

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.62/RPR/2020
निर्धारण वर्ष / Assessment Year :2014-15

M/s. Gopal Rice Industries,
Vill. Sambalpur, Raipur Road,
Dhamtari (C.G.)
PAN :AABFI4303F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward- Dhamtari (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.74/RPR/2020
निर्धारण वर्ष / Assessment Year : 2014-15

The Income Tax Officer,
Ward- Dhamtari (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Gopal Rice Industries,
Vill. Sambalpur, Raipur Road,
Dhamtari (C.G.)
PAN :AABFI4303F

.....प्रत्यर्थी / Respondent

Assessee by :Shri G.S Agrawal, CA
Revenue by :Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.11.2022
घोषणा की तारीख / Date of Pronouncement : 22.12.2022

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned cross-appeals filed by the assessee and the revenue are directed against the order passed by the CIT(Appeals)-I, Raipur dated 06.03.2020, which in turn arises from the order passed by the A.O. u/s.147 r.w.s. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 08.12.2018 for assessment year 2014-15.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. That under facts and the law, the assessment order is void-ab-initio as the proceedings u/s.147/148 is not as per law, the assessment order be annulled.

2. That under the facts and the law, the learned CIT(Appeals) further erred in maintaining addition of Rs.35,73,000/- for alleged bogus purchases @12% on purchase of Rs.2,97,75,000/-, though the sales were accepted, day to day quantity records kept GP already considered in accounts, rejecting the explanation filed. Prayed to delete the addition of Rs.35,73,000/-.

3. That under the facts and the law, the learned AO erred in passing the assessment order without allowing opportunity to the appellant to examine persons whose statement/report of Inspector was relied upon by the learned AO in making the addition. Prayed that the assessment order is against nature justice and the addition maintained by the Ld. CIT(A) at Rs35,73,000/- be deleted.”

On the other hand the revenue is aggrieved with the impugned order on the following grounds of appeal:

“1. Whether in facts and in the law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,62,02,000/- out of the total addition of Rs.2,97,75,000/- being under bogus purchase ignoring the statements taken on oath by the parties from whom the purchase was made by the assessee firm.

2. Whether in facts and in law the Ld. CIT(A) was justified in deleting the addition of Rs.22,39,080/- being under unreported profit earned on the bogus purchase ignoring the facts that the assessee firm was not able to furnish the relevant materials which will substantiate its claim that purchase was made by the assessee firm and the goods amounting to Rs.2,97,75,000/- was actually purchased from the parties.

3. The order of the Ld. CIT(A) is erroneous both in law and on facts.

4. Any other ground that may be adduced at the time of hearing.”

3. Succinctly stated, the assessee firm which is engaged in the business of manufacturing of flour and rice had filed its return of income for the A.Y.2014-15 on 24.11.2014, declaring an income of Rs.1,35,190/-. Original assessment was, thereafter, framed by the A.O vide his order passed u/s. 143(3) of the Act, dated 08.08.2016, determining the income of the assessee firm at Rs.4,35,450/-.

4. On the basis of information received by the A.O that the assessee firm as a beneficiary had procured bogus purchase bills, the A.O vide notice issued u/s.148 dated 27.03.2018 reopened its concluded assessment.

5. During the course of the assessment proceedings, it was observed by the A.O that the assessee had, inter alia, claimed to have made purchases aggregating to Rs.2,97,75,000/- from the following 8 parties:

S. No.	Name of the party from whom claim of the purchase was made	Amount of purchase shown by the assessee (in Rs.)
1.	Eaden Rice Mill	17,50,000/-
2.	Shri Ganpati Paddy	47,00,000/-
3.	Zin Mata Rice Mill	28,87,500/-
4.	Shri Veshno Devi Exhim	16,50,000/-
5.	Shri Krishna Processor	15,00,000/-
6.	Shyam Trading Company	82,00,000/-
7.	Maa Sharda Processor	78,50,000/-
8.	Shri Samleshwari Foods	12,37,500/-
Total		2,97,75,000/-

As notices u/s.133(6) of the Act issued to the aforementioned parties were returned unserved by the postal authority, therefore, the A.O called upon the assessee to provide correct address of the said parties so that verification of the purchases claimed to have been made from them could be carried out. In reply, the assessee provided new addresses of the aforesaid parties. Thereafter, summons u/s.131 of the Act were issued to the aforementioned parties which, however, could not be served on their respective addresses primarily for two fold reasons, viz. that the persons

available at the said respective address denied to accept the summons and stated that they were not aware of any such party; or the party was not found at the address provided by the assessee firm. As is discernible from the assessment order, the Inspector of the Income Tax Department, Dhamtari who was deputed by the A.O to affect service of the summons u/s.131(b) of the Act on the aforementioned parties, had in his report stated the factual position, which, for the sake of convenience is culled out as under:

Sr. No.	Particulars	Remark
1.	M/s. Eadan Rice Mill	The owner of the aforesaid rice mill could not be located and it was intimated by the peoples staying nearby area that rice mill is not in operation from the last 6-7 years. On contact, the owner of the rice mill Shri Badruddin Khokar on phone, it was intimated that the rice mill is not in operation since the year 2011-12.
2& 3.	Shri Ganpati Paddy, and Zin Mata Rice Mill C/o. Kailash Khandelwal	It was informed by Shri Sourabh Khandelwal S/o. Kailesh Khandelwal that his father was not aware about both the aforesaid concerns and in no way related with them.
4 & 5.	Shri Krishna Processor & Maa Sharda Processor C/o. Sourabh Khendelwal	It was stated that the said shop/firm could not be found at the mentioned address. Shri Sourabh Khandelwal had

		categorically denied of having any relation with the said concerns.
6 & 7.	Shri Veshno Devi Exim & Shri Samleshwari Foods C/O. Mohit Vaishnav	It was stated that the said shop/firm could not be found at the mentioned address which was residential house of Shri Mohit Vaishnav who was staying on rent. Smt. Kumari Neha Vaishnav relative of Shri Mohit Vaishnav after calling him up on phone had informed that he was not aware about either of the aforesaid concerns.
8.	Shri Shyam Trading Company C/o. Raju Gupta	It was stated that the said shop could not be found at the mentioned address.

Considering the aforesaid facts, the A.O issued summons u/s.131 of the Act to Shri Sanjay Agrawal, partner of the assessee firm and recorded his statement on oath. On being confronted with the fact that all the aforesaid 8 concerns to whom notices u/s.133(6) of the Act were issued at the new addresses that were provided by him were returned back as "Unserved", the aforesaid person expressed his unawareness as to why the said respective concerns had refused to accept the notices. Also, on being informed that the registration numbers of the vehicles on which goods were stated to have been delivered to the assessee firm (as were gathered from the purchase bills of the aforesaid parties), on the basis of verification carried out, revealed that the same were either as that of a private bus,

motor cycle, harvester or a scooter, or in certain instances were not found registered with the office of Road Transport Officer, Raipur (RTO), the aforesaid person adopted an evasive approach and simply stated that goods were received by his firm through trucks and pick up vans and no verification of the registration numbers in normal course of its business would be carried out at the time of receipt of goods. On being confronted with the fact that some of the proprietors/partners of the aforesaid 8 concerns from whom goods were claimed to have been purchased, had in their statements recorded u/s.131 of the Act admitted that they were not carrying out any genuine business and had only provided bogus bills, the aforesaid person once again expressed his unawareness as to why such statement was given by the respective persons. As the assessee had failed to substantiate the authenticity of the purchases claimed to have been made from the aforementioned parties on the basis of supporting documentary evidences, viz. delivery challan, bilties etc., therefore, the A.O called upon it to put forth an explanation as regards the same. In reply, it was the claim of Shri. Sanjay Agrawal (supra) that the goods which were purchased from the aforementioned 8 parties, i.e rice and broken rice were duly recorded in its stock register, and in lieu thereof *aungya* was deposited with the concerned mandi. Also, the assessee declined of having carried out any bogus purchases.

6. Considering the aforesaid facts involved in the present case before us, the A.O was of the view that the assessee had failed to substantiate on the basis of any supporting documentary evidence the authenticity of the purchase transactions with the aforesaid 8 tainted parties, i.e., delivery challans, bilties etc. which would have otherwise proved to the hilt the delivery of goods from the said parties. Also, it was observed by the A.O that the assessee on being confronted with the statement(s) of the proprietors/partners of the aforementioned concerns that was recorded u/s.131 of the Act, wherein, they had categorically admitted that they had only provided bogus bills and were not involved in carrying out any genuine business, had however, failed to come forth with any plausible explanation much the less controvert the same on the basis of any clinching material.

7. Apart from that, it was observed by the A.O that a perusal of bank statement of some of the concerns, revealed beyond doubt the *modus operandi* that was adopted by them for providing bogus purchase bills. It was noticed by the A.O that the amount of impugned purchase consideration that was deposited in the bank account through RTGS/cheques was thereafter withdrawn in cash. On the basis of his aforesaid observations, the A.O was of a strong conviction that the amount of purchase consideration that would be paid to the aforesaid tainted

suppliers would find its way back to the pocket of the assessee. On the basis of the aforesaid facts, the A.O was of the firm view that the assessee had not made any genuine purchases from the aforementioned 8 parties, and had in fact only procured bogus purchase bills on commission basis from them. Also, taking cognizance of the fact that the assessee could not substantiate the factum of delivery of goods from the aforesaid parties by placing on record supporting documentary evidence, i.e., delivery challans, bilties etc., the A.O was of the view that it was evidenced to the hilt that no delivery of goods was received by the assessee from the said tainted parties. Apart from that, it was observed by the A.O that the vehicle numbers provided on the impugned purchases bills of the aforementioned parties were either found to be pertaining to certain private buses, motorcycle, cars or were not in existence at all. Also, on verification of the TIN of the aforesaid concerns from the website of the Commercial Tax Department, it was gathered by the A.O that in majority of the cases the same had been cancelled, while for in some of the cases the same were found to be registered in the name of another party.

8. Considering the aforesaid facts, the A.O was of the view that as the assessee had only procured bogus purchase bills from the aforementioned parties, thus, held the entire amount of impugned purchases of Rs.2,97,75,000/- as an unexplained expenditure incurred by the assessee

u/s.69C of the Act. Further, observing that the assessee had during the year declared GP rate of 7.52%, the A.O disallowed GP rate of 7.52% of the sales of Rs.2,97,75,000/- (out of the total sales of Rs. 10,99,39,751/-), i.e., the profit element corresponding to the impugned purchases, and made an addition/disallowance of Rs. 22,39,080/- on the said count. Accordingly, the A.O on the basis of his aforesaid deliberations vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 08.12.2018 assessed the income of the assessee firm at Rs.3,24,49,530/-.

9. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who had scaled down the addition to Rs.35,73,000/- by applying the overall profit rate of 8% to the value of impugned purchases of Rs.2,97,75,000/- (supra). Apropos the addition of Rs.22,39,900/- (supra) that was made by the A.O qua the sales corresponding to the bogus purchases, the CIT(Appeals) being of the view that now when the assessee had duly recorded the purchases in its books of account and also, the corresponding sales, therefore, there was no justification in sustaining the said addition. Accordingly, the CIT(Appeals) partly allowed the assessee's appeal.

10. Both the assessee and the revenue being aggrieved with the order of the CIT(Appeals) have carried the matter in appeal before us.

11. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

12. Although, the assessee had assailed the validity of the jurisdiction that was assumed by the A.O u/s.147 of the Act, however, the Ld. Authorized Representative (for short 'AR') of the assessee after arguing for some time sought liberty to withdraw the Grounds of appeal No.(s) 1 & 3. On the basis of the aforesaid concession of the Ld. AR, the **Grounds of appeal No.(s) 1 & 3** are dismissed as not pressed.

13. Confining ourselves to the adjudication of the Ground of appeal No.2, we shall briefly deal with the facts to the extent the same are relevant to the issue in hand.

14. As is discernible from the orders of the lower authorities, we have no hesitation in observing that as the assessee firm had neither before us nor before the lower authorities had placed on record the bare minimum document that would substantiate the authenticity of its claim of having made purchases from the aforesaid 8 tainted parties, i.e., delivery challans, bilties etc., therefore, we have no hesitation in observing that no genuine purchases were made by the assessee from the said parties. In

fact, the respective statements of the aforementioned parties that were recorded u/s. 131(1) of the Act by the A.O, wherein, they had categorically denied of having carried out genuine business and had admitted of having provided bogus/accommodation bills, thus, leaves no scope of doubt that the assessee had not carried out any genuine purchases of goods from them. We, thus, in terms of our aforesaid observation have no hesitation to uphold the view taken by the A.O that the assessee had not made any genuine purchases from the aforementioned parties and had only procured bogus/accommodation bills from them.

15. We, though have concurred with the view taken by the lower authorities that the assessee had not made any genuine purchases from the aforesaid 8 tainted parties in question, and had only procured bogus bills from them, but at the same time are unable to persuade ourselves to subscribe to the addition of the entire amount of impugned purchases of Rs.2.97 crore (approx.) made by the A.O. As stated by the Ld. AR, and, rightly so, the purchases of the rice/broken rice which the assessee firm had claimed to have made from the aforementioned tainted parties was duly entered in its stock register for the year under consideration, Page 56 to 73 of APB. The Ld. AR in support of his aforesaid claim had also taken us through the quantitative purchase/sale details of rice/broken rice as had been culled out from its stock register, Page 9 to 16 of APB. On a

perusal of the said details, it transpires beyond doubt that the impugned purchases of rice/broken rice claimed by the assessee firm to have been made from the aforementioned 8 parties were duly incorporated by it in its said stock register, which details for the sake of clarity are being culled out as under:

Sr. No.	Particulars	Page No. of APB
1.	Shri Shyam Trading, Gondia 2000 Qtls- Rice Date : 03.07.2013	9
2.	Shri Shyam Trading, Gondia 2000 Qtls- Rice Date : 07.10.2013	10
3.	Eadan Rice Mill, Raipur 1250 Qtls-Broken rice Date: 08.04.2013	11
4.	Maa Sharda Process, Raipur 2000 Qtls- Broken Rice Date : 01.10.2013	13
5.	Maa Sharda Process, Raipur 1000 Qtls- Broken Rice Date :01.11.2013	14
6.	Shri Krishna Processers, Raipur 1000 Qtls-Broken rice Date: 01.11.2013	14
7.	Shri Samleshwari Foods, Abhanpur 750 Qtls- Broken Rice Date :28.11.2013	14
8.	Shri Zin Mata Rice Mill, Raipur 750 Qtls- Broken Rice Date : 30.11.2013	14
9.	Maa Sharda Process, Raipur 1000 Qtls-Broken Rice Date :05.12.2013	14

10.	Shri Zin Mata Rice Mill, Raipur 1000 Qtls- Broken Rice Date 05.12.2013	14
11.	Shri Ganapati Paddy, Raipur 2000 Qtls- Broken Rice Date: 12.12.2013	15
12.	Maa Sharda Process, Raipur 1000 Qtls- Broken Rice Date :26.12.2013	15
13.	Shri Veshno Devi Exim, Abhanpur 1000 Qtls- Broken rice Date :27.01.2014	15
14.	Shri Ganapati Paddy, Raipur 1000 Qtls-Broken Rice Date : 28.01.2014	16
15.	Maa Sharda Process, Raipur 200 Qtls- Broken Rice Date :17.02.2014	16.

Quantitative details of rice/broken rice claimed by the assessee to have been purchased from the aforesaid tainted parties, as had been culled out by us hereinabove on the basis of the details made available by the assessee at Page 9 to 16 of APB, on being cross tallied with the rice/broken rice stock register, Page 56 to 73 of APB is found to be in order. In sum and substance, the quantity of the rice/broken rice in question claimed by the assessee to have been purchased is found duly entered in the respective rice/broken rice stock register, Page 56 to 73 of APB. Apart from that, the veracity of the aforesaid details filed before us can safely be gathered from the fact that the closing stock of rice and broken rice as on 31.03.2014 as per the respective stock register(s), Page 64 & 73 of APB, duly tallies with the details of the “closing stock” of the said respective

goods i.e. rice/ broken rice available as “Annexure No.9” of the audit report in “Form No. 3CD”, Page 112 of APB.

16. Apart from that, a perusal of the assessment order reveals that the A.O while framing the assessment had himself observed that the bogus/unverified purchase of Rs.2.97 crore (approx.) had found its way in the total sales of Rs.10.99 crore (approx.) of the assessee for the year under consideration. On the said basis, the A.O had disallowed corresponding GP of 7.52% of the impugned purchases of Rs.2.97 Crore (approx.) and thus, had made an addition on the said count of Rs.22.39 lac (approx.). Also, the CIT(Appeals) while vacating the aforesaid addition of Rs. 22.39 lac (supra), had observed that as all the purchases and sales have duly been recorded by the assessee, therefore, there was no justification for sustaining the said addition.

17. Be that as it may, it is matter of fact which is evidenced from record that the impugned bogus/unverified purchases of rice/broken rice of the assessee (quantitative wise) had duly been accounted for by the assessee in its books of account, and thus, had found its way in the sales/closing stock for the year under consideration. Considering the aforesaid fact, we are of the considered view that it can safely, or in fact inescapably be concluded that the assessee firm had purchased the goods in question, i.e., rice/broken rice though not from the aforementioned 8 tainted parties, but

at a discounted value from the open/grey market. In fact, we are of the considered view that services of the aforesaid 8 tainted parties who are admittedly only in the business of providing bogus/accommodation bills were availed by the assessee firm for the limited purpose of facilitating routing of the impugned purchases through its books of account. We, thus, on the basis of our aforesaid observations, are of the considered view, that now when purchases of the impugned goods, i.e., rice/broken rice had been routed through the assessee's books of account and thus, had formed part of its sales/closing stock for the year under consideration, therefore, there could have been no justification for making an addition of the entire amount of the impugned purchases of Rs.2.97 crore (supra) in the hands of the assessee firm. At the same time, as the assessee had failed to substantiate the authenticity of the purchase transactions claimed to have been made from the aforementioned 8 tainted parties, therefore, it can safely be concluded that it had procured the goods in question, i.e., rice/broken rice at a discounted value from the open/grey market, as against the inflated value at which the same on the basis of the aforesaid bogus bills had been accounted for in its books of account.

18. Considering the aforesaid facts, we are of the view that the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which the assessee would have made by procuring the goods at a

discounted value from the open/grey market, as against the inflated value at which the same had been booked on the basis of the bogus bills in its books of account.

19. In so far the issue of quantification of profit which the assessee would have made by procuring the goods in question from the open/grey market, we find that the Hon'ble High Court of Bombay in the case of Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Haji Adam & Company, ITA No1004 of 2016, dated 11.02.2019, while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate of other genuine purchases. The Hon'ble High Court while concluding as hereinabove had observed as under:

“8. In the present case, as noted above, the assessee was a trader of brics. The A.O found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs."

It was, thus, observed by the Hon'ble High Court that the addition in respect of the purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of other genuine purchases. On the basis of the aforesaid observations of the Hon'ble High Court, we are of the considered view that on the same lines the profit made by the assessee in the case before us by procuring the goods at a discounted value from the open/grey market can safely be determined by bringing the G.P rate of such bogus purchases at the same rate as that of the other genuine purchases.

20. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O, with a direction to restrict the addition in the hands of the assessee qua the impugned bogus/unverified purchases by bringing the GP rate of such bogus purchases at the same rate as that of the other

genuine purchases. Accordingly, we set-aside the order of the CIT(Appeals) to the said extent and restore the matter to the file of the A.O to give effect to our aforesaid observations.

21. In the result, appeals of the assessee and revenue are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 22nd December, 2022
***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.