IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.150/Mum./2022
(Assessment Year : 2010-11)

Shri Rajesh G. Jain
Flat no.304, Janki Orchid
90 Feet Road, Bhayander (W)
Mumbai 401 101 PAN – AAEPJ5354H ……. Appellant

v/s

Income Tax Officer
Ward–2(2), Thane Park ……. Respondent

Assessee by : Shri Lalit Munoyat
Revenue by : Smt. Mahita Nair

Date of Hearing – 20/12/2023	Date of Order – 29/12/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/03/2020, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)–1, Thane, ["*learned CIT(A)*"], for the assessment year 2010-11.

2. The present appeal has been listed for hearing before us pursuant to the order dated 06/11/2023, passed by the coordinate bench of the Tribunal in Rajesh G. Jain v/s ITO, M.A.no.450/Mum./2023 (in ITA no.150/Mum./2022, for the assessment years 2010-11), whereby, the earlier order dated 21/10/2022,

passed under section 254(1) of the Act was recalled and the appeal was directed to be re-fixed for hearing.

3. The present appeal is filed after a delay of 525 days. As per the assessee, the impugned order dated 13/03/2020 was received by the assessee on 22/06/2020, and the present appeal was filed by the assessee on 28/01/2022. The learned Authorised Representative ("*learned AR*") submitted that due to the pandemic situation and the lockdown implemented in the State of Maharashtra, the assessee could not file the present appeal within 60 days from the date of receipt of the impugned order. We find that vide order dated 10/01/2022, passed by the Hon'ble Supreme Court, in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, the limitation period for filing the appeal was extended upto 29/05/2022. In view of the above, since the present appeal has been filed within the extended time granted by the Hon'ble Supreme Court during the Covid period, therefore there is no delay in filing the present appeal and we proceed to decide the same on merits.

4. In its appeal, the assessee has raised the following grounds:–

> *"1) The Order is bad in law and also on the facts of the case.*
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> *2) The Order is bad in law as it is against the express provision of the Circular No. 19/2019 dated 14th August 2019 which provides for compulsory issue of a computer-generated Document Identification Number (DIN) and quoting of the same in the body of such communication, by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019, failing which such communication shall be treated as invalid and shall be deemed to have never been issued.*
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> *3) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred in estimating the profit from alleged Hawala purchases being Rs.4,22,145/- @*

12.50% of the alleged bogus purchases of Rs. 33,37,160/-, based on the information available on the web site of sales tax department called "Revised List of Hawala Parties. The estimated profit @ 12.50% is on a higher side.

4) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred in estimating the profit from alleged Hawala purchases being Rs.5,00,471/- @ 12.50% of the alleged bogus purchases of Rs. 40,03,764/- based on the information available on the web site of sales tax department called "Revised List of Hawala Parties. The estimated profit @ 12.50% is on a higher side.

5) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred in disallowing 100% of alleged Hawala purchases based on the information available on the web site of sales tax department called "Revised List of Hawala Parties being Rs.6,27,906/- which is in contradiction to the Ld. CIT(A)'s own decision of estimating the profit from alleged Hawala purchases @12.50% from similar transactions.

6) On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in disallowing a sum of Rs. 67,17,345/- being unexplained sundry creditors for goods outstanding at the year-end without realizing the fact that these creditors represent unpaid alleged Hawala purchases for the year which also amounts to disallowing 100% of alleged Hawala purchases which is in contradiction to the Ld. CIT(A)'s own decision of estimating the profit from alleged Hawala purchases @1 2.50% from similar transactions.

7) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred in by confirming an Ad Hoc addition of Rs. 75,000/- on account of lower household withdrawal considering the status of the appellant and his standard in the society.

8) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred by confirming an Ad Hoc addition of Rs. 50,000/- on account of various expenses which were allegedly not fully verifiable.

9) On the facts and in circumstances of case and in law, the Ld. CIT(A) erred in not following the ratio of jurisdictional ITAT and the High Court, according to which only profit element embedded in the alleged bogus purchases can be taxed and not the whole of the alleged bogus purchases.

10) The Ld. CIT(A) has erred on the facts of the case by not appreciating the effect of the "addition in totality" on the resulting rate of Gross Profit which, under normal circumstances, is highly unrealistic in any line of business activity.

11) The Ld. CIT(A) has erred in law by not adopting the theory of contemporary correlation by ignoring the inevitable consequences, incidents and corollaries which must inevitably have flowed when an imaginary state of affairs has been treated as real.

12) The above grounds of appeal are supplementary or complimentary to the other grounds of appeal and not to the exclusion of any other ground of appeal.

13) The appellant craves to leave to amend, modify and alter any grounds of appeal during the course of hearing of this case."

5. Ground no. 1 is general in nature and therefore the same needs no separate adjudication.

6. Ground no. 2 raised in the present appeal was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

7. Grounds no. 3-5, raised in assessee's appeal, pertain to addition on account of alleged bogus purchases.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and has earned income from the business of supply of building materials. For the year under consideration, the assessee filed its return of income on 21/09/2010 declaring a total income of Rs. 3,73,640. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the scrutiny proceedings, the Assessing Officer ("*AO*") noted that the assessee has shown purchases from parties whose names appear in the list of Hawala parties declared by the Sales Tax Department, Mumbai. Accordingly, notices under section 133(6) of the Act were issued to all these parties. However, only one party, i.e. M/s Abhishek Enterprises complied with the notice issued under section 133(6) of the Act and stated that he did not have any transaction with the assessee. While the other parties did not comply with the notices issued under section 133(6) of the Act. Accordingly, the AO asked the assessee to produce these parties for verification to prove the genuineness of the transaction but the assessee despite the grant of opportunity failed to produce them before the AO for

necessary verification. Accordingly, vide order dated 25/03/2013 passed under section 143(3) of the Act the AO disallowed an amount of Rs 80,08,830 on account of bogus purchases.

9. The learned CIT(A), vide impugned order, restricted the addition in respect of bogus purchases to 12.5% of such purchases following the decision of the coordinate bench of the Tribunal in Simit P. Sheth v/s ITO, ITA No. 32383/Ahd/2009. In the case of M/s Abhishek Enterprises, the disallowance of Rs. 6,53,022 made on account of bogus purchases was sustained on the basis of the statement of that party that no transaction was carried out with the assessee. Being aggrieved, the assessee is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. In the present case, it was noticed that the assessee had made purchases from the parties whose names appear in the list of Hawala parties declared by the Sales Tax Department. Notices issued under section 133(6) by the AO to said entities were also not complied with by the said parties. The AO made an addition of the entire amount of the alleged bogus purchases made from the said supplier. We find that before the lower authorities, the assessee was unable to produce the parties. The assessee also failed to produce any supporting documents in the form of delivery challan, lorry receipts, or stock register in support of such purchases. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, the Revenue has not doubted the sales declared by the assessee. Further, it cannot be doubted that without the purchase of material,

the assessee cannot carry out the sales. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entity and material purchased from somewhere else at a lower cost. Thus, we are of the considered view that entire bogus purchases cannot be added in such a case. We are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage. Therefore, in view of the above findings, we find no infirmity in the findings of the learned CIT(A) in restricting the disallowance to 12.5% of the amount of bogus purchases. We find that the same is also in line with the judgment of the Hon'ble jurisdictional High Court in PCIT v/s Paramshakti Distributors Ltd. in ITA No. 413 of 2017 decided on 15/07/2019. In respect of purchases made from M/s Abhishek Enterprises also the disallowance is restricted to 12.5% of such purchases of Rs. 6,35,022, as the same also appears to be a case of bogus bills arranged from M/s Abhishek Enterprises and material purchased from somewhere else at a lower cost by the assessee. As a result, grounds no. 3-5 raised in assessee's appeal are partly allowed.

11. The issue arising in ground No. 6, raised in assessee's appeal, pertains to the disallowance of sundry creditors.

12. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings the assessee was asked to prove the identity, creditworthiness, and genuineness of the transaction with the parties which are appearing as sundry creditors in its balance sheet. The AO noted that these parties are not included in the list of Hawala parties of the Sales Tax Department, Mumbai. In the absence of proof of identity,

genuineness, and creditworthiness of these parties as appearing in the balance sheet as on 31/03/2010, the AO made an addition of Rs. 64,17,345 to the total income of the assessee as unexplained sundry creditors.

13. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and held that the assessee has provided the ledger extracts and payment through the bank account along with sample bills of such parties evidencing purchases, however, the assessee has neither furnished confirmation from these creditors nor produce such parties even during the remand proceedings. Being aggrieved, the assessee is in appeal before us.

14. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, an amount of Rs. 66,74,029 was shown as sundry creditors in the balance sheet of the assessee. During the assessment proceedings, notices under section 133(6) of the Act were issued to the sundry creditors, however, there was no compliance from these parties. In support of its submission, the assessee provided the ledger extracts and submitted that the payments have been made through the banking channel. The assessee also furnished the sample bills of such parties evidencing the purchases made. However, in the absence of a response from these parties in compliance to notice issued under section 133(6) of the Act as well as the non-production of such parties by the assessee, the addition was made by treating the balance sundry creditors as unexplained.

15. From the perusal of the ledger account of these parties in the books of the assessee, we find that the assessee made the purchases during the year

and also made the payment. Accordingly, the balance outstanding was shown as sundry creditors in its balance sheet, which was added by the AO. Therefore, it cannot be disputed that the addition of outstanding trade creditors has been made under section 68 of the Act, as these parties did not respond to notices issued under section 133(6) of the Act and the assessee also could not furnish the confirmation from these parties. We find that the issue of whether unpaid trade creditors could be added under section 68 of the Act came up for consideration before a five-member Special Bench of the Tribunal in Manoj Agarwal v/s DCIT, [2008] 113 ITD 377 (Delhi), wherein it was observed as under:-

> *"178. …..The argument that section 68 is not applicable where an asset is sold and the sale proceeds are credited in the books of account cannot be accepted having regard to the settled legal position that it is always for the assessee to explain the nature and source of the sums credited in his books of account. The section does not recognize any distinction between amounts credited in the books as gifts or loans or pure receipts, on the one hand, and amounts credited as sale proceeds. In either case, when called upon, the assessee is bound to explain the nature and source of the amounts credited. There may be a few exceptions to this general rule. For example, in the case of credit purchases, the account of the supplier is credited with the amount payable. In such a case, where the purchase is allowed as expenditure, it may not be possible for the Assessing Officer to again call upon the assessee to prove the nature and source of the credit, for the reason that the purchase itself was allowed as expenditure only on being satisfied that it was a genuine purchase on credit. Implicitly, the nature and source of the amount credited has also to be taken as having been explained satisfactorily. Another possible argument can be that in such a case, the amount credited is not a cash credit in the sense that some monies have been received by the assessee, but the credit represents a mere liability payable by the assessee in future. Under accounting principles, a liability can only be brought into account by making a credit entry in the books of account in favour of the person to whom the money is payable. Thus, there is marked difference between a credit representing a liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction, a liability for purchase which has been credited in the account of the supplier cannot be added under section 68 of the Act, more so when the purchase has been accepted as genuine and a deduction therefor has been allowed. In all other cases including the case of a credit representing the sale proceeds of an asset, the provisions of section 68 are applicable and it is for the assessee to prove satisfactorily the nature and source of the monies. …."*

16. We find that in Smt. Madhu Solanki v/s ITO, ITA No. 974/Bang/2009, the coordinate bench of the Tribunal, vide order dated 09/08/2021, after considering the aforesaid decision held that the AO cannot make an addition of trade creditors under section 68 of the Act when the purchases made during the year and payments made during the year have been accepted. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"15. Similar view has been expressed by Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Agarwal reported in 2009 (7) TMI 1247 as under:-*
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> > *"This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the soles, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of sundry creditors under Section 68 of the Income Tax Act. As there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed."*
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> *16. The Ld D.R placed his reliance on the decision rendered by the Bangalore bench of ITAT in the case of Suresh Kumar T. Jain (supra), which was also confirmed by Hon'ble Karnataka High Court, vide its order dated 20-11-2018 passed in ITA No.160 of 2010. The Ld D.R contended that the outstanding trade creditors could be added u/s 68 of the Act. We have gone through the above said decision and notice that the facts prevailing in that case were different. In the above said case, most of the creditors confirmed the outstanding balances as per their books of accounts, which were much lesser than the outstanding balances disclosed by the assessee before the High Court. Copies of confirmation letters received from the creditors were also furnished to the assessee, but he did not offer any explanation. Hence, it was considered to be a case of either payment outside books or cessation of liability. Under these set of facts, it was held that the addition made u/s 41(1) and 68 of the Act was justified.*
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> *17. In the present case, the facts are totally different. First of all, the outstanding balances related to the purchases made during the year under consideration and not brought forward balances. The AO did not get reply from both the trade creditors and hence he proceeded to assess the outstanding balances, while accepting the purchases made during the year & payments made during the year. The AO has made the addition u/s 68 of the Act and did not invoke provisions of sec. 41(1) of the Act. On the contrary, the assessee has shown that the payments have been made in the succeeding year through*

banking channels. Accordingly, we are of the view that the revenue could not rely upon the decision rendered in the case of Sureshkumar T Jain. Under these set of facts, we are of the view that the AO could not have made addition of trade creditors u/s 68 of the Act."

17. Therefore, respectfully following the aforesaid decisions, since in the present case the purchases made by the assessee and the payment made during the year have not been disputed by the AO in respect of the parties shown as sundry creditors, we are of the view that the addition in respect of the balance sundry creditors is not sustainable. Accordingly, the AO is directed to delete the same. As a result, ground no. 6 raised in assessee's appeal is allowed.

18. Grounds no. 7 and 8, raised in assessee's appeal, pertain to ad hoc addition of Rs. 75,000 on account of lower household withdrawal and addition of Rs. 50,000 on account of various expenses.

19. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that some expenses, such as conveyance, staff welfare, stamp duty, sundry expenses, diesel and truck, debited in the profit and loss account are incurred in cash and proper bills and vouchers are not maintain. Accordingly, the AO made an addition of Rs. 50,000 on ad hoc basis. Further, it was observed that the assessee has shown low household withholding of Rs. 89,420. Therefore, considering the status of the assessee and his standard in society, the AO made an ad hoc addition of Rs. 75,000 to the total income of the assessee. The learned CIT(A), vide impugned order, dismissed the appeal filed by the

assessee and confirmed the aforesaid additions. Being aggrieved, the assessee is in appeal before us.

20. Having considered the submissions of both sides and perused the material available on record, we find that the AO has made the addition on an ad hoc basis without any relevant supporting documentation. Accordingly, we find no merits in these additions made by the AO and upheld by the learned CIT(A). Accordingly, we direct the AO to delete the addition of Rs. 75,000 on account of low household withdrawal, and Rs. 50,000 on account of various expenses incurred in cash. As a result, grounds no. 7 and 8 raised in assessee's appeal are allowed.

21. Grounds no. 9-12 are general in nature and therefore in view of our aforesaid findings need no separate adjudication.

22. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 29/12/2023

Sd/-	**Sd/-**
B.R. BASKARAN	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 29/12/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai