

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &
MS PADMAVATHY S, AM**

**I.T.A. No. 3090/Mum/2024
(Assessment Year: 2012-13)**

Nissim Traders Pvt. Ltd., 1501, Orient Height, Rajaram Mohanrai Road, Grant Road (East), Mumbai-400004. PAN: AABCN3760G	Vs.	ACIT, Circle-10(3)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri P.V. Desai, AR

Revenue / Respondent by : Shri Layaqat Ali Aafaqui- Sr. DR

Date of Hearing : 23.04.2025

Date of Pronouncement : 06.05.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi (in short "CIT(A)) dated 05.09.2023 for Assessment Year (AY) 2012-13. The assessee raised the following grounds of appeal –

“1.1 The Ld. CIT(A) erred in law and on facts in upholding the re- F opening of the assessment u/s 147 done by the AO in contravention of the provisions of law.

1.2 The Ld. CIT(A) erred in law and facts in not quashing the order u/s 144 r.w.s 147 passed by the AO in total contravention of the provisions of law.

1.3 The appellant prays that the illegal and unlawful order passed u/s 144 r.w.s 147 be quashed.

2.1 Without prejudice to the above:

The Ld. CIT(A) erred in law and on facts in upholding the unjustified and unwarranted addition of Rs 1,15,57,000/- made to the declared income in contravention of the provisions of law.

2.2 The Ld. CIT(A) failed to appreciate that the AO cannot make the additions to the declared income on vague and frivolous grounds without having any proof or evidence to substantiate his claim.

2.3 The Ld. CIT(A) failed to appreciate that the purchases and the payment for purchases both cannot be treated as unexplained cash credit and added to declared income by completely ignoring the facts on record.

2.3 The Ld. CIT(A) failed to appreciate that additions to the assessed income cannot be made on basis of vague and unsubstantiated information particularly when assessments for the same year have been previously made u/s 143(3) and the declared income has been accepted by the AO.

2.4 The appellant prays that the unjustified and unwarranted addition to the assessed income of Rs 1,15,57,000/- made to the assessed income in total contravention of the provisions of law be deleted in toto.”

2. The assessee is a private limited company and filed the return of income for AY 2012-13 on 30.09.2012 declaring a total income of Rs. 55,59,320/-. The case was selected for scrutiny and the assessment proceeding were completed under section 143(3) of the Income Tax Act, 1961 (the Act) dated 31.01.2015 where the income returned by the assessee was accepted. Subsequently the AO received information based on survey conducted by DDIT (Inv.) in the case of M/s Reema Polychem and M/s Reema Polychem Pvt. Ltd. that the assessee is one of the beneficiaries which has taken accommodation entry from one M/s Payal Fine Lab Pvt. Ltd. which company has taken accommodation entries from the parties who

were surveyed. Therefore, the AO reopened the assessment of the assessee by issue of notice under section 148 of the Act. The AO called on the assessee to furnish the details of the transactions with M/s Payal Fine Lab Pvt. Ltd. The AO also issued notice under section 133(6) of the Act to M/s Payal Fine Lab Pvt. Ltd. For the reason that no details have been furnished by the assessee with regard to the impugned transactions and for the reason that M/s Payal Fine Lab Pvt. Ltd. has not responded to the notice under section 133(6) of the Act, the AO made an addition of Rs. 1,15,57,000/- towards the receipts of Rs. 55,00,000/- and sale of Rs. 60,57,000/-. Aggrieved assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee submitted that inspite of repeated request no material evidence regarding the alleged accommodation entry was provided to the assessee which proves that the AO did not have any material evidence in order to arrive at the reason to believe that the income has escaped assessment. The CIT(A) did not accept the submissions of the assessee and confirmed the addition made by the AO by holding that

“4.6 In my opinion for a genuine transaction refers to the accurate and transparent recording of a business transaction related to the acquisition of goods or services from an external vendor or supplier. This entry is made in the company's books of accounts to document the purchase / sale and its corresponding financial impact. A genuine entry reflects the true nature of the transaction and adheres to accounting principles and standards. It typically should include the following information:

- 1. The date on which the transaction occurred.*
- 2. Information about the vendor or supplier from whom the goods or services were acquired. This might include the vendor's name, address, and any identifying information.*
- 3. A clear and concise description of the goods or services purchased. This helps in identifying the nature of the transaction.*
- 4. The invoice number or reference number provided by the vendor. This helps in cross-referencing the entry with the vendor's documentation.*

5. *The quantity of goods or services purchased and the price per unit. This information is necessary for calculating the total cost of the purchase.*

6. *The total amount of the purchase, which is the product of the quantity and unit price.*

9. *If relevant, details about the payment terms and conditions agreed upon with the vendor, such as payment due date, discounts, etc.*

10. *Reference to the source document supporting the transaction, such as the vendor's invoice or purchase order.*

11 *Any taxes, fees, or additional charges associated with the purchase.*

4.7 The appellant has provided only the bank statement showing payment of Rs. 5500,000/- to M/s Payal fine fab pvt ltd. No other documents showing any of the above mentioned requirements has been submitted by the appellant to show that the said payment is against genuine purchases or services. Correspondingly, it is also an undisputed fact that M/s Payal fine fab pvt ltd did not carry out any genuine business in the relevant period. When the seller entity does not have to anything to sell what is the use of making payment terming it as purchases. The appellant has not been able to substantiate it transactions with M/s Payal fine fab pvt ltd. in view of the above, I do not find any mistake in the reopening the case by the AO and the additions made in the assessment order. The 133(6) notice issued by the AO during the course of assessment proceedings remained un-complied by the M/s Payal fine fab pvt ltd and appellant too did not produce the entity before AO. In view of the above, both the grounds taken by appellant are dismissed.”

3. There was a delay of 226 days in filing the appeal before the Tribunal. The assessee in this regard filed an application for condoning the delay. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon’ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 226 days in filing the appeal and admit the appeal for adjudication.

4. The primary contention of the ld. AR is that the assessment is reopened after a period of four years and therefore the AO ought to have reopened the assessment only when there is concealment on the part of the assessee to disclose any material facts. The ld. AR argued that in the reasons recorded the AO has stated that the M/s Payal Fine Lab Pvt. Ltd. has taken loan from the parties who were subject to survey and accordingly come to the conclusion that the sales made by M/s Payal Fine Lab Pvt. Ltd. to the assessee is not genuine. The ld. AR further submitted that other than the allegation that the assessee has entered into transactions with M/s Payal Fine Lab Pvt. Ltd. the AO has not brought any material on record to substantiate that the impugned transactions are not genuine. The ld. AR also submitted in the statements recorded during the survey proceedings, the assessee's name was not mentioned and that the AO has not found any cash trail in support of the allegation that the assessee has routed the unexplained cash through accommodation entry. The ld. AR drew our attention to the fact that in assessee's case the scrutiny assessment under section 143(3) was completed on 31.01.2015 where the AO has examined entire books of accounts including the ledger account of M/s Payal Fine Lab Pvt. Ltd. Accordingly the ld AR argued that the addition made by the AO is merely based on surmise and not on any valid materials.

5. The ld. DR on the other hand argued that the assessee's claim that the reasons recorded are not clear with regard to the income escaping assessment is not correct for the reason that the assessee has not raised any objections before the AO in this regard. The ld. DR drew our attention to the findings of the CIT(A) to submit that the accommodation entries which are routed through assessee's books are non-genuine and that the assessee failed to discharge its duties in this regard. The ld. DR also argued that M/s Payal Fine Lab Pvt. Ltd. did not respond to the notice under section 133(6) which goes to prove that the entries made in the books of the assessee

with regard to the transactions purchases from M/s Payal Fine Lab Pvt. Ltd. are not genuine.

6. We heard the parties and perused the material on record. In assessee's case the original scrutiny assessment under section 143(3) of the Act was completed on 31.01.2015 accepting the income returned by the assessee. Subsequently based on the information from DDIT (Inv.) that the assessee is one of the beneficiaries of accommodation entries, the assessment was reopened under section 147 of the Act. From the perusal of the reason recorded, we notice that the AO has treated the sale and the receipts against the same from M/s Payal Fine Lab Pvt. Ltd. as non-genuine in the hands of the assessee for the reason that from M/s Payal Fine Lab Pvt. Ltd. has entered into accommodation entries from entities which were found to be paper entities as part of the survey conducted and statement recorded. The assessee during the re-assessment proceedings had written letters to the AO seeking evidences received from DDIT (Inv.) so that the assessee could file proper objections against the re-opening (page 7 to 10 of Paper Book). It is the contention of the Id. AR that the AO did not respond to the letters and therefore the assessee could not furnish the required details against the allegation and that the AO has concluded the assessment ex-parte. From the perusal, finding of the CIT(A) which is extracted in the earlier part of this order, we notice that the CIT(A) has confirmed the addition for the reason that the bank statement reflects the payments made to M/s Payal Fine Lab Pvt. Ltd. and that the assessee has not produced the relevant documents to substantiate the purchases. However from the perusal of records we notice that the assessee has furnished the invoice copies, ledger accounts, audited financial statements of M/s Payal Fine Lab Pvt. Ltd. as evidence in support of the transaction which have not been considered by the CIT(A). In fact the assessee has furnished all the details as has been listed in the CIT(A)'s order (as extracted herein above) which

the CIT(A) has stated as a requirement to substantiate the impugned transaction. We also notice that other than the findings from survey conducted in the third party premises which were alleged paper companies, the revenue did not bring any material on record to evidence that the transactions entered into by the assessee are non-genuine.

7. In assessee's case the reopening under section 147 of the Act vide notice dated 29.03.2019 is beyond four years. It is relevant to examine the provisions of section 147, with regard to reopening beyond 4 years which read as under –

147 - Income escaping assessment.

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

8. From the perusal of the above provisions it is clear that if the reassessment proceedings beyond 4 years from the end of the relevant assessment year cannot be initiated unless the assessee has failed to disclose fully and truly all material facts. In assessee's case, we have already seen that the assessee has disclosed the transactions

entered into with M/s Payal Fine Lab Pvt. Ltd in the books of accounts and has also furnished the relevant documents in support of the purchases.

9. In view of these discussions and considering facts of the present case, we are of the considered view that the AO is not correct in treating the transactions entered into with M/s Payal Fine Lab Pvt. Ltd as non-genuine, merely based on the survey report and that the party has not responded to the notice under section 133(6) without recording any adverse finding on the evidences submitted by the assessee substantiating the transaction. Accordingly we direct the AO to delete the addition made in this regard to the tune of Rs.1,15,57,000/-.

10. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 06-05-2025.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

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