

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.3498/M/2024
Assessment Year: 2018-19**

M/s. Abans Enterprises Ltd., 36, 37, 38A Nariman Bhavan, Backbay Reclamation, Nariman Point, Mumbai Maharashtra – 400 021 PAN: AAACM3843L	Vs.	Assistant Commissioner of Income Tax-4(3), (1) Office of the ACIT-4(3), Central Circle, 19 th Floor, Air India Building, Mumbai – 400 021 (2) Kautilya Bhawan, Avenue 3, Near Videsh Bhavan, G Block, Bandra Kurla Complex Bandra East, Mumbai (Mah) – 400 051
(Appellant)		(Respondent)

- A N D -

**ITA No.3519/M/2024
Assessment Year: 2018-19**

M/s. Abans Metals Private Ltd., 36, 37, 38A Nariman Bhavan, Backbay Reclamation, Nariman Point, Mumbai Maharashtra – 400 021 PAN: AAACM3843L	Vs.	Assistant Commissioner of Income Tax-4(3), (1) Office of the ACIT-4(3), Central Circle, 19 th Floor, Air India Building, Mumbai – 400 021 (2) Kautilya Bhawan, Avenue 3, Near Videsh Bhavan, G Block, Bandra Kurla Complex Bandra East, Mumbai (Mah) – 400 051
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Present for:

Assessee by : Shri Suyog Bhave, Ld. A.R.
Revenue by : Shri Srinivas P., Ld. Sr. D.R.

Date of Hearing : 25 . 11 .2024
Date of Pronouncement : 19. 02. 2025

O R D E R**Per : Narender Kumar Choudhry, Judicial Member:**

These appeals have been preferred by the Assessee against the orders dated 18.09.2024 & 16.05.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

2. Both the appeals having involved identical issues, therefore for the sake of brevity, the same were heard together and are being disposed of by this composite order by taking into consideration the facts and circumstances and issues involved in ITA No.3498/M/2024 as a lead case and result of the same would be mutatis mutandis applicable to both the appeals under consideration.

3. Coming to ITA No.3498/M/2024, it is observed that a survey action u/s 133A of the Act was conducted in the case of Abans group on dated 03.12.2019. The Assessee is also part of the Abans group who has made purchases to the tune of Rs.42,41,06,920/- in total from the following parties which were allegedly found to be non genuine parties:

- (i) *M/s. Asterpetal Trade & Services Private Limited*
- (ii) *M/s. Mavaiya Enterprises Pvt Ltd*
- (iii) *M/s. Trishna Trading Services Private Limited*
- (iv) *M/s. Manmish Traders Private Limited*

4. On analyzing the details available on record, it was found by the AO that source of funds is quite less in the Assessee's company

especially in the comparison to the turnover which has increased greatly in the years from F.Y. 2017-18 onwards, whereas the profit percentage is minimum in comparison to the turnover. The AO, thus in order to verify the genuineness of the purchases made, issued notices to the said parties, however, received no effective reply and/or response and therefore the AO by analyzing the peculiar facts and circumstances of the case and the details and documents available on record, ultimately held the alleged purchases of Rs.42,41,06,920/- as non genuine having purchased from non genuine entities and consequently made the addition of Rs.10,60,267/- being 0.25% of the said amount of Rs.42,41,06,920/- and added the same in the hands of the Assessee, as additional profit on account of such non-genuine purchases made during the year.

5. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, could not get any relief, as the Ld. Commissioner vide impugned order sustained the addition made by the AO @ 0.25% of the alleged purchases, on account of additional profit as reasonable, by dismissing the appeal of the Assessee.

6. The Assessee, being aggrieved with the impugned order, challenged the said affirmation of the addition by filing this appeal and at the outset has submitted that the Hon'ble Co-ordinate Bench of the Tribunal in the Assessee's sister concern cases, has also dealt with the identical issue/addition and vide order dated 30.09.2024 passed in ITA no.3315/M/2024 & ors., ultimately deleted the identical addition by observing and holding as under:

“18. The other issue which has been raised in A.Y. 2015-16 which is also therein A.Ys. 2016-17, 2017-18 and 2020-21 relates to purchases made from entities which were held to be non-genuine and addition had been made on adhoc percentage of

commission on such purchases. The ld. AO noted that the survey u/s.133A was conducted of Abans group on 03/12/2019 and it was found that there were certain entities from whom purchases have been made were found to be non-genuine parties. The list of such six entities from which assessee had made purchases were as under:-

Name of Entity	Amount (Rs.)
Aavim Trading Services Private Limited	28,98,700
Mavaiya Marketing Pvt. Ltd.	22,24,37,313
Manmish Ventures Private Limited	4,55,97,900
Yogdarshan Commercial Trading Pvt. Ltd.	20,17,06,000
Trishna Trading Services Private Limited	1,72,95,000
LM Tradecom Pvt. Ltd	6,44,31,280
Total	55,43,66,19

19. The ld. AO for all the six entities has held that the source of the funds /capital is less when compared to the turnovers; email has been handled by Abans group; ITRs filed from the premises of Abans group from same IP address; shareholders are not men of means; there was no response received to the summons issued to the Directors; books of accounts were found in the data recovered from the premises. In some other cases, he has alleged that company does not have any employees or negligible number of employees and summons were issued to the Directors and in some of the cases enquiry was conducted and the Inspector reported that there was no business activity happening at this premises and statement of shareholders and Directors were reported and they were not aware of most of the times. Based on this analysis, the ld. AO stated that these purchases were not genuine and accordingly, he disallowed 0.25% as alleged commission on total purchases from the above mentioned nongenuine entities which worked out to Rs.13,85,915/-. The ld. CIT (A) too has confirmed the said addition holding that ld. AO has pointed out various discrepancies in his orders and also the financials and pointed out that most of these entities have a very poor financials and low profit margin.

20. Before us, ld. Counsel submitted that the assessee had given detailed explanation for each and every entity which has been though incorporated in the order of ld. CIT(A) but has not been dealt with. In a summarized manner, the assessee has given its rebuttal on the various allegations made by the ld. AO which are as under:-

Sr. No	Allegations made by the AO	Assessee's Rebuttal/ Submissions
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A.	<i>Common Allegations for all six entities</i>	
1.	<i>Source of funds / Capital is less compared to the turnover</i>	<i>The assessing officer has compared turnover with share capital as the only source of funds. However trading does not require only large own capital. Based on the information received from the supplier, the source of funds can be traced to inter corporate loans taken from various business associates purely for working capital requirements. Further, in trading businesses, there is no requirement of high source of funds. In any event, the profit is commensurate to the funds invested.</i>
2.	<i>E-mail was being handled by Abans group</i>	<i>No evidence that email was actually being handled by Abans group. The AO has not brought on record any evidence to support the basis on which this allegation is made. He has not mentioned who was operating such email nor provided evidence for the same. E mail by its very nature can be operated from anywhere. It is vehemently contended that the email and ITR of the company was not operated from the office of Abans Group</i>
3.	<i>ITRs filed from premises of Abans group from IP address 103.207.9.67.</i>	<i>This is factually incorrect. Based on the information received from the six suppliers, the ITR has not been filed from IP mentioned in the order but from some other IP address. The assessing officer has not indicated the location where the IP address was found nor has he provided any evidence to prove that. Further, there is no indication of compliance with the requirements of Section 65B of the Indian Evidence Act.</i>
4.	<i>The shareholders are not men of means</i>	<i>The shareholders have regularly filed their returns of income. Their returns of income are sufficient to make the investment in share capital. In any event, this by itself does not render the transactions as non-genuine.</i>
5.	<i>No response received to the summons issued to the Directors</i>	<i>Summons were issued on 09.09.2020, i.e., during peak COVID-19 lockdown. The Directors had actually responded stating inability to attend due to</i>

		<i>lockdown, however, the same is completely ignored. The assessing officer has merely reproduced the investigation report prepared during COVID, but failed to verify and conduct any investigation during assessment proceedings. It is noteworthy, that all the directors were available at the premises verified and that the assessing officer had the powers to compel attendance and duty to verify the same in assessment proceedings, but failed to do so</i>
6.	<i>Books of accounts were found in data recovered from premises</i>	<i>The assessing officer did not provide the evidence in support of this allegation. He did not even provide the details of content of data, the period to which it pertained, the location where was found. Further, there is no indication of compliance with the requirements of Section 65B of the Indian Evidence Act.</i>
B.	<i>Specific Allegations for Mavaiya</i>	
1.	<i>The company does not have any employees or negligible number of employees.</i>	<i>Based on the information provided by the supplier, there was considerable amount of employee benefit expenses such as Rs. 23.79 lakhs for AY 2015-16, Rs. 66 lakhs for AY 2016-17, Rs. 66 lakhs for AY 2018-19.</i>
C.	<i>Specific Allegations for Manmish</i>	
1.	<i>Summons were issued to Mr. Vinod Mansukhlal Vadhaiya directors.</i>	<i>Based on the information provided by the supplier, there was no such director in the company, thus, the information is factually incorrect. Also based on the information received from company the actual director of the company, Mr. Hardik Gandhi, attended the summons proceedings, thus the information is factually incorrect. This fact is not commented upon by investigation wing. The assessing officer did not carry out any investigation or reverification.</i>
D.	<i>Specific Allegations for Yogdarshan</i>	
1.	<i>Inquiry was conducted in this case at the address of the registered office. The Inspector reported that</i>	<i>Based on the information provided by the supplier, the inquiry was conducted during peak Covid period at Mumbai premise, whereas the transactions are done from premises situated in Gujarat. Interestingly, the Inspectors report in all cases is identical. It says that the office</i>

	<i>there was no business activity happening at this premises.</i>	<i>is small, is dilapidated and is closed. It further says it is unused for a long time. It further refers to enquiries from staff of another premise, but fails to even mention the name of such office or any staff. This clearly shows it to be a prejudiced report.</i>
2.	<i>The statements of Shareholders & Directors were recorded. They were not aware of most of the things.</i>	<i>AO has not shared the complete statement. The inferences drawn are not supported by the extracts reproduced in the assessment order. The directors had given details of brokers, sales, purchase parties, transport etc., therefore the above observation is not correct. Extracts show that they had asked for time to provide details. They did inform that stocks are maintained in Gujarat. No details of accounting details found was provided to the directors. Nor are copy of such documents shared in the assessment proceedings. The assessing officer conducted no verification during assessment proceedings. No opportunity of cross examination was provided.</i>
3.	<i>Books of accounts were found in data recovered from premises</i>	<i>The assessing officer did not provide the evidence in support of this allegation. He did not even provide the details of content of data, the location where was found. It is alleged that some data of some earlier years, not current, was found. In the absence of specific details and sharing of actual data, it cannot be commented upon. Further, there is no indication of compliance with the requirements of Section 65B of the Indian Evidence Act.</i>
E.	<i>Alleged allegations for Aavim</i>	
1.	<i>Office was closed and no operations were carried out.</i>	<i>The inspectors report mentions the office was closed. Yet, he states that the office is very small and is not used for long time, when he could not have seen that. This indicates biased reporting.</i>
2.	<i>Director did not attend summons</i>	<i>Inspector report makes sweeping comment that looking at size of residence, director Brijesh Mehta is not men of means. He has attached only a picture of door of the Flat. In Mumbai,</i>

		<i>size of residence is not an indicator to judge means. Merely on the basis of address at Rajasthan, it is concluded that Daksh Soni, a director is not men of means. Further, the director sought adjournment to another date, but no fresh date was given by the investigation wing during COVID. AO also did not seek his attendance in assessment proceedings.</i>
<i>F.</i>	<i>Alleged allegations for Trishna</i>	
<i>1.</i>	<i>Based on returns filed and addresses of directors, it is concluded that they are not men of means.</i>	<i>The income shown in return does not prove the allegation made by the investigation wing. It is prejudged inference irrespective of evidence.</i>
<i>2.</i>	<i>The shareholder does not have means to hold the shares of the company.</i>	<i>With a share capital of Rs 1 lakhs, it is clear that the allegation levelled in the investigation wing report is unwarranted and has been accepted without any application of mind by assessing officer. Shri Pulkit Mehta with returned income of about Rs 4 lakhs is capable of making this investment. Further, source need not be current income alone. It is biased inference.</i>
<i>G.</i>	<i>Alleged allegations for L M Tradecom</i>	
<i>1.</i>	<i>Directors are not men of means</i>	<i>The details of return of income narrated and their addresses do not justify such inference.</i>
<i>2.</i>	<i>IP address 112,196.138.237 for filing return of income is at Abans Group offices as per Q22 of statement of Shiv Shankar Singh</i>	<i>The extract of the statement reproduced in the assessment order in Answer to Q22 does not mention this IP address. It is learnt that the IP address was 112.196.129.164. This shows that allegations made in the investigation report is false and the assessing officer failed to verify and draw correct inferences.</i>

21. All these submissions which were given before the ld. AO and ld. CIT (A) has not been considered at all. Most of these inferences have been drawn from the Investigation report and did not even verify the various allegations made in the report while assessee brought on record all the details and evidences. Ld. counsel further submitted that investigations were carried out

during the peak Covid period and verifications were made in Mumbai when the operations were in Gujarat, thus, there was basic fallacy in the investigation and this fact was duly highlighted before the ld. AO and ld. CIT (A). He further submitted that there is neither evidence nor any allegation that these entities are involved in bogus sales/purchase or accommodation entry. All the transactions are supported by GST returns of the parties. Further Abans entities came up for examination by CGST Mumbai and Gujarat, but no adverse inference was drawn in relation to sales and purchase transaction with said entities. It has been informed that CGST Gujarat conducted audit in case of Yogdarshan and transaction of sales and purchase were found to be in order CGST Mumbai conducted audit in the cases of Abans Broking Services Private Limited and Abans Securities Private Limited which had transactions with these very companies alleged to be nongenuine in the assessment order, but did not draw any adverse inference. There is no evidence of any underlying flow of cash was found even during the 55 extensive survey operations under section 133A carried out in December 2019. No evidence for considering rate of 0.25% as alleged commission.

22. Ld. Counsel further submitted that sales for the year under consideration have not been disputed and making any such kind of adhoc addition of 0.25% on such sales is uncalled for.

23. On the other hand, ld. DR relying upon the various facts brought on record by the ld. AO pointed out that detailed enquiry was carried out by the Investigation wing and it was found that either these parties were not existing at their address and these entities did not have any infrastructure for supplying such goods nor any credence. Accordingly, he strongly relied upon the findings and observations of the ld. AO and ld. CIT (A).

24. We have heard the rival submissions and also perused the materials placed on record. It is seen that the ld. AO had treated the purchases from 6 entities as non-genuine and has applied profit rate of commission on such purchases @0.25%. He has accepted that these purchases are duly recorded in the books of accounts, and has not disturbed the purchases. However, according to him as per market practice there is commission rate of obtaining such entry at @ 0.25% which needs to be added. First of all in so far as the transactions of purchases from these parties are concerned, the same had not been doubted for the reason that ultimately the ld. AO's allegation is that assessee might have earned commission on such purchases as these are non genuine parties with no credentials and on inquiry by the investigation wing various facts have emerged about their credibility. If the purchases are from the books and source of

purchases are not in doubt and assessee has produced all the evidences to prove the purchases then how can on such purchases adhoc addition on account of commission can be made. Before the AO assessee has submitted following details to prove the purchases:

- (i) Purchase invoices;*
- (ii) Warehouse receipts showing physical receipt of the goods in the warehouse;*
- (iii) Delivery Orders;*
- (iv) Bank statements demonstrating payment towards the purchases;*
- (v) GST returns showing receipt of the goods and availment of input tax credit on such purchases.*

If these documents have not been doubted then where is the question of making adhoc addition of commission on such purchases.

25. Coming to the various allegations made by the AO and the rebuttal given by the assessee before the AO as well as before the CIT(A), it is seen that one of the allegations of the AO was that the source of funds in capital of these entities are less compared to the turn over. What was required to be seen is whether there was actual trading or not as trading does not require large own capital but what are the source of funds in their balance sheet. Another allegation regarding e-mail was only by the Abans group. There was nothing which has been brought on record by the ld. AO that e-mail was actually being handled by the Abans group nor he has mentioned who was operating the said e-mail. Assessee had already countered that e-mail and ITR of the company was not operated from the office of the Abans group and had given detailed explanation before the ld. CIT(A) also which was not even being committed upon. In so far as ITR filed from the premises of Abans group from a particular IP address, assessee has categorically denied that it is incorrect and no such ITR has been filed from the IP mentioned in the order but from some other IP address which was provided before the ld. CIT (A). This has not been rebutted by the department when assessee brought on record that the IP address which has been mentioned by the ld. AO were different. In so far as the shareholders were not men of means, already it has been brought on record that they were filing their regular income tax returns and have shown investment of share capital from their own sources. In any case, this cannot be the ground for treating the transaction as non-genuine.

25.1 Now, coming to the summons issued to the Directors, it has been stated that the summons were issued during

the peak Covid 19 lockdown period and directors had actually responded their inability to attend due to lockdown which has been ignored. If the ld. AO has simply relying upon the comments of the investigation wing and he did not ask the assessee during the course of assessment proceedings to file their confirmations and he could have independently verified once the assessee had stated that all the Directors were available at the premises and ld. AO can ask for their attendance which ld. AO had failed to do so. In so far as books of accounts found in the audit report from the premises, the assessee's contention was that neither, the Investigation Wing nor the ld. AO had provided the evidence in support of such allegation nor any details of content of date and period to which it pertain was provided or found. Thus, such ground cannot be adversely viewed. Similarly, with regard to every allegation, counter submissions as noted above has not been dealt by the ld. CIT (A) specifically when they were duly explained through various documents and facts. Once these facts were brought on record, ld. AO should have at least himself carried out any enquiry or verification rather than blindly apply and relying upon the investigation report. Thus, in view of the aforesaid submissions given by the assessee and rebuttal given against various allegations of the AO are liable to be accepted. In any case, the case of

the ld. AO is that assessee might have earned commission from such purchases of 0.25% which cannot be sustained as ld. AO has applied commission of 2% and reduced to 0.25% by CIT (A) are on mere conjecture. It is not a case where the entire purchases have been added, albeit ld. AO has presumed that assessee might have earned commission on such purchases made from non-genuine parties. Accordingly, such adhoc application of commission of 0.25% is deleted.

26. Similar issue of application of commission of 0.25% has been applied for the A.Y.2016-17, 2018-19 and 2020-21, therefore, in view of the finding given hereinabove, such addition on account of adhoc commission are deleted. Accordingly, appeal for A.Y.2015-16, 2016-17, 2018-19 and 2020-21 are allowed.”

7. As the identical issue/addition as involved in the instant case has already been dealt with by the Hon'ble Co-ordinate Bench of the Tribunal in the cases referred to above, wherein the Hon'ble Co-ordinate Bench of the Tribunal on elaborate discussion/analyzations ultimately deleted the addition and/or decided the issue in favour of those Assessees. Even otherwise there is nothing on record available to refute the findings of the Hon'ble Co-ordinate Bench of the Tribunal in Assessee's sister's concerns cases. Therefore, respectfully following the judgment referred to above, this Court is inclined to delete the addition under consideration. **Thus, the addition under consideration is deleted. Resultantly the Assessee's appeal i.e. ITA No.3498/M/2024 is allowed.**

8. In the result, in view of judgment in ITA No.3498/M/2024, both the appeals stands allowed.

Order pronounced in the open court on 19.02.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.