

1.2 The Income Tax Officer 18(1)(1) Mumbai has re-opened the assessment on the basis of information received from the Investigation department of the Income Tax based on the Statement recorded of Mr Harish Chandak Proprietor of M/s Giriraj Enterprises. **He grossly erred in relying on this Statement as it nowhere indicates that M/s Giriraj Enterprises had provided accommodation bills to the appellant** and also in spite of the specific written request of the appellant did not provide an adequate opportunity to cross examine Mr Harish Chandak. Mr Harish Chandak Proprietor of M/s Giriraj Enterprises has not been declared a Hawala Dealer by the Sales Tax Department. The assessment is thus bad-in-law and hence should be set aside.

Ground No. 2: Addition of Rs. 15,32,997/- being estimated profit element embedded in purchase

2.1 The said CIT (A) erred in confirming the addition of Rs.15.32,997/- made by the AO **on presumption and surmise** that the appellant would have made an additional net profit of 12.5% on the said alleged purchases of Rs.1,22.63,975/- and has completely ignored the facts that

- i. **the margin of the appellant is limited having regard to the commoditized trading business of rubber & rubber chemicals;**
- ii. **the appellant has already shown gross margin of 7.17% on the purchases and therefore any further addition of 12.5% of purchases over and above the actual margin earned is unjustified, without any basis and not possible to earn in such business.**
- iii. various documentary evidences were submitted in support of the disputed purchase transactions such as purchase invoices, payment entries in bank statement, corresponding sales, stock register, etc.
- iv. Sales Tax Department has not declared M/s Giriraj Enterprises (Prop Harish Chandak) as a Hawala Dealer
- v. On receipt of 133(6) notice for Asst Yr 2010-11 in the assessee's own case Mr Harish Chandak had appeared before the Learned A.O ward 18(1)(1) on 11.12.2017 and stated in his Cross Examination that he had supplied goods to the assessee from his Bhivandi Godown and had received payments thru cheque and had never given any cash to the assessee.

Ground No.3: Misinterpretation of ITAT Order:

Income Tax Officer 18(1)(1) Mumbai has erroneously taken business income as Rs 11,35,912 & adding Rs 15,32,997 misinterpreting the benefit provided by

Honorable ITAT in order No ITA No. 3456/Mum/2016 dt 01.09.2016 as amended by order No. MA No. 402/Mum/2016 in the appellant's case for the year under consideration.

Ground No.4: Erroneous levy of Interest:

The Income Tax Officer 18(1)(1) Mumbai has erroneously calculated interest u/s.234A, 2348, 234C, 234D& 244A and it is prayed that the same should be rectified accordingly.”

2. The assessee is a partnership firm engaged in the trading business of various types of synthetic rubber, rubber compounds and rubber chemicals. The assessee filed the return of income for AY 2009-10 on 29.09.2010 declaring a total income of Rs. 5,81,910/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (the Act). Subsequently, based on information received from Sales Tax Department regarding alleged bogus purchases, the assessment was re-opened and a notice under section 148 of the Act was issued. The assessee made various submissions before the AO with regard to party-wise purchases and sales to various parties from whom it was alleged that the assessee has entered into bogus transactions. The assessment under section 143(3) r.w.s. section 147 was completed wherein the AO made addition of Rs. 9,35,988/- under section 69C of the Act towards bogus purchase from three parties made on peak credit basis. On further appeal, the CIT(A) restricted the addition to 12.5% of the alleged bogus purchases. The Co-ordinate Bench of the Tribunal further restricted the addition to 3.1% vide order dated 01.09.2016 along with MA dated 06.03.2018.

3. Subsequently the assessee's case was once again reopened by issue of notice under section 148. As per the reasons recorded, it was reported that information has received from DDIT(Inv.) that as per interim result of their enquiry on M/s Giriraj Enterprises, the proprietor Mr. Harish K. Chandak has admitted on

providing accommodation entry and since the assessee has entered into certain transactions with M/s Giriraj Enterprises the AO reopened the assessment. The assessee filed detailed objections before the AO against the re-opening. The assessee also filed the order of the CIT(A) in the case of Mr. Harish K. Chandak where all sales transactions of Giriraj Enterprises has been accepted as genuine. However, the AO did not accept the submissions of the assessee and disposed of the objections. Before the AO, the assessee also submitted the confirmation from Giriraj Enterprises, details of purchases from Giriraj Enterprises and the corresponding sales. The AO after considering the submissions of the assessee made an addition of Rs. 15,32,997/- being 12.5% of alleged bogus purchases of Rs. 1,22,63,975/- from M/s.Giriraj Enterprises. On further appeal, the CIT(A) confirmed the addition made by the AO. The assessee is in appeal before the Tribunal against the CIT(A).

4. The ld. AR submitted that the second reopening is done beyond four years and therefore the proviso to section 147 is applicable in assessee's case whereby no action shall be taken 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 disclose fully and truly all material facts necessary for his assessment, for that assessment year. The ld AR further submitted that the second reopening is done on the basis of report of investigation wing without any independent application of mind by the AO. The ld AR also submitted that there is no failure on the part of the assessee to disclose all material facts since the assessee has disclosed the entire transactions with M/s.Giriraj Enterprises and the corresponding sales. The ld AR drew our attention to the order of the CIT(A) passed in the case of Mr. Harish K. Chhandak Proprietor of M/s.Giriraj Enterprises dated 12-3-2015 for the AY. 2009-

10, where the CIT(A) had given the finding that the sales of the Mr. Harish K.Chandak is genuine, (Page 65 para.2.4 of PB). Therefore the Id AR argued that when the sales are held as genuine, the AO in assessee's case is not correct in holding the purchases as not genuine.

5. The Id. DR relied on the order of the lower authorities.

6. We heard the parties and perused the material on record. The assessee's case was first reopened for the reason that the assessee has entered into certain bogus transactions and the assessment under section 143(3) r.w.s. section 147 was completed wherein the AO made addition of Rs. 9,35,988/- under section 69C of the Act. The said addition was ultimately restricted to 3.1% by the coordinate bench of the Tribunal. The assessee's case was re-opened for the second time based on the information that Mr. Harish K. Chandak the proprietor of M/s Giriraj Enterprises has admitted to providing accommodation entry and that the assessee has entered into transactions to the tune of Rs.1,22,63,975/- with the said enterprise. The AO made an addition by applying 12.5% of the above sum while completing the assessment under section 143(3) r.w.s.147 and the said addition was confirmed by the CIT(A). The main contention of the assessee is that the second reopening was done merely based on the information received for DDIT(Inv) and that the AO has not done any independent enquiry more so when the assessment is reopened beyond four years. From the perusal of the assessment order we notice that the AO has acknowledged the fact that the assessee has submitted the bills, delivery challan, stock register etc., pertaining to the alleged bogus transaction (refer para 4 of AO's order). Further the AO also acknowledges the fact that the assessee has submitted the ledger copy of M/s.Giriraj Enterprises, Bank statements, party confirmation etc. (refer para 6 of AO's order). We also

notice that the AO is not disputing the fact that the goods bought through alleged bogus transactions have been sold as reflected in audited financial statements. We further notice that the AO has not recorded any adverse findings with regard to the documents submitted by the assessee with regard to the alleged bogus transactions. We further notice that the AO has recorded in the assessment order that the input credit on the alleged bogus purchases has not been denied and that the supplier has not been named as the hawala party. The AO is making the addition for the reason that the party has admitted having entered into bogus transaction and that the assessee has not produced the parties. During the course of hearing the Id AR drew our attention to the statement of oath recorded from Mr. Harish Chandak, to submit that he has not mentioned having entered into any bogus transactions with the assessee (Page 78 to 84 of paper book). We notice that during cross examination by the assessee's partner Mr. Vinod Bhatia, Mr. Harish K Chandak has categorically denied having given hawala bills to the assessee (page 87 to 89 of paper book). From the perusal of the entire facts in assessee's case as explained herein above, it is clear that the AO has completed the reassessment without proper appreciation of the facts and evidences submitted by the assessee in support of the alleged bogus purchases and merely based on the information from DDIT(Inv). Therefore in our considered view the entire reopening is carried out only on the basis of report of investigation wing without any independent enquiry and without any tangible material in the hands of the AO to show that the assessee was involved in taking accommodation entry towards bogus purchases. Considering the facts unique to the facts and circumstances of the present case we hold that the AO could not have reopened the assessment only on suspicion which makes the re-opening invalid in the eyes of law. Accordingly the addition made by the AO is not sustainable and liable to be deleted.

7. Ground No.2 and 3 are raised without prejudice grounds and since we have already deleted the addition these grounds have become academic. Ground no.4 is consequential and does not warrant any adjudication.

8. In the result, the appeals of the assessee is allowed.

Order pronounced in the open court on 01-08-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai