

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA Nos.: **587, 588 & 589/CHNY/2020**

निर्धारण वर्ष/Assessment Years: 2012 – 13, 2013-14 & 2014-15

OPG Agro Farms Pvt. Ltd.,
No.9, LRN Colony,
Saradha College Road,
Salem – 636 007.

The DCIT,
vs. Corporate Circle 5(1),
Chennai.

PAN: AAACO 4371M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. Jharna B. Harilal, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Marudhu Pandian, CIT

सुनवाई की तारीख/Date of Hearing

: 15.11.2022

घोषणा की तारीख/Date of Pronouncement

: 18.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by the assessee are arising out of common order of the Commissioner of Income Tax (Appeals)-3, Chennai in ITA No.131, 132 & 133/CIT(A)-3/2017-18 dated 16.12.2019. The assessments were framed by the DCIT, Corporate Circle 5(1), Chennai for the assessment years 2012-13, 2013-14 &

2014-15 u/s.143(3) r.w.s 153C of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 29.12.2017.

2. At the outset, it is noticed that the appeals filed by assessee are barred by limitation by 35 days. The assessee has filed condonation petition along with affidavit stating that the order of CIT(A) was received on 16.12.2019 and the appeals before the Tribunal have to be filed on or before 17.02.2020 but, the appeals were filed only on 23.03.2020 with a delay of 35 days. It was stated that the delay was due to the business trip of the Director of the assessee company during January 2020 to 13th March 2020. Soon after the return of the Director, he found the appellate order kept on his table and forwarded to Chartered Accountant for filling of appeals. Thus, the delay was on account of Director's absence from head quarters and was on reasonable cause. The Id.CIT-DR, did not object for condonation of delay. As the cause seems reasonable, we condone the delay and admit the appeals for adjudication.

3. First, we will deal with **ITA No.587/CHNY/2020** for assessment year 2012-13

4. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.13,62,309/- based on one balance sheet found during the course of search in the pen-drive which was confiscated, which contains trial balance, profit & loss account and balance sheet for the period from 01.04.2011 to 31.03.2013. For this, assessee has raised various grounds which we need not to reproduce.

5. Brief facts are that a search was conducted on the entities relating to OPG group of companies u/s.132 of the Act by the Department on 07.08.2014. During the course of search, certain materials was seized which includes pen drive which contains details of trial balance, trade account, profit & loss account and balance sheet. The assessee was confronted with this balance sheet and assessee admitted before the search party as well as before the AO that the figures mentioned in these accounts contains entry which are to be multiplied by 100 to arrive at the correct value of transaction. The statement recorded from Shri Alok Gupta, Director of OPG Holding India (P) Ltd., on 08.08.2014 clarified that these transactions belongs to assessee and the entries contained therein are short of '00' that means the entries in the pen drive are to be multiplied by 100. The AO accordingly taken figure of balance sheet

found in the pen drive i.e., from 01.04.2011 to 31.03.2012 for the assessment year 2012-13 and the opening balance declared therein was Rs.13623.09, which was extrapolated by the AO by applying 100 and thereby made addition of Rs.13,62,309/-. The CIT(A) also confirmed the same. Aggrieved, now assessee is in appeal before us.

6. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.AR for the assessee only made submission that on perusal of the balance sheet which is from 01.04.2011 to 31.03.2012, the figure of profit & loss account is opening balance of Rs.13,623.09 and opening balance cannot be added in assessment year 2012-13. She made only this submission.

7. When this was countered, the Id. CIT-DR only submitted that these documents were found during the course of search and any case, this has to be added in earlier year or the Tribunal can give direction.

8. We noted that the addition made is on account of opening balance which cannot be added in this relevant assessment year for

the reason that this a opening balance, it is carried forward from earlier year. Accordingly, we delete this addition and allow this ground of assessee's appeal.

9. Coming to **ITA No.588/Chny/2020** for assessment year 2013-14.

10. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of opening balance figure of Rs.13,62,862/- for the relevant assessment year i.e., from 01.04.2012 to 31.03.2013.

10.1 Since, we have already adjudicated this issue in assessment year 2012-13, taking a consistent view that the opening balance cannot be added, we delete this addition and allow this issue of assessee's appeal.

11. The next issue in this appeal is as regard to the order of CIT(A) confirming the action of AO in making addition of Rs.38,58,094/- being unaccounted cash expenses on account of purchases.

12. Brief facts are that the AO during the course of assessment proceedings noticed from the seized pen drive which contains trial balance, profit & balance account and balance sheet for the relevant assessment year 2013-14 relating to 01.04.2012 to 31.03.2013, the assessee in profit & loss account had disclosed purchase account of Rs.38,580.94. According to AO, the said cash transaction of Rs.38,58,094/- after extrapolating from actual figure of Rs.38,580.94 is treated as unaccounted purchases and hence, unaccounted purchases are added to returned income of the assessee. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

13. We have heard rival contentions and gone through facts and circumstances of the case. The Id.AR for the assessee before us explained from the seized material i.e., profit & loss account for the period 01.04.2012 to 31.03.2013 that the purchase account of Rs.38,580.94 contains a corresponding sale of Rs.38,580.94. The Id.AR also took us through the trial balance for the same period wherein the purchase entry and sale entry is made and both has negated the figure. The Id.AR stated that once there is no stock available, the bogus purchase even if treated can be assessed only

on profit element. It is an admitted fact that the AO as well as the CIT(A) treated this as bogus purchases but has not denied the sale made out of the same. Even otherwise from the seized accounts in the pen drive clearly shows that there is purchases as well as sales and for making this purchase, assessee might have made investments which can be estimated out of the purchase of Rs.38,58,094/-. The turnover can be rotated atleast six times and accordingly, we are of the view that the assessee might have made investments in bogus purchases and that can be estimated at 1/6th of the total bogus purchases which comes to Rs.6,43,015/-. Hence, we sustain the addition to the extent of this amount of Rs.6,43,015/- and moreover the profit element at 10% of the bogus purchases, which the AO will recompute and will add the amount. In term of the above, this issue is partly allowed. Hence, this appeal of the assessee is partly allowed.

14. Coming to **ITA No.589/Chny/2020** for the assessment year 2014-15.

15. At the outset, the Id.AR for the assessee stated that the assessee had utilized the Direct Taxes 'Vivad se Vishwas Scheme, 2020' to settle pending disputes relating to Direct Taxes for this

assessment year. The Id.AR also stated that the assessee had paid the tax amount as per Form 3 and in this regard, submitted Form 3 & 4 issued and requested for withdrawal of appeal. Therefore, once the assessee filed Form 4 and settled pending disputes regarding direct taxes, we dismiss this appeal filed by the assessee as withdrawn.

16. In the result, the appeals filed by the assessee in ITA No.587/CHNY/2020 is allowed, ITA No.588/CHNY/2020 is partly-allowed and ITA No.589/CHNY/2020 is dismissed as withdrawn.

Order pronounced in the open court on 18th November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 18th November, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |