

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G”, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3815/MUM/2024 (A.Y: 2021-22)**

Siraj Ahmed Shah

Shop No. RWG 194, Ganesh Nagar,
Charkop Kandivali West,
Maharashtra – 400 067

PAN: EAQPS3991Q

(Appellant)

Vs. ITO Ward 42(1) (4),

Kautilya Bhavan, Bandra Kurla
Complex, Maharashtra –
400 051

(Respondent)

Assessee Represented by

**: Shri Naimish Joshi, Ld.
AR**

Department Represented by

: Dr. Kishor Dhule, Ld. DR

Date of conclusion of Hearing

: 18.12.2024

Date of Pronouncement

: 02.01.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], passed under section



250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] dated 04.07.2024 for the A.Y. 2021-22.

2. The brief facts of the case are that, the assessee is an individual and engaged in the business of wholesale scrap and ferrous waste goods in the trade name of M/s US Enterprises. The assessee has filed the return of income for the year under consideration on 30.03.2022 declaring loss of Rs. (-) 41,10,405/-. The return of income was processed u/s 143(1) of the Act accepting the return of income. However, the AO passed the order u/s 143(3) of the Act, assessed the total income of Rs. 6,23,54,005/- by making an addition 6,23,54,005/- on account of bogus purchase u/s 69C of the Act.

3. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT (A) and Ld. CIT(A) refused to admit the additional evidence on the ground that application under Rule 46A was not filed and no cogent reason was assigned for admitting the additional evidence, hence dismissed the appeal of the assessee observing as under:-

In the light of above facts and discussions from point no.-(i) to (xx), in absence of the Application under Rule 46A of the Income-tax rules, negligent behaviour of the appellant assessee during the course of assessment proceedings and in front of this Appellate authority, this Appellate authority is in the view that, the grounds of appeal no.-1 to 3 of the appellant assessee are hereby rejected and



addition amounting of Rs 6,23,54,005/- u/s 69C of the Income-tax Act, 1961 made by the Assessing officer is found to be correct and is hereby UPHELD.

4. Aggrieved with the order of Ld. CIT(A), assessee preferred the appeal before us on the following grounds:-

Payment to the suppliers, which can be duly verified by the banking entries and from the banker of the suppliers whether such payments has been received or not.

The Sales Returns are also been filed by all the suppliers basis which I have availed GST input credit and sold goods to the end user. The evidence of such GST returns by suppliers is available with the GST Portal. The filing of such returns and such returns IP Domain can be obtained from the GST Department to authenticate the GST Returns of the suppliers.

I have purchase bills from all the suppliers including the E-Way Bills which is with the GST Department for the purpose of GST Assessment due to default of GST payment by the suppliers. The said purchases are also been sold legitimately to the end user through proper sales having Sales Register, GST Sales Returns, Receipts of payments against sales in the banking mode.

5. At the outset, Ld. AR submitted that there was a justified ground for not submitting additional evidence in support of its case regarding the genuineness of the transaction as it was not the case of bogus purchase. He further submitted that Ld. CIT(A) was not justified in denying the admission of additional evidence. Thus, the matter be restored to the file of



Ld. CIT(A) for adjudicating afresh after giving the opportunity to the assessee for moving application under Rule 46A.

6. On the other hand Ld. DR submitted that there was no reason assigned by the assessee to admit the additional evidence, however the Tribunal may consider the request of assessee as per law.

7. We have considered the rival submissions and perused the material placed on record. It is evident from the extracts of the order of Ld. CIT(A) that he has not allowed the additional evidence while dismissing the appeal of the assessee. It is clear that the appeal has been dismissed for the reason that application under Rule 46A was not moved by the assessee and negligent behavior of assessee during the course of assessment and before the First Appellate Authority. We are convinced by the submission of Ld. AR with respect to the reasons for not submitting the application under Rule 46A before the Ld. CIT(A) and in the interest of natural justice, one opportunity is given to the assessee to move an application under Rule 46A before the Ld CIT(A) and Ld. CIT(A) may consider the said application as per law. For these reasons, the impugned order is set aside and matter is restored to the file of Ld. CIT(A) for deciding afresh after giving



opportunity to assessee who shall present its case before the Ld. CIT(A) within 60 days.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02.01.2025.

Sd/-
(AMARJIT SINGH)
(ACCOUNTANT MEMBER)
Mumbai / Dated 02.01.2025
Dhananjay, Sr.PS

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai