

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

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.5264/MUM/2024
(A.Y. 2015-16)

M/s Alucast Engineering Pvt. Ltd. Company, 3/18, AC Market, Tardeo Road, Tulsiwadi S.O., Mumbai-400 034, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle - 6(1)(1), Room No. 504, Aayakar Bhavan, M.K. Road, Mumbai - 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHCA9486C		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Nishit Gandhi, AR
Respondent by :	Dr. K.R. Subhash, (CIT DR)

Date of Hearing	17.06.2025
Date of Pronouncement	28.07.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The instant appeal is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 147 r.w.s 144 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 22.05.2023 for the Assessment Year [A.Y.] 2015-16.



2. The grounds of appeal are as under:-

1. *In the facts and in the circumstances of the present case the learned A.O. erred in initiating re-assessment proceeding, which is invalid and the consequent assessment order there from requires to be quashed and the learned CIT erred in ignoring the invalid re-assessment proceeding.*
2. *In the facts and in the circumstances of the case the learned A.O. erred in initiating reassessment in the present case which is barred by limitation and therefore unsustainable and required to be quashed and the learned CIT erred in ignoring the invalid re-assessment proceeding.*
3. *In the facts and in the circumstances of the case the learned A.O. erred in making addition of Rs.1,37,61,87,098/-without understanding the facts of the case properly arbitrarily out of suspicion on the basis of assumption and presumption without any adverse material on record requires to be deleted in the interest of justice and the learned CIT erred in not deleting the addition.*
4. *The learned A.O. erred in making addition of purchase of Rs.1,37,61,87,098/-without understanding the facts of the case and without appreciating that there cannot be sales without purchase and when sales is offered to taxation the purchase cannot be disallowed and the learned CIT erred in not appreciating that the appellant has offered the sales of Rs. 3,56,17,25,921/- to taxation and claimed deduction of the purchase of Rs. 3,55,09,49,303/- since, there cannot be sales without purchase.*
5. *The learned A.O. erred in not understanding the terms of sales which are by transfer of ownership on ex-warehouse basis and by endorsement since, in the bill differ business, goods are lying in warehouse of supplier. The payment is made to original supplier out of own fund or through bank finance under 180 days letter of credit bill discounting and the learned CIT erred in not appreciating the facts of the case.*
6. *The appellant prays that stay be granted against the recovery of outstanding tax consequent to high-pitched assessment order and penalty proceeding should be stayed till the disposal of appeals since the appellant discontinued its business long back for want of finance.*
7. *The appellant states that the CIT(A) confirmed the addition relying upon one incorrect observation that the goods purchased from Pratibha Industries Ltd. on 05/01/2015 is not sold to M/s. Pankaj Metals but the fact is that the goods purchased from M/s. Pratibha Industries on 05/01/2015 is sold to M/s. Jay Polychem India Ltd. On 05/01/2015 and hence, not selling goods to M/s. Pankaj Metal does not make the business transaction as bogus.*

3. Brief facts of the case are that the assessee is Private Limited company regularly assessed to tax. It filed its return of declaring total



income of Rs.44,62,795/-. It deals in trading in aluminium and steel products on wholesale basis for the period under consideration. According to the assessment order, the assessee indulged in alleged bogus transactions with sister concern M/s Pankaj Metals('PMS).It was observed that the assessee claimed to have sold goods worth Rs 137.16 cr. to this concern but it did not submit any evidence in connection with transportation of goods sold to it despite repeated opportunities although it is stated to have produces copies of sales register, product wise annual sale quantity, copy of ledger account, table co-relating purchase and consequent sales made to PMS. Copy of assessment order for the AY 2012-13 made u/s 147/143(3) the Act was also submitted.

3.1 It is further stated that in absence of evidence of transportation of goods, the said sale were considered to be non-genuine and only paper transactions. It has been pointed out investigation carried out by the Department w.r.t. STR (Suspicious Transactions Report),it was found that the said entity was carrying on any business of sale and purchase on paper only. Therefore, all the customers and clients who made sales or purchase with it, had merely issued/given the paper entry only. It is also observed that as per details of transportation submitted, it was noticed that every time PMS was arranging it. However, even those transportation details were not produced.



Accordingly, entire transaction of sale of Rs 137.16 cr was treated as non-genuine was disallowed and added back to the income.

4. In the subsequent appeal before the Id.CIT(A) in the grounds of appeal, it was contented that the AO erred in making the above addition without understanding the facts of the case properly and out of suspicion and assumptions and without any adverse materials in hand made the addition. He did not appreciate that there cannot be sales without purchase and when the sales are offered for taxation, the purchase cannot be disallowed. It was also submitted that goods were sold on ex-warehouse basis and by endorsement. The A.O. erred in not understanding the terms of sales which are by transfer of ownership on ex-warehouse basis and by endorsement since, in the bill differ business, goods are lying in warehouse of supplier. The payment is made to original supplier out of own fund or through bank finance under 180 days letter of credit bill discounting and the learned CIT erred in not appreciating the facts of the case.

4.1 In the course of appeal proceedings, it explained the trade mechanism in the case claiming that there was no physical movement of goods and sales is by transfer of ownership of goods on ex warehouse basis. It was a case of what is popularly known as 'Bill differ business'.



The company is stated to be doing this business in group with sister concern known as Adatiyas for earning profit known as Adat. The group concern of assessee and its sister concerns are providing trade credit either with own finance or with the help of bank finance through letter of credit bill discounting. The nature of business of the assessee and its group company as per the assessee was that the original corporate suppliers having huge stock at their huge warehouse i.e. stock yard when need finance, sale their goods to it by transfer of ownership on ex-warehouse basis against payment. The assessee sells said goods to its sister concern PMS on transfer of ownership on same ex-warehouse basis. There is no transport since the goods are sold on above basis. The quantity of goods is very high and the transportation expense is sizeable and hence, the delivery is made by endorsement on ex-warehouse basis. Later PMS sales goods to end customer / the original supplier on 180 days credit terms secured letter of credit. The ownership in goods transfers from the original supplier to appellant to sister concern PMS and to end customer / the original supplier with 180 days credit payment terms secured by letter of credit. In this trade mechanism original supplier monetizes their sale of stock by receiving payment from assessee .The end customer / original supplier is offered 180 days credit terms by PMS secured by letter of credit. This LC bill discounting is done



through State Bank of India and there is no cash transaction anywhere. The assessee has no working capital or bank facilities hence uses the group company PMS having working capital limits of bank and LC bill discounting limits from banks for onward sale on 180 days credit terms. This mechanism helps the assessee to sustain business. It has made all compliances under the prevailing MVAT Act, 2002. The entire transactions are strictly through banking channels only and there is no transaction of purchase or sales on cash terms.

4.2 It was also submitted before the Id.CIT(A) that the appellant had co-related its each and every purchase with consequent sale thereof to PMS and similarly PMS has co-related each and every purchase with consequent sale thereof to their customer / to the original supplier. The purchase and sales are properly reflected in MVAT returns and MVAT audit report and there is no mismatch anywhere. Huge MVAT is paid and there is no outstanding MVAT liability. The department has matched the entire purchase and sales returns with MVAT number of the dealer and there is no mismatch anywhere. It was further contented that the A.O. has suspected the genuineness of purchase and sales for want of physical delivery and not grasped the facts of the case of the trade mechanism of the assessee and its group companies. In this type of trade there is no transportation, there is no



physical movement of goods and the size and weight of the goods are in tones i.e. heavy weight goods. The movement of payment is through banking channel only and the same is verifiable from the banks.

5. Before us, the ld.DR relied on the orders of authorities below while the ld.AR vehemently opposed the impugned appellate order. It is submitted that both the authorities have not tried to understand the basic nature of transactions. The ld.CIT(A) did not consider its detailed submissions which were duly supported with necessary evidence, none of which have been dealt with by him. It has provided the table co-relating the quantitative sale made to PMS with consequent purchase and consequent sales thereof with quantity is fully correct and do not suffer from any mistake at all. It is contented that the assessee furnished the relevant details and fully complied with the notices. The AO completed the assessment arbitrarily out of suspicion and on the basis of assumption and presumption without any adverse material on record against it by making addition of Rs.1,37,16,79,699/- to the returned income and the said high-pitched assessment order resulted in demand of Rs. 92,34,16,200/-. The A.O. has not understood the facts that the sale made to PMS of Rs. 1,37,16,79,699/- was offered to taxation by crediting the trading profit and loss account and there cannot be sale without purchase and hence, the purchase is claimed as a deduction. The



A.O. cannot make addition of sales since, it is offered to taxation and cannot deny the purchase as a deduction since, there cannot be sales without purchase and the A.O. can at the most differ on profit margin only and nothing else. Moreover, the entire business transactions are through banking channel only.

5.1 It is further pleaded that the addition deserves to be deleted outright simply on the most primary ground that as per the AO the sales are added back as income and the corresponding purchases too. However, the assessee has not made purchases of the said amount at all. Such an addition apart from being impermissible in law is also contrary to the canons of taxation. The assessee had correlated each and every purchase with corresponding sales and vice versa. Therefore, there is no question of any understatement of profit, etc. On a bare perusal of the submissions made before the Ld. AO as well as the Ld. CIT(A) it is evident that the assessee has explained all its transactions with numerous documents which have neither been disputed nor refuted.

5.2 It is further stated that the CIT(A) has, in fact, gone on a wrong footing by simply picking out one purchase bill of 05.01. 2015 in respect of purchases from Pratibha Industries and held that the same is not a part of the details furnished by the assessee in respect of sales to PMS without appreciating the entire transaction. Admittedly, the said



purchases made from Pratibha Industries were actually sold to Jay Polychem. However, before drawing an adverse observation which is purely based on assumption, the Ld. CIT(A) did not even confront the assessee. As a result, the order came to be passed on an incorrect factual basis, which in turn affirmed a grossly incorrect order of assessment.

5.3 It is further contented that the assessee has maintained all the requisite books of accounts. The same are duly audited under various Statutes including the Companies Act, the Income Tax Act and even under the Maharashtra Value Added Tax [MVAT] Act. Admittedly, no adverse inference as regards the books of accounts has been drawn by any of the authorities and even the Ld. AO or the Ld. CIT(A). It was also subjected to Revenue Audit under the MVAT Act. However, no adverse inference was drawn even by the MVAT authorities. The additions springs merely out of assumption and therefore unsustainable.

5.4 The Ld. AO has simply made the additions on the ground that no evidence of transportation was furnished while at the same time he has also accepted that transportation was arranged every time by PMS. In any case, the assessee had duly explained that the same was on an ex-warehouse business and the property in the goods was transferred on the basis of endorsement on the bills which is an accepted mode of transfer under the Sales Tax Law as also a conventional practice in this



type of trading of goods. The Id. AO as well as the Ld. CIT(A) have grossly erred in not even considering this aspect of the matter.

5.5 It is also pointed out that a similar issue had been accepted in a Faceless Assessment in the case of a group concern in Volition Trading P. Ltd. Also, even in the case of PMS itself, a similar issue was picked up for reassessment and then accepted by the Assessing officer himself in a Faceless Assessment. All the requisite details, documents, evidences of sales, purchases, bank statements, etc. were furnished and had not been disputed. Exactly similar transactions have been considered and duly accepted by National Faceless Appeal Centre, in the case of PEL Industries, a group concern of the assessee. The nature of business has been duly explained and accepted by him in the said order.

5.6 In respect of the observations of the Id.CIT(A) in respect of an invoice relating to a purchase from Pratibha Industries on 05.01.2015 it is submitted that the Id.CIT(A) has gone on a completely erroneous footing on the following assumptions:

- a. It is assumed by him that all the sales made to Pankaj Metals were made exclusively out of purchases made from Pratibha Industries and every purchase from Pratibha Industries is sold only to Pankaj Metals;
- b. The invoice dated 05.01.2015 relied on by him in fact reflects all the transaction with Pankaj Metals;
- c. That the assessee has not made purchases or sales to any other party.



d. Based on his examination of accounts since there are lesser expenses than what should have been incurred by the Assessee and therefore the transactions are not acceptable.

5.7 These assumptions are grossly incorrect. In any case, as per the invoice relied on by the Ld. CIT(A) the sale is made to Jay Polychem and for which each and every detail has been and the sale amount is also offered to tax.

5.8 The assessee submitted that, without prejudice to any of the above, assuming without accepting, that the AO's observation is correct that the transactions of purchase and sale are only on paper, even in such a case, what could be taxed is at the most the net profit in the transaction in as much as for every purchase there is a corresponding sale and vice versa. This profit has already been offered to tax. It is, therefore, submitted that even going by the allegation of the AO the entire transaction of sale or purchase cannot be treated as income of the assessee. The order is grossly wrong even on this count. The order of the Ld.CIT(A) proceeds on assumptions as stated above and therefore the same be reversed and the additions made by the Ld. AO be deleted.

5.9 The AO has also not mentioned any specific section under which the addition has been made. In the absence of a specific provision, no assessment can be made on the assessee. In any case, sales recorded in the books cannot be brought to tax as unexplained cash credit u/s 68.



That is the reason why even the AO has not invoked the said section while making the impugned additions in the hands of the Assessee.

5.10 Apart from merits of the case, the assessee has also legal grounds challenging the validity of reassessment proceedings and the consequent assessment order. It is claimed that the present reassessment is bad in law and void since the same is barred by limitation. The present reassessment is bad in law also because the same is initiated by the Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer (FAO) in terms of section 151A of the Act. Further, the impugned reassessment is bad in law also because to the admission of the AO himself the same is made on the basis of sales which are already offered to Tax. Therefore, there is no question of income escaping assessment. Sales are treated as income escaping assessment which is admitted by the Assessing Officer himself. Despite this he has proceeded with the reassessment, which is impermissible in law. The reassessment was initiated merely to make roving and fishing enquiries whereby no specific transaction has been referred to in the Notice u/s 148A(b) or the order u/s 148A(d) except making some generalised statements. The re-assessment was initiated simply on surmises in order to first make a fishing enquiry and thereafter find some income which could be treated as income escaping assessment.



Thus even the assessment order does not clearly spell out the nature of additions nor does it state as to what is the basis of making such an exorbitant assessment.

6. We have gone through the contents of the orders of the lower authorities, rival submissions, detailed note submitted by the assessee and voluminous paper book containing supporting details to the contentions made. It is noticed that the Id.CIT(A) has upheld the reassessment proceedings u/s 147 of the Act which was contested before him at the outset which was also contested by the assessee before him holding that the same was based on credible information. Moreover, the return was not subjected to scrutiny assessment earlier.

7. In so far as the merits are concerned, he Id.CIT(A) reproduced the contentions made by the assessee before him on pages-13 19 of the appellate order wherein he has narrated the detailed submissions of the assessee in support of the genuineness of the said transactions inter alia claiming that each and every sales and purchase transaction are correlated, books of account duly maintained were audited. It was also claimed that it was assessed under MVAT Act 2002, payments made to the suppliers and purchasers were all through banking channels. All suppliers and customers of the assessee were registered dealers under MVAT and in their respective returns, no mismatch was found. It was



also pointed out an inspection under MVAT and MGST was also conducted on the assessee and PMS and other group entities during 06.12.2019 to 12.12.2019 to cover the investigation period from FY 2014 to 20220 and present reassessment was part of investigation. It is emphasised the above authorities did not find any non genuine transaction. It was also submitted that in an identical reassessment case of a group company M/s Volition Trading P.Ltd which made a sale of Rs 5.99 cr. claimed to be non genuine, the assessment order was AY 2014-15 was passed accepting the returned income. It is also pointed out that similarly in another group case PMS reassessment proceedings under taken for AY 2012-13 with regard to alleged bogus transaction as per information from Investigation wing, Baroda on escaped income of Rs 86.98 cr. was accepting the transaction genuine by the DCIT-19(1),Mumbai.

7.1 We further note that the Id.CIT(A) has once again reproduced the contents of the assessment order from pages 20 to 25 of the appellate order. As for his own decision, he firstly pointed out that the expenses debited to the profit and loss account of 'Other expenses' and finance cost, travelling etc were not commensurate with the disclosed purchase and sale amounting to Rs 355.09 cr and Rs 356.17 cr respectively. Secondly, he pointed out that as per quantitative details of



sales made to PMS from consequent purchase from Pratibha Industries, no purchase was reflected therein from 5.1.2015 to 7.1.2015, without calling for any clarification from the assessee in this regard although as per the contention made by the assessee before us, the said transactions related to Pratibha Industries with PMS, in individual capacity only. However, based on above stated two observations, he rejected the contentions of the assessee and upheld the addition made by the AO.

7.2 It is noteworthy that the AO has treated the sales made to PMS as bogus in the absence of any evidence brought on record by the assessee to show actual delivery of goods. The ld.AR in the detailed submissions made before the ld.CIT(A) also has contented that the transactions were made on ex-warehouse basis and there is no physical delivery involved. The assessee had also explained the peculiar nature of the business carried on by the assessee. However, the appellate order as also the assessment order are completely silent on this claim but kept harping on delivery evidences on numerous occasions and even the adverse conclusion drawn by treating the entire transactions as non genuine is based on this aspect only. Other important aspects of the case as narrated in the preceding paras and duly highlighted by the assessee are not even touched upon by the ld.CIT(A). Both the AO and the ld.CIT(A) have failed to appreciate the exact nature of business



carried out. Moreover, the AO has not rebutted the contentions regarding the adherence of the assessee company to MVAT Act, audited report and also not found any infirmity in the purchases by the assessee. No adverse finding has been given on the mode of transactions, books of account including stock register none of which has been rejected in any manner. Besides, the Id.AR has placed on record assessment order in the case of PMS wherein the assessment order passed u/s 143(3) of the Act no adverse finding has been given nor any addition made. Similarly, its reliance on assessments of other group entities involving similar facts drew no observation or finding by both the lower authorities.

8. From the above discussion, it is evident that the appellate order have been passed in almost an ex-parte and preconceived manner, completely ignoring the submissions made before him by the assessee. A major part of the appellate order comprises of reproduced portions of grounds of appeal, contents of the assessment order or the written submissions made by the assessee before him while the operative part of the decision is too sketchy and without much application of mind. He has failed to consider the submissions made before him in a judicious and proper perspective. Therefore, we are constrained to observe that the Id.CIT(A) has not decided the appeal on



merits which is contrary to the mandate of section 250(6) of the Act. The same is reproduced here under for ready reference:

"(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

8.1 A perusal of above provision makes it clear that the CIT(A) is bound to dispose of the appeal before him on merits. Once an appeal is preferred before him, then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as per section 250(4) of the Act. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides, Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). The appellate order is therefore, deficient in this regard and grossly violative of the principles of natural justice.

9. In the light of above observations, in the substantial interest of justice, we set aside the appellate order and restore the entire matter



back to the Id.CIT(A) for passing the assessment order *de novo* after considering the detailed submissions made by the assessee before him both on legal grounds as also on merits. Needless to state he would allow the assessee sufficient opportunity of hearing to explain its case. The assessee is also directed to make necessary compliance to notices issued and replies, if any, sought by the appellate authority.

9.1 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by him independently and in accordance with law.

10. In the result, the appeal is **allowed for statistical purposes.**

Order pronounced in the open court on 28.07.2025.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 28.07.2025

Lubhna Shaikh / Steno



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

