assessee was asked to show cause as to why it should not be treated as a paper concern with hardly any business activity. It is observed that in the assessment order, while rejecting the books, it has been mentioned that the purchases and sales shown are fictitious. Thus, it is noted that both in the show cause notice as well as the assessment order, the primary ground for rejection of books is that the sales/purchases of the assessee are fictitious and it is not carrying out any actual business activity. As noted earlier, the search action revealed that with certain parties, the assessee has entered into purchase transactions as well as sale transactions which made it obvious that the assessee had undertaken circular transactions to show fictitious turnover. It is also a fact that the assessee did not maintain any warehouse for storing the agricultural produce at Rajasthan which was being claimed by it. In view of such a factual position, the contention of the assessee of rejection of its books and estimation of its income in the assessment order on a ground which was different from the one mentioned in the show cause notice, is found to be erroneous and is therefore, rejected. Accordingly, all the additional grounds of appeal raised by the assessee are dismissed.

15. The findings of the authorities below mentioned (*supra*) to justify rejection of books of accounts u/s. 145(3) clearly reflects that whatever may be the show cause issued or enquiry conducted leads to specific additions/disallowance u/s 37/69C, etc. Legal position with reference to rejection of books of accounts is altogether different whereas the case made by AO and further confirmed by the Ld. CIT (A) leads the matter towards specific disallowance /addition. We found that revenue is failed to bring material on record which justify rejection of books of accounts leading to application of GP rate @ 1% on total revenue. In view of the above, we direct to delete the addition of Rs. 23,44,406/- being 1% of turnover and other operating income of Rs. 45,44,563/- (as the same is already part of revenue declared by the assessee) and returned income of Rs. 35,48,140/- declared by assessee is directed to be final figure. In the result, ground no. 3 with its sub grounds is allowed.”

**6.** The Ld. CIT(A) relied on his predecessor for A.Y. 2015-16 to disallow the claim of assessee and upheld rejection of books of account. This *Tribunal* reversed the order of the Ld. CIT(A) and allowed the claim of the assessee as observed hereinabove.

**6.1.** Be that as it way, it is noted that the Ld.AO did not carry out any verification in respect of the documents furnished by the purchasers/sellers as the case may be mentioned in 2.2. hereinabove. There is no documentary evidence placed on record by the Ld.AO to contradict the details filed by the parties mentioned in Para 2.2. hereinabove.

**6.2.** Therefore in respect of the parties mentioned in Para 2.2., we do not find any reason to uphold the addition made by the Ld.AO. However in respect of the parties, whose summons were returned unserved, the assessee had filed PAN and address. It is noted that the Ld.AO did not undertake any further verification in respect of them. We therefore do not find to any reason to



deviate from the observations of the *Tribunal* in A.Y. 2015-16 as nothing was brought on record by the revenue to contradict the same for the year under consideration .

Respectfully following the same we delete the addition made by the Ld.AO.

**Accordingly the grounds raised by the assessee stands partly Allowed.**

**In the result the appeal filed by the assessee stands partly Allowed.**

**Order pronounced in the open court on 16-12-2024.**

**Sd/-  
RENU JAUHRI  
ACCOUNTANT MEMBER**

**Sd/-  
BEENA PILLAI  
JUDICIAL MEMBER**

Place: Mumbai,

Dated: 16.12.2024

*Snehal C. Ayare, Stenographer/ Dragon*

**Copy of the order forwarded to :**

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

//True Copy//



BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**