

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

**BEFORE SHRI.NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No 4553/Mum /2024
(Assessment Year :2021-22)**

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| Accost Media LLP 710,7 th Floor, Bhaveshwar Arcade Annex, LBS Marg, Opp. Shreyas Cinema, Ghatkopar, Mumbai-400 086 PAN : AAFFO3393K | vs | DCIT, Circle 27(1), Mumbai IT Office, Vashi Railway Station Building, Navi Mumbai-400 703 |
| APPELLANT | | RESPONDENT |

**I.T.A No 4561/Mum /2024
(Assessment Year :2021-22)**

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| DCIT, Circle 27(1), Mumbai IT Office, Vashi Railway Station Building, Navi Mumbai-400 703 | vs | Accost Media LLP 710,7 th Floor, Bhaveshwar Arcade Annex, LBS Marg, Opp. Shreyas Cinema, Ghatkopar, Mumbai-400 086 PAN : AAFFO3393K |
| APPELLANT | | RESPONDENT |

Assessee by : Shri Gunjan Kakkad
Respondent by : Shri Dr. K.R. Subhash, (CIT DR)

Date of hearing : 09/12/2024
Date of pronouncement : 10/12/2024

ORDER

PER SHRI ANIKESH BANERJEE, JM:

These cross appeals arise out of the order of the National Faceless Appeal Centre (NFAC), Delhi,[for brevity, 'Ld.CIT(A)] order passed under section 250 of the Income-tax Act, 1961 for Assessment year 2021-22, date of order 09/07/2024. The impugned order was emanated from the Assessment Unit, Income-tax Department, [for brevity, 'Ld. AO'] order passed under section 143(3) read with section 144B of the Act, date of order 23/12/2022. The assessee and the revenue have taken the following grounds of appeal:-

Assessee (ITA No. No 4553/Mum /2024)

"On the facts and fn the circumstances of the case and In law the Ld, CIT(A) erred In making an addition of Rs. 2,16,42,907/- (I.e. 12.5% of Rs. 17,31,43,2577- being the original addition) without appreciating the facts that the appellant has produced the relevant Information required to prove the genuineness of the transactions.

On the facts and in the circumstances of the case and in law the Ld, CIT(A) erred in making an addition of Rs. 2,16,42,9077- (i.e. 12.5% of Rs. 17,31,43,2577- being the original addition) wherein the Ld. CIT(A) has completely Ignored the documentary evidence submitted by the appellant before him during the appellate proceedings to prove the genuineness for the expenditure/purchase incurred and has in fact only relied upon merely on basis of that the appellant has not produced the ITR of the said expenditure/purchase parties.

On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in making an addition of Rs. 2,16,42,9077- (i.e. 12.5% of Rs. 17,31,43,2577- being the original addition) merely on surmises that the purchases/expenses might have been inflated being the basis of the addition so made.

The appellant craves leave of Your Honour to add, amend, modify, alter and /or delete any of the above grounds of appeal."

Revenue (I.T.A No 4561/Mum /2024)

"(i) On the facts and circumstances of the case the CIT(NFAC) has erred in allowing relief to (he assesses completely missing the fact that despite repeated opportunity, the assesses could not produce the parties for verification and also could not arrange confirmation from the purchase parties. AO has duly mentioned that even in the physical verification carried out by verification unit in respect of 3 parties, those were not found at the given address.

(ii) On the facts and circumstances of the case the CIT(NFAC) has erred in observing that, it is not a case where the entire cash has been siphoned off by debiting the bogus purchases or bogus labour expenses. This observation is not backed by any findings and is not verifiable.

(iii) On the facts and circumstances of the case the CIT(NFAC) has erred in relying on the decision of Hon'ble jurisdictions! High Court of Bombay in the case of Ashwin Purshottam Bajaj (appeal no 576 of 2018) dated 12.07,2023, which is distinguishable on fact. In the case of Ashwin Purshottam Bajaj, there was information from sales tax authorities regarding bogus sales/purchases, whereas in the case of the assessee, the AO in his own verification did not find the purchases/labour expenses verifiable.

(iv) On the facts and circumstances of the case the CIT (NFAC) has erred in directing to restrict the addition on bogus purchase to 12.5% of such expenses claimed which is rather arbitrary and not backed by any supporting evidence.

(v) On the facts and circumstances of the case the CIT(NFAC) has missed that it is (he primary onus of the assessee to establish the genuineness of the expenses claimed by him and this onus has not been discharged by the assesses despite due opportunities.

The appellant craves /eaves to add, amend or delete any or the grounds of appeal,"

3. The brief facts of the case are that the assessee is engaged in business of painting and advertisements like wall-painting, digital wall painting, board advertising and mini hoardings. During the impugned assessment year, the case

was selected for scrutiny under CASS to verify the substantial purchases made by the assessee from suppliers, who are either non filers or have filed non business ITR or reflected a substantially lower turnover in ITR compared to turnover shown in SGTR1 (State GST Return-1) return. During the assessment proceedings, the Ld.AO asked the assessee to furnish the complete details of purchase and labour charges. In response, the assessee had filed reply and submitted documents like ledger details, bills, vouchers by vendors / service providers, GST returns of the vendor transactions through banking channels. Therefore, to verify the genuineness of the transactions of various parties, the Ld.AO issued notice under section 133(6) of the Act. Out of 28 parties none of the notices was complied with. Further, the Ld.AO had carried out physical verification through "Verification Unit" for 3 vendors. However, during the verification of the addresses mentioned in bills and vouchers were either wrong or no business activities was found at the address mention in the bills / vouchers. The registration under GST Act is in nature of business 'retailer of garments' whereas this party had supplied colour for painting. Considering the wrong address and no business activities at the address mentioned, the Ld.AO being suspicious, called for verbal hearing. The assessee appeared in virtual hearing and only relied on submitted reply. The Ld. AO inferred that the assessee has taken only the accommodation entries from the parties to reduce its profit or to adjust the unaccounted income in the shadow of business activities. Therefore, the expenditure claimed of Rs.17,31,43,257/- on account of purchase / service charges was treated as unexplained and added back to the total income under section 69C read with section 115BBE of the Act. The aggrieved assessee filed an

appeal before the Ld.CIT(A). The Ld.CIT(A) had considered this transaction as purchases of the assessee and respectfully following the judicial precedents, only 12.5% of the impugned purchases which works out amount to Rs.2,16,42,907/- was restricted for addition and the rest of the addition was deleted. Being aggrieved on the appeal order, both the revenue and assessee have filed cross appeals before us.

4. In hearing, the Ld.AR vehemently argued and filed the written submission which are kept in the record. The Ld.AR submitted documents before the bench related 28 parties which are as follows:- the ledger account, invoice and delivery challans, e-way bill generated under GST Act, balance confirmation with respective creditors, copy of tax credit reflected in the GST portal and TDS deducted related to payment to parties. Only in case of Income-tax Return, the nine parties had not filed their ITRs and rest of the parties' ITRs are duly filed with the written submission of the assessee. The respective parties submitted their GST returns and the respective purchases are also reflected in the GST statement. The assessee also enjoyed the ITC related to GST purchase. But in question of the physical verification of parties and non-compliance of notice U/s 133(6) of the Act, the Id. AR was unable to bring any evidence before the bench.

5. Further, the reliance was placed by the Id. AR in the order of the co-ordinate bench of ITAT, Rajkot Bench in the case of Jaliluddin Jummat Ali Sheikh vs ACIT (2023) 199 ITD 613 (Rajkot – Trib) where the Tribunal allowed the purchases on the basis of the documents and evidence submitted related to indirect tax. The identity of the sellers or service providers are mentioned globally in the indirect tax system. Accordingly, the addition was deleted. Further

reliance was placed in the order of Hon'ble High Court of Bombay in the case of Ashok Kumar Rungta vs ITO 167 taxman.com 429 (Bom). The relevant paragraphs 12,13, & 14 are reproduced as below:-

"12. In our opinion, a full addition could be made only on the basis of proper proof of bogus purchases being available indicate as the law would recognise before the AO, of a nature which would unequivocally indicate that they were wholly bogus. In the absence of such proof, by no stretch of imagination, a conclusion could be arrived, that the entire expenditure claimed by the petitioner qua such transactions need to be added, so be taxed in the hands of the assessee.

13. In a situation as this, the AO would be required to carefully consider all such materials to come to a conclusion that the transactions are found to be bogus. Such investigation or enquiry by the AO also cannot be an enquiry which would be contrary to the assessments already undertaken by the Sales Tax Authorities on the same transactions. This would create an anomalous situation on transactions. Hence, in our opinion, wherever relevant any conclusion the sale-purchase in regard to the transactions being bogus, needs to be arrived only after the A.O, consults the Sales Tax Department and a thorough enquiry in regard to such specific transactions being begun, is also the conclusion of the Sales Tax Department In a given case in the absence of a cohesive and coordinated approach of the AO. with the Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase. sales transactions being bogus merely on the basis of general information so as to discard such expenditure and add the same to the assessee's income.

14. Any half-hearted approach on the part of the AO to make additions on the issue of bogus purchases would not be conducive. It also cannot be on the basis of superficial inquiry being conducted in a manner not known to law in its attempt to weed out any evasion of tax on bogus transactions. The bogus transactions are in the nature of a camouflage and/or a dishonest attempt on the

part of the assessee to avoid tax, resulting in addition to the assessee's income. It is for such reason the approach of the AO is required to be well considered approach and in making such additions, he is expected to adhere to the lawful norms and well settled principles. After such scrutiny, the transactions are found to be bogus as the law would understand, in that event, they are required to be discarded by making an appropriate permissible addition.”

6. The Ld.DR vehemently argued and invited our attention in appeal order pages 9 to 11. The relevant paragraphs are reproduced below:-

“I have considered the facts of the case and submission filed by the appellant carefully. I find that the details called for by the AO to verify the genuineness of purchases and labour payments were not provided by the appellant. I find that the appellant had not provided copies of ITRs of the respective parties to prove the identity and genuineness of the transactions. What was furnished by the appellant before AO was the information maintained by the appellant as a part of its books of accounts. However, when the AO had specifically asked the appellant to prove the identity and genuineness of the transactions, the appellant did not comply the same. Thus, I find that the appellant had not discharged the primary onus of proving the identity and genuineness of the transactions done by the appellant with the said parties. I find that the main reason for selecting the case for scrutiny was that “the substantial purchases made by the appellant from suppliers who are either non filers or have filed non- business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in SGTR1 return”. When the AO tried to examine the case from the above angle, the appellant failed to submit the required information/evidences.

I find that the onus is on the appellant to prove the genuineness of purchases by producing the parties from whom the purchases were purportedly made or to whom labour charges were paid, which the assessee failed to produce before the

AO. Mere payment through banking channels is not sacrosanct. If the seller is found to be non-existent then purchase price can be treated as income. Strict rules of evidence do not apply to the income tax proceedings and the real test with regard to genuineness of transaction is "preponderance of probabilities" and not "beyond a reasonable doubt". It is well settled law that strict rules of evidence do not apply to Income-tax proceedings and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. The AO is entitled to arrive at a conclusion on appreciation of a number of facts, the cumulative effect whereof may be considered to judge the soundness of the conclusion. It is a settled law that Income Tax Authorities are entitled to look into the surrounding circumstances to find out the reality of the recitals made in documents. It is the duty of the authority to go behind the smoke-screen and discover the true state of affairs. The authority is not to be satisfied with the form but with the substance of the transactions. Merely because a paper trail had been created, that would not by itself make the transaction genuine. It was held by Hon'ble Punjab & Haryana High Court in the case of Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341) that if on the examination of the evidence, it is found that there was no genuine transaction between the parties, a pure paper transaction could not have entitled the assessee to claim benefit under the law.

However, I find this is not a case where the entire cash has been siphoned off by debiting the bogus purchases or bogus labour expenses. This is a case where at the most, the purchases/expenses might have been inflated. Therefore, relying upon the decision of Hon'ble Gujarat High Court, in the case of Simit P Seth (356 ITR 451) and considering the facts in the appellant case, I direct the AO to restrict the addition to Rs.2,16,42,907/- [i.e.12.5% of Rs. 17,31,43,257/-], instead of Rs. 17,31,43,257/-, thereby reducing the said addition by an amount of Rs. 15,15,00,350/-. The addition to the extent of Rs. 2,16,42,907/- is therefore

confirmed. I find that Hon'ble jurisdictional Bombay High Court in its recent decision in the case of PCIT-19 vs. Ashwin Purshottam Bajaj (Appeal No.576 of 2018) dated 12/07/2023 has confirmed the action of CIT(A) of restricting the addition on bogus purchases at the rate of 12.5% by relying on the decision of Hon'ble Gujarat High Court, in the case of Simit P Seth (356 ITR 451). Thus the grounds of appeal raised by the appellant are partly allowed."

7. The Ld.DR further argued that assessee made the purchases from different suppliers, who are either non filers or have filed non business ITR (ITR 1 & 2), or reflected a substantially lower turnover in ITRs as compared to turnover in GSTR 1 return. The assessee had not complied with queries before the Ld.AO properly during in the assessment proceedings. In reference of Verification Unit, the identity / existence of three parties remained uncompiled and the report of the Verification Unit related to the three parties, (i) Said Enterprises, Prop. Zahid Hussain Chaudhary, (ii) Rakeshbhai Kantibhai Makwana, Prop Nutan Enterprises and (iii) Shri Rupesh Prakash Bhoir, Prop Arihant Traders. In all the three purchasers, the Verification Unit made an adverse comment about the existence of all three parties.

8. After hearing the submissions of both parties and reviewing the documents on record, we proceed to dispose the appeal filed by the assessee. It is evident that the Ld. AO conducted a thorough inquiry, including issuing notices and utilizing the Verification Unit. However, the identity of the parties involved in the transactions was not conclusively established. The expenses recorded by the assessee in relation to purchases and labor charges were supported only by documentary evidence.

The Ld. AR presented documents related to compliance with the GST Act, including GST returns, Input Tax Credit (ITC) claimed by the assessee, and evidence of Tax Deducted at Source (TDS) from the concerned parties. However, the Ld. DR highlighted specific issues regarding the creditworthiness of the parties, their non-filing of Income Tax Returns (ITRs), non-declaration of business income by the parties and the lack of identification during the verification process conducted by the Ld. AO. The Ld. DR also emphasized that mere inclusion of these transactions in GST returns is insufficient to establish the identity of the parties, a requirement the assessee failed to meet during the proceedings.

The Ld. AO undertook verification efforts by issuing notices under Section 133(6) of the Act and through the Verification Unit. Despite these steps, discrepancies remained, including ambiguity regarding the nature of the business activities of the parties. Notably, among the 28 parties involved, 9 had not filed their ITRs, casting doubt on the authenticity of the transactions.

The Ld. CIT(A) deemed the entire set of purchases as bogus and relied on the judgment of the Hon'ble High Court of Bombay in **PCIT-19 v. Ashwin P Bajaj**(Appeal No. 576/2018, dated 12/07/2023). Following this precedent, the Ld. CIT(A) restricted the addition to 12.5% of the alleged bogus purchases, amounting to Rs. 2,16,42,907/-. While we considered the judgment of the Hon'ble Bombay High Court in **Ashok Kumar Rungta** (supra), which addressed cases involving insufficient inquiries by the Ld. AO, we note that in the present appeal, the Ld. AO conducted a comprehensive investigation, providing the assessee with ample opportunities, including virtual hearings, to present evidence.

Considering these facts, we find no infirmity in the impugned order passed by the Ld. CIT(A). Therefore, the impugned appeal order is upheld.

9. In the result, the appeal of the assessee bearing **ITA No.4553/Mum/2024** and the appeal filed by the revenue bearing **ITA No.4561/Mum/2024** are dismissed.

Order pronounced in the open court on 10th day of December, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai