

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

ITA No.722/M/2016

[Assessment Year: 2009-10]

ITA No.723/M/2016

[Assessment Year: 2008-09]

ITA No.724/M/2016

[Assessment Year: 2007-08]

Dy. Commissioner of Income-Tax- 15(1)(1) Room No.517, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai- 400020.	Vs.	M/s. Antony Motors Pvt. Ltd. A-390/391, MIDC, TTC, Industrial Zone, Navi Mumbai- 400701. PAN: AAACA4719K
(Appellant)		(Respondent)

C. O. No. 150/M/2017

(Arises out of the ITA No.724/M/2016)

[Assessment Year: 2007-08]

C. O. No. 151/M/2017

(Arises out of the ITA No.723/Mum/2016)

[Assessment Year: 2008-09]

C. O. No. 152/M/2017

(Arises out of the ITA No.722/Mum/2016)

[Assessment Year: 2009-10]

M/s. Antony Motors Pvt. Ltd. A-390/391, MIDC, TTC, Industrial Zone, Navi Mumbai- 400701. PAN: AAACA4719K	Vs.	Dy. Commissioner of Income-Tax- 15(1)(1) Room No.517, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai- 400020.
(Appellant)		(Respondent)



Present for:

Assessee by : Shri Bhupendra Shah

Revenue by : Shri Paresh Deshpande – Sr. A.R.

Date of Hearing : 08.10.2024

Date of Pronouncement : 30.10.2024

ORDER

Per Bench:

Present cross appeals filed by assessee and revenue arises out of consolidated order passed by the Ld.CIT(A)-24, Mumbai dated 08/11/2015.

2. It is submitted by the Ld.AR that the grounds raised by assessee and revenue in their respective appeals are common for all the years under consideration, arising out of identical factual metrics. For the sake of convenience grounds raised by assessee and revenue for A.Y. 2009-10 are reproduced as under:

Revenue appeal for assessment year 2000-10:

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance of Rs.1,23,35,791/- made on account of total bogus purchase to 7.5% despite of the facts that the assessee has failed to substantiate its claim of purchase”.

2. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

3. The appellant prays that the order of DRP on the above ground be set aside and that of the Assessing Officer be restored.”



Assessee's cross appeal for assessment year 09-10:

"1. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in reassessing the income by recording the reasons u/s 148 and the Commissioner of Income Tax(A) erred in confirming the same without appreciating the fact that:

- i. The Assessing Officer has not furnished a copy of approval letter obtained before reopening.
- ii. The Assessing Officer has not mentioned the date on which the reasons are recorded.
- iii. The Assessing Officer has not furnished the copy of the intimation received from DG office.
- iv. Copy of the statement recorded by the MVAT department from so called hawala dealers are not furnished.

2. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in making additions of Rs.1,23,35,791/- on account of alleged non- genuine purchases from 5 parties (viz. Deepali Enterprises, Rekha Trading Company, Renuka Sales, Siddhivinayak Trading Company and Cosmos Enterprises) which were wrongly sustained @ 7.5% of said purchases i.e. Rs.9,25,184/- by the Commissioner of Income Tax(A) by way of alleged bogus purchases only on the basis of the information on the website www.mahavat.gov.in about suspicious dealers:

- i. Without issuing notices u/s 133(6) to the suppliers and thereby not allowing cross-examination of the same.
- ii. by not rejecting the books of accounts of the Appellant u/s 145(3) by stating that the purchases within the same were unverifiable.
- iii. without appreciating the fact that similar additions were deleted in many other cases by the ITAT.
- iv. by overlooking the fact that all the payments were made by account payee cheque.
- v. by disregarding the fact that the appellant had already shown GP of 17-20%.

General: This cross objection is filed in time. The cross objection prays leave to add, alter or amend the above grounds of cross objection on or before the disposal of this cross objection."



Brief facts for AY 2009-10 are as under:

3. The assessee is engaged in the business of manufacturing repairing, servicing of body of motor chases and engineering products, training in spare parts. For Assessment Year 2009-10, the assessee filed its return of income on 30/10/2007 declaring total income of Rs.2,50,91,020/-. It is submitted that, under section 143(3) of the act the assessment order was passed on 31/12/2011 determining total income in the hands of assessee at ₹3,06,60,843/-.

3.1. Subsequently, information was received from investigation wing of the Income tax department, Mumbai that sales tax department recorded statements of certain hawala operators, who confirmed to have given bogus bills to certain assessee's including one M/s.Titan Antony Aviation Pvt. Ltd., an associate concern of the assessee company.

3.2. The Ld.AO observed that, the assessee and M/s. Titan Antony Aviation Pvt.Ltd was sharing the same office premises. On perusal of case records of the assessee for the year under consideration, the Ld.AO noted that, certain transactions with these hawala dealers were found. Accordingly, survey under section 133A of the act was carried out on 14/12/2012 on the assessee.



The Ld. AO found that, for financial year relevant to assessment year under consideration, following parties issued bogus bills to the assessee, the details of which are as under:

Sr. No.	Name	Financial Year	Amount
1.	Deepali Enterprises	2008-09	23,09,859
2.	Rekha Trading Company	2008-09	11,68,829
3.	Renuka Sales	2008-09	48,02,321
4.	Siddhivinayak Trading Company	2008-09	37,22,378
5.	Cosmos Enterprises	2008-09	3,32,404
Total			1,23,35,791

3.3. Ld.AO on perusal of ledger register maintained by the assessee in respect of materials purchased and received by them, it was seen that material purported to have been received from the above parties were not entered. The assessing officer thus had reason to believe that, income to the extent of Rs.1,23,35,791/- escaped assessment, and accordingly notice under section 148 was issued on 09/01/2013.

3.4. The assessee was called upon to furnish return in lieu of the notice. The assessee vide letter dated 12/02/2013 submitted that, the return filed on 29/09/2009 (or general return filed) may be treated as return filed in lieu of notice under section 148 of the act.



The assessee also requested for the reason recorded for reopening the assessment, which was communicated to the assessee on 06/08/2013. Objections for reopening of assessment were filed by the assessee on 28/08/2013. The assessing officer rejected these objections vide order dated 24/01/2014.

3.5. The Ld.AO thereafter called upon the assessee to furnish details of purported purchases made from the parties mentioned in the table hereinabove. The assessee was also called upon to justify, as to why, the purported purchases should not be disallowed as bogus purchases. In response to the SCN, the assessee filed various details like summary of stock statement details of purchases from the parties, copy of bills with and GRN number, bank certificate for payment made to the 5 parties, ledger copies of the above 5 parties along with confirmation from them and consumption made out of the purchases made from these parties and reply on 05/02/2014, 17/02/2014, 28/02/2014 and 25/03/2014. The assessee also furnish the copies of the TDS certificate and 26AS statement.

3.6. The Ld. AO however noted that, the assessee only furnished copies of invoices etc., and stated that the purchases were made from genuine supplier and was delivered at the site. The Ld.AO did not accept the evidence, and made addition in the hands of the assessee amounting to ₹1,23,35,791/-.

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



4. The Ld.CIT(A) on the issue of challenge raised by the assessee regarding validity of the notice under section 148 of the act, was of the opinion that, the Ld.AO had valid reasons to initiate such proceedings and the same was communicated to the assessee. The Ld.CIT(A) also held that, all necessary procedures stipulated by *Hon'ble Supreme Court* in case of *GKN Drive Shafts vs ITO* reported in (2003) 259 ITR 19 was followed. The Ld.CIT(A) thus dismissed the legal ground raised by the assessee in all the years under consideration.

4.1. On merits, Ld.CIT(A) considered the additions as under:

A. Issue 1: The Ld.CIT(A) was of the opinion that the assessee shown gross profit of 17% to 20% during the year under consideration. The Ld.CIT(A), thus estimated the suppressed profit to the extent of 7.5% of the purchases made from the bogus entities, being the profit element embedded in such purchases.

Identical view was taken by the Ld.CIT(A) for all the years under consideration.

B. Issue 2: In respect of the disallowance made under section 14A read with Rule 8D of the Act, the Ld.CIT(A) was of the opinion that, against the dividend earned by the assessee, disallowance made by the Ld.AO was on the higher side and therefore restricted the disallowance to 10% of the dividend income.



Similar view was adopted for all the years under consideration on this issue.

C. Issue 3: On the issue of the disallowance made by the Ld.AO under section 36(1)(iii) of the act, relying on the decision of *Hon'able Bombay High Court* in case of *Reliance Utility* reported in 313 ITR 340 and *HDFC Bank Ltd* reported in 366 ITR 505, the Ld. CIT(A) deleted the additions for all the years under consideration.

Similar view was adopted for all the years under consideration on this issue.

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

5. At the outset, the Ld.AR submitted that, the legal issue contested by the assessee in the cross appeals for all the three years, goes to the root cause of the case. The Ld.AR prayed to consider Ground No.1 raised in assessee's cross appeals may be considered before dealing with the merits of the additions.

Accordingly we take up Ground No.1 raised by the assessee in the cross objections filed for all the years under consideration as under.

Brief facts leading to legal issue are as under:



5.1. The Ld.AR submitted that, the return of income for the year under consideration was filed declaring total income of ₹3,02,87,795/-. It is submitted that, the return was processed for scrutiny and notice under section 143(2) was issued to assessee on 29/09/2010 along with notice under section 142(1) of the act. The Ld.AR referring to page 68 of the paper book for Assessment Year 2009-10, submitted that scrutiny assessment order was passed for the year under consideration. He submitted that the assessee made actual purchases from the alledged parties that were genuine and the same were verifiable.

5.2. The Ld.AR submitted that the crux of the issue is validity challenged by the assessee of the notice issued under section 148 of the Act and in consequence the order of reassessment are bad in law on following preposition.

A. He submitted that for the year under consideration notice under section 148 was issued within the period of 4 years, that and the assessing officer must have reason to believe that income chargeable to tax escaped assessment. It is submitted that for arriving at such conclusion, there must be “tangible material” available with the Ld.AO on record. The Ld.AR submitted that, in the present facts of the case, there is nothing on record to substantiate such reasonable belief on behalf of the Ld.AO.

B. The Ld.AR contended that all relevant details pertaining to the suppliers and purchases were furnish during original assessment



proceedings, and therefore issuance of 148 notice amounts to 'change of opinion'. He placed reliance on the decision of *Hon'ble Supreme Court* in case of *CIT vs Kelvinator of India Ltd* reported in (2010) 320 ITR 561. Reliance was also placed on the decision of *Hon'ble Bombay High Court* in case of *Asian paints vs DCIT & Anr.*, reported in (2009) 308 ITR 195 to buttress his contention that the Ld.AO cannot proceed further for a period of 4 weeks from the date of service of the order rejecting the objections filed by the assessee.

C. The Ld.AR alleged that the assessing officer did not furnish copy of the approval obtained before reopening of the assessment and did not specify on which date the reasons recorded.

D. Ld.AR submitted that, the assessee by letter dated 28/08/2013 requested for statements recorded and cross examination of the of the VAT dealers, based on which the Ld.AO came to the conclusion that, assessee was indulged in obtaining bogus purchases in the form of accommodation entry, without purchasing actual goods, materials from such dealers. It is submitted that, the assessing officer failed to furnish the copy of the information received from the DG office, and the proof of assessee's name appearing on the list of persons who is alleged to have received such accommodation entries by way of bogus purchases.



5.3. The Ld.AR prayed that, the proceedings initiated under 148 of the act on present facts of the case is not based on the fulfilment of the precondition stipulated under the section and that, it is mere 'change of opinion' without there being any tangible material to come to such conclusion.

5.4. On the contrary the Ld.DR vehemently opposed the arguments of the Ld.AR. He submitted that the objections are decided by the Ld. AO vide order dated 24/01/2014. The Ld.DR vehemently argued that, re-opening of assessment in present facts of the case cannot be termed as mere change of opinion. He submitted that the Ld.AO examined the details filed by the assessee during the assessment proceeding on the basis that the same were genuine.

5.5. He submitted that the now there is information available that, the alledged suppliers were not genuine. It was fresh information, and acting on the same cannot be said to be change of opinion. He placed reliance on the decisions of *Hon'ble Supreme Court in case of N.K.protens* reported in [2017] 84 taxmann.com 195 wherein the addition of entire undisclosed income generated out of bogus transactions, was upheld. He thus supported the reoopening of the assessment upheld by the Ld. CIT(A)

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



6. The reopening of an assessment under Section 148 of the Act cannot be arbitrary or on a mere change of opinion or at a mere whim and caprice of the Assessing Officer. It is for this reason that the Supreme Court in *GKN Drive shafts India v. ITO (supra)* provides that the assessing officer would furnish reasons as recorded for issuing notice to reopen an assessment and the assessee would be entitled to file its objections. The Assessing Officer would then dispose of the objections by a speaking order. Thus one more safeguard was provided by Hon'ble Supreme Court to ensure that there is proper application of mind before an assessment is reopened as reopening of an assessment is likely to cause harassment.

6.1. It is noted that during the assessment proceedings the assessee was asked by the Ld.AO to furnish details of sales and purchases and to provide name, address and the amount etc. From the details so furnished, it was observed that, it exactly matched with the information available with the Ld.AO. However the assessee contends that that all documents including the bills received from all suppliers were disclosed by the assessee during the original assessment proceedings. Therefore, there has been no failure to disclose truly and fully all material facts necessary for assessment on the part of the assessee.

6.2. It is the main contention of the Ld.AR that escapement of tax on income must arise out of failure on behalf of the assessee to disclose fully and truly all facts necessary for assessment of income.



In this case, it is submitted that, all documents including the bills received from the alleged entry providers were disclosed by the assessee during the original assessment proceedings leading to assessment order under section 143(3) dated 31/12/2011. Therefore, there has been no failure to disclose truly and fully all material facts necessary for assessment.

6.3. In our view the shield under the proviso to Section 147 of the Act can come to the assessee aid, only if, there has been a full and true disclosure of all facts necessary for assessment. In the present case, there is a prima facie doubt about the truthfulness and/or completeness of the disclosure at the time of original assessment in view of information obtained later. Under such circumstances the provisions cannot aid the assessee at the stage of notice under Section 148 of the Act. It is likely that during the assessment proceedings the assessee may be able to satisfy the Assessing Officer that there was a true and full disclosure. Once the Assessing Officer received information that invoices issued by alleged five parties reproduced herein above are bogus, then the same is necessarily to be the subject matter of enquiry under the reassessment proceedings. The information that bills produced were not genuine does give rise to a reasonable belief in the mind of the Assessing Officer that income chargeable to tax has escaped assessment, as recorded in the reasons as under:



M/s. Antony Motors Pvt. Ltd.
ITA No. 722- 724/M/2016
CO No. 150.-152/M/2017

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OFFICE OF THE
DY.COMMISSIONER OF INCOME TAX (OSD)-10(3)
AayakarBhavan, 4th Floor, Room No.457, M.K.Road, Mumbai-400 020
[Telephone No.022- 22039131 - Ext. 2457 -22120156 (Direct)]

No.DCIT(OSD)-10(3)/148 /2013-14

Dated : 06-08-2013

To,
The Principal Officer,
M/s. Antony Motors Pvt. Ltd.
A /390-391, MIDC, TTC Zone,
Mahape, Navi Mumbai-400701.

Sub: Notice dated 09.1.2013 issued u/s. 148
of the I.T. Act, 1961 for A.Y. 2009-10 - reg.
Ref: Your letter dated 12.2.2013.

Please refer to the above.

In this connection, reasons recorded for re-opening the assessment for A.Y. 2009-10 are reproduced as under :-

“ The assessee M/s. Antony Motors Pvt Ltd is assessed to tax in this Circle and is an associate concern of M/s. Titan Antony Aviation India Pvt Ltd in respect of which the Investigation wing of the Income Tax Department, Mumbai has forwarded details and statements of hawala operators who have confirmed to have given bogus bills to the company. As the assessee M/s. Antony Motors Pvt Ltd shares same office premises as that of M/s. Titan Antony Aviation Pvt Ltd, accordingly the case records of the assessee company for A.Y. 2009-10 (Scrutiny assessment completed during 2011-12) were verified. On verification it is found that for Financial Year 2008-09 the following parties, in respect of which the information is received for being hawala operator, has also issued alleged bills to the assessee company. The details are as under :-

S.No.	Name	Financial Year	Amount Rs.
1	Deepali Enterprises	2008-09	23,09,859
2	Rekha Trading Company	2008-09	11,68,829
3	Renuka Sales	2008-09	48,02,321
4	Siddhivinayak Trading Company	2008-09	37,22,378
5	Cosmos Enterprises	2009-10	3,32,404
	TOTAL		1,23,35,790/-

In the statement to Sales Tax Authorities, the proprietor of the above party has accepted that they are indulged in hawala bill racket, they only provide bills to their customers and no material is supplied to the customers.

A survey u/s. 133A was carried out in this case and ledger accounts of these parties were collected. Inward Registers were also impounded and on verification it was noticed that the material received from these parties is not entered in the inward register.

On the basis of this additional information on record, which has been received after completion of assessment, I have reason to believe that income to the tune of Rs.1,23,35,790/- for F.Y. 2008-09 relevant to A.Y. 2009-10, has escaped assessment.



(N.V. NADKARNI)
Dy. Commissioner of Income Tax (OSD) -10(3),
Mumbai.



6.4. In our view, at the time of issuing a notice under Section 148 of the Act, it is not necessary for the Assessing Officer to conclusively arrive at a finding that there has been escapement of income. At the stage of issue of the notice, the only requirement is to examine whether, on the available material a reasonable person could form a reasonable view to believe that, income chargeable to tax escaped assessment. In the present facts of the case such reasonable belief by the Ld.AO is discernable from the reasons recorded herein above.



6.5. The Ld.AR before this *Tribunal* emphasized that the assessment was completed under Section 143(3) of the Act. Further, during the course of assessment proceedings the assessee was asked by the Ld.AO to furnish details of sales and purchase of more than Rs.10 lacs. Consequently, the purchases of from all 5 alleged suppliers were also subject matter of examination before the Ld.AO during the original assessment proceedings. The Ld.AR thus submitted that on the same set of facts as were in existence during assessment proceedings leading to assessment order dated 31/12/2011, the Ld.AO seeks to take a view different from that taken earlier.

6.5.1. This submission by the Ld.AR in our opinion, over looks the fact that, in so far as the purchases from alleged five suppliers are concerned, based on which the revenue reopened the assessment, was never a subject matter of enquiry by the Ld.AO during the original assessment proceedings that lead to passing of assessment order dated 31/12/2011. Thus, so far as purchases from alleged five suppliers are concerned, there can be no occasion for change of opinion as rightly pointed out by the Ld.DR that there was no opinion formed by the assessing officer at the time when the original assessment order was passed. It is only during the course of survey proceedings that information was received regarding the bills from the alleged parties being not genuine.



6.5.2. In support, we refer to the decision of *Hon'ble Supreme Court* in case of *Raymond Wollen Mills Ltd.* reported in (1999) 236 ITR 34. *Hon'ble Supreme Court* while considering as to sufficiency of reasons to believe at the stage of issuance of notice under section 148 of the Act of 1961 has held thus:—

"3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

Hon'ble Supreme Court in above rulings held that, at the stage of issuance of notice for re-opening of assessment, the Court is only required to see whether there is *prima facie* material available on the basis of which department can reopen case and not sufficiency or correctness of material to be considered.

6.6. Another submission of Ld.AR is that, there was no proper application of mind by authority granting approval/sanction and that it was based on borrowed satisfaction to reopen the assessments. We refer to Section 151 of the act that deals with sanction for issue of notice. Sub-section (2) of section 151 requires that, the authority granting sanction/approval must be satisfied on



the reasons recorded by Assessing Officer that it is a fit case for issuance of such notice.

6.6.1. In case of assessee before us, on analysis of information collected/received and findings thereon, the Assessing Officer elaborately recorded reasons to believe that income of assessee has escaped assessment and sought permission to proceed u/s. 148. Based on reasons to believe recorded by Assessing Officer, the approving authority granted approval u/s.151 which cannot be found fault with.

6.7. The allegation raised by the Ld.AR regarding details materials/ statements based on which the notice under section 148 was issued to the assessee were not provided, even after repeated request. On perusal of the assessment order, it is recorded that the assessing officer noticed that the Sales Tax Department of Government of Maharashtra listed out names of certain dealers, who were alleged to have been providing accommodation entries without doing actual business. On such dealer whom the revenue identified to have entered into alleged bogus transaction was M/s. Titan Antony Aviation Pvt. Ltd., who was an associate concern of the assessee before us.

6.7.1. A survey operation was initiated against assessee and, during the survey it was noted that, the assessee purchased



materials from alleged five parties listed herein above who were also listed by Sales Tax Department of Government of Maharashtra and alleged to have been providing accommodation entries without doing actual business. The Ld.AO noticed that, the assessee made purchases from five parties listed herein above, and that materials purchased from them were not recorded in the inward register maintained by the assessee. The Survey team therefore impounded the inward register from assessee's premises. In our view there is nothing other than assessee's own inward register that became the basis for issuing the notice under section 148 of the Act with a reason to believe that income to the extent of purchase made from those five alleged parties escaped assessment.

6.7.2. In these facts, we are of the view that the satisfaction of the Assessing Officer to form a reasonable belief that income chargeable to tax escaped assessment is not unreasonable. We therefore do not find the contentions raised by the Ld.AR to be supportive enough to hold the notice issued under section 148 of the Act to be bad in law.

We therefore do not find any reason to interfere with the view taken by the Ld.CIT(A) and the reopening of the assessment is upheld.

In so far as assessment years 2007-08 & 2008-09, we note that there was no scrutiny proceedings initiated and therefore the reopening is held to be validly initiated for all the above reasons and discussions above.



Accordingly, Ground no.1 raised by the assessee in all the cross objections stands dismissed.

7. On merits, the assessee in its cross objection challenged the order of the Ld.CIT(A) for not deleting the addition. The revenue in its appeals challenged the view of the Ld.CIT(A) in restricting the addition to 7.5%.

7.1. The Ld.AR submitted that assessee has shown the quantitative details of purchases and also corresponding sales or consumption which has been noted by the learned Assessing Officer in the assessment order itself. Despite this fact the addition is made in the hands of the assessee at the rate of 7.5% by the Ld.CIT(A). He submitted that the *Hon'ble Bombay High Court* as in case of *PCIT vs. Mohammad Haji Adam & Co. reported in (2019) 103 taxmann.com 459* wherein, *Hon'ble Court* directed to bring to tax only gross profit rate as applied in other genuine purchases.

7.2. The Ld.DR on the contrary submitted that, the onus of providing the correctness of deductible expense is on assessee and only because of payment is made through cheque and assessee has bills of the said party, the purchases do not become genuine, in view of the categorical disowning by the said party on oath before the



sales tax department. The Ld.DR thus submitted that entire amount should be added in the hands of the assessee.

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

7.3. The total purchase sold by the assessee during assessment year 2009-19 was Rs. 3,53,07,169/- as appearing from page 25 of the PB for A.Y. 2009-10. The Ld.AO noticed that the Sales Tax Department of Government of Maharashtra listed out names of certain dealers, who were alleged to be involved providing accommodation entries without doing actual business. On verification, the Ld.AO noted that 5 parties in respect of whom information was received has issued bogus bills to the assessee company. The Ld.AO noticed that the assessee made purchases from five parties listed herein above, and that materials purchased from them were not recorded in the inward register maintained by the assessee. It is noted that Ld.AO placed full reliance on the enquiries conducted by Sales Tax Department to support the addition made in the hands of the assessee amounting to Rs.1,23,35,791/-. The details of the difference between inward register and the genuine stock is identifiable from the following extract. Scanned and reproduced hereunder page 25 of the PB:



M/s. Antony Motors Pvt. Ltd.
ITA No. 722- 724/M/2016
CO No. 150-152/M/2017

ANTONY MOTORS PVT. LTD. MS (08-09)
 Stock Summary 1-Apr-2008 to 31-Mar-2009

DESCRIPTION	OPENING STOCK		INWARD		OUTWARD		CLOSING BALANCE	
	QUANTITY (KGS)	VALUE	QUANTITY (KGS)	VALUE	QUANTITY (KGS)	VALUE	QUANTITY (KGS)	VALUE
Aluminium Material								
ALU. CHQ. PLATE	11,518	19,21,924	837	1,77,059	9,385	16,47,573	2,970	4,51,410
ALU. COIL	10	1,560	-	-	-	-	10	1,560
ALUMINIUM SECTION	8,931	13,88,503	21,649	32,09,308	27,239	41,37,251	3,341	4,60,560
ALUMINIUM SHEET	12,633	21,27,524	1,753	2,36,286	9,557	16,28,988	4,834	7,34,821
TOTAL	33,092	54,39,510	24,244	36,22,653	46,181	74,13,812	11,155	16,48,351
BRASS MATERIAL								
BRASS MATERIAL	-	-	5,040	21,95,992	5,040	21,95,992	-	-
G.I. MATERIAL:								
G.I Sheet	74,305	36,40,945	1,61,985	78,14,436	2,20,967	1,08,00,189	15,323	6,55,192
COIL	-	-	9,462	3,59,556	9,462	3,59,556	-	-
M.S. MATERIAL								
Ms Angle	17,773	8,17,558	1,79,215	75,17,612	1,75,525	74,96,992	21,463	8,38,178
MS BRIGHT ROD	-	-	7,278	3,37,249	7,066	3,24,529	212	12,720
MS Channel	11,945	4,79,472	1,52,248	62,49,465	1,59,859	65,56,795	4,334	1,72,142
M.S Flat	7,304	2,68,643	63,194	29,11,830	64,369	29,02,415	6,129	2,78,058
M.S Pipe	-	-	73,147	32,17,407	73,147	32,17,407	-	-
M.S Profile	1,399	1,55,961	65,132	31,85,648	66,531	33,41,609	-	-
M.S Round	3,530	1,57,663	69,834	33,24,997	66,636	31,58,052	6,728	3,24,608
M.S Rect.Pipe	49,626	20,93,553	20,514	41,58,772	70,140	62,52,325	-	-
M.S Sheet	1,13,220	42,31,030	15,642	7,05,87,139	15,36,319	6,96,49,964	1,41,255	49,68,206
M.S Sheet	8,593	6,16,959	62,922	89,66,925	56,072	85,35,617	15,444	10,48,267
M.S Sq.Pipe	1,643	55,330	16,431	31,99,832	16,831	32,17,872	1,243	37,290
M.S Ret.Tube	-	-	-	-	-	-	-	-
TOTAL	2,15,033	88,76,169	22,74,270	11,34,56,878	22,92,495	11,46,53,578	1,96,808	76,79,469
S.S. MATERIAL								
SS MATERIAL	-	-	1,729	3,93,040	1,729	3,93,040	-	-
TOTAL (A)	3,22,430	1,79,56,624	24,76,729	12,78,42,535	25,75,873	13,58,16,167	2,23,286	99,83,012
Points	-	2,23,090	-	43,74,567	-	43,00,742	-	2,96,915
Electricals & Wires	-	2,42,153	-	51,64,093	-	49,32,335	-	4,73,811
Consumable & Hardware	-	2,00,106	-	1,38,83,954	-	1,30,89,380	-	19,93,671
Chowki Materials	-	2,03,147	-	82,05,211	-	84,08,358	-	-
MDF , Glass Wool	-	11,38,042	-	1,65,39,117	-	1,66,50,172	-	10,26,987
Wet Kits	-	-	125	2,87,45,336	88	1,72,31,010	37	1,15,14,326
Furnace Oil	-	-	85,940	24,86,626	38,296	15,01,106	48,644	9,85,520
Zinc	-	-	84,478	76,47,007	60,373	54,65,463	24,105	21,81,544
Acid	-	-	-	1,05,674	-	93,674	-	12,000
Rubber	-	-	-	2,76,113	-	-	-	1,15,288
Hydraulic Material	-	-	-	2,16,85,288	-	1,91,26,154	-	25,59,134
Galvanising Material	-	-	-	8,27,730	-	7,78,045	-	49,685
Lid	-	-	3,330	49,75,313	1,840	25,91,313	1,490	23,84,000
Wheel	-	-	12,273	1,33,68,602	11,731	1,27,77,902	542	5,90,700
Other Material	-	28,00,834	-	2,05,82,826	-	2,34,81,975	-	11,40,575
TOTAL (B)	-	48,07,272	1,87,146	14,88,67,457	1,12,328	13,04,27,627	74,818	2,53,24,157
GRAND TOTAL(A+B)	3,22,430	2,27,63,896	25,63,875	27,67,10,012	26,88,201	26,62,43,794	2,98,104	3,53,07,159

7.4. We have considered several judicial precedents relied before us in the paper book and filed at the time of hearing. Admittedly, the assessee is unable to prove the genuineness of the purchase with respect to the five parties amounting to Rs.1,23,35,791/-. However the Ld.CIT(A) took note of the fact that, no sales could be effected without purchases. The assessee also produced quantity and quality wise details of purchase and their corresponding consumption and sales before Ld.CIT(A). The Ld.CIT(A) thus came to the conclusion



that, only profit element embedded in such purchases could be subjected to tax.

7.5. It is apparent that, the assessee purchased materials from one party and procured bogus bills of the same material from another party. There is no doubt that the assessee would have paid commission to procure such bills to these five parties, which has not at all been looked into by the Ld.AO. However, be that as it may, in such circumstances, all the judicial precedents relied before us shows that, only profit element embedded therein should be added. We note that the assessee offered GP ratio of 17.33 % to 16.71% for assessment years 2007-08 to 2009-10. And the profit element in the motor industry is also 15 to 20%. The Ld.CIT(A) restricted the addition to 7.5% of the bogus purchase bills that already forms part of the profit element. To that extent in our view, there is double addition.

7.6. At this juncture, we draw assistance from the following observation of decision of *Hon'ble Bombay High Court* in case of *PCIT vs. Mohammad Haji Adam & Co.(supra)*:

8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases



shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under—

" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

7.7. Admittedly, the assessee recorded the sales out of the alleged bogus purchases as turnover. Therefore, we are of the opinion that the addition should be based on gross profit ratio. Respectfully following the ratio laid down by *Hon'ble High Court*, in the interest of justice, we remand the issue to the Ld.AO. The assessee is directed to furnish details of genuine purchases and non genuine purchases. The Ld.AO shall then calculate the ratio of genuine and non genuine purchases with the GP ratio for relevant assessment years. The difference shall be considered as addition in the hands of the assessee.



Accordingly Ground No.2 raised by assessee and Ground no.1 raised by the revenue in all appeals under consideration stands partly allowed for statistical purposes.

8. Ground No.3 in assessee's cross objection is on the issue of restricting disallowance under section 14A @ 10% of the dividend income. In revenue appeal, **Ground no. 2** is on deleting the interest expenses while computing disallowance under section 14 A of the Act.

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

8.1. For the years under consideration the assessee has earned following as dividend:

2007-08 dividend earned is Rs.4,20,000/-

2008-09 dividend earned is Rs.12,103/-

8.2. Admittedly, the assessee earned dividend income for the years under consideration. It is noted that, the Ld.CIT(A) recorded a finding that the assessee did not make any suo moto disallowance for the assessment years 2007-08 & 2008-09. In our view, Rule 8D is applicable from assessment year 2008-09 as per the decision of *Hon'ble Supreme Court* in case of *Maxopp Investment Ltd., vs. CIT reported in (2011) 15 taxmann.com 390*. Therefore, Rule 8D cannot



be resorted to for computing the disallowance for assessment year 2007-08.

8.3. Further categorical finding by the Ld.CIT(A) that, apportion of expenditure cannot exceed the exempt income earned, cannot be found fault with. The Ld.CIT(A) placed reliance on the decision of coordinate bench of this *Tribunal* in case of *India Bulls Projects Ltd., vs. DCIT reported in (2015) 56 taxmann.com 43* to restrict the disallowance at 10%, based on the reasoning therein. We therefore do not find any infirmity in the disallowance being restricted to 10% of the exempt income earned by the assessee during assessment year 2007-08.

Accordingly, Grounds raised by the assessee and revenue for assessment year 2007-08 stands dismissed.

8.4. For assessment year 2008-09, we note that the assessee claimed that no expenditure was incurred by the assessee for earning the dividend income. It is noted that the Ld.AO did not examine whether the entire expenditure disallowed are allocable to earn exempt income. Once the assessee has claimed that it has not incurred any expenditure, other than allocated by itself for the purpose of disallowance u/s. 14A, the Ld.AO has to examine and find out which are the expenditure claimed by the assessee in the P&L Account allocable for the purpose of disallowance u/s. 14A in



respect of earning exempt income. The expenditure incurred in relation to income which does not form part of the total income only has to be disallowed u/s. 14A. Only when an expenditure has a direct or proximate relation with the exempt income, could be disallowed. In the case when there is no direct expenditure incurred for earning the exempt income then the allocation or apportionment of expenditure has to be made, only when, there is nexus between expenditure incurred and exempt income. In the case in hand the Ld.AO has not conducted any enquiry to find out which are the other expenditure which can be attributable for earning the exempt income.

In the absence of any such enquiry the action of the Ld.AO in making entire disallowance is not justified. For the assessment year 2008-09 the Ld.CIT(A) worked out the disallowance u/s. 14A at 10% of the expenditure incurred for composite activities. When there is no change in the facts and circumstances of the case for the year under consideration in the expenditure to be apportioned in relation to the earning of exempt income vis-à-vis assessment year 2008-09, the disallowance made for the assessment year 2008-09 has to be followed for the year under consideration. We therefore do not find any infirmity in the disallowance being restricted to 10% of the exempt income earned by the assessee during assessment year 2008-09.



Accordingly, Grounds raised by the assessee and revenue on this issue for assessment year 2008-09 stands dismissed.

Ground No.4 in the cross objection filed by the assessee is in support of deleting the addition made under section 36(1) (iii) of the Act.

The revenue alleges the view taken by the Ld.CIT(A) on this issue in ground no. 3 for A.Y.2008-09.

It is noted that the Ld.CIT(A) deleted the addition by observing as under:

“2.8.7 Ground No. 7 is against the action of Ld.AO in disallowing Rs.56,492/- u/s 36(1) (iii). At the outset it has been stated by Ld. AR that appellant's case is covered by the decision of Hon'ble Bombay High Court in the case of Reliance Utility 313 ITR 340 (Bom) and in HDFC Bank 366 ITR 505 (Bom). In view of the binding decisions of Hon'ble Bombay High court, the addition made is deleted. Accordingly Ground No. 7 is allowed.”

There is nothing argued by the Ld.DR or any evidence placed on record contrary to the above observation by Ld.CIT(A). Considering the smallness of the amount deleted, we uphold the same.

Accordingly the grounds raised on this issue by the assessee stands allowed & revenue stands dismissed.

In the result the appeals filed by the assessee & revenue stands partly allowed.

Order pronounced in the open court on 30-10-2024.

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER



M/s. Antony Motors Pvt. Ltd.
ITA No. 722- 724/M/2016
CO No. 150.-152/M/2017

Mumbai. Date: 30.10.2024.- *Dragon*
Snehal c. ayare, stenographer

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