

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 347/KOL/2022
Assessment Year: 2012-2013**

***Assistant Commissioner of Income Tax,.....Appellant
Central Circle-2(2), Kolkata,
Aayakar Bhawan Poorva, 4th Floor,
110, Shantipally, E.M. Bypass,
Kolkata-700107***

-Vs.-

***M/s. Magnetic Niryat Pvt. Limited,.....Respondent
9, Vivekanand Road, Kolkata-700007
[PAN:AAGCM4047E]***

Appearances by:

N o n e, appeared on behalf of the assessee

*Shri Sudipta Guha, CIT (DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : September 28, 2022

Date of pronouncing the order : December 23, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-20, Kolkata dated 29.10.2021 passed for A.Y. 2012-13.

2. The Revenue has raised six grounds of appeal. However, its grievances revolve around a single issue, namely whether gross purchases of the assessee are to be added in an *ex-parte* assessment on an estimate basis or element of income quantified by the ld. CIT(Appeals) at 5% is to be restricted.

3. Brief facts of the case are that in response to the notice of hearing, no one has come present on behalf of the assessee.

4. With the assistance of ld. D.R., we have gone through the record carefully and proceed to decide the appeal *ex-parte*.

5. The Registry has pointed out that the appeal is time-barred by 160 days. However, we find that time period calculated by the Registry is covered by the judgment of the Hon'ble Supreme Court, whereby limitation period has been excluded by the Hon'ble Court on account of COVID period. Therefore, we condone the delay and proceed to decide the appeal on merit.

6. Brief facts of the case are that a search and seizure operation was conducted under section 132 of the Income Tax Act on 20.10.2011 at the business premises of the persons and concerns of Sonthalia Group. The assessee-company has filed its return on 30.09.2012 declaring

total income of Rs.59,652/-. The ld. Assessing Officer has passed a very brief *ex-parte* assessment, whereby he has added a sum of Rs.30,02,54,353/-. The finding recorded by the ld. Assessing Officer reads as under:-

“2.4. Creditors for goods:-

On perusal of the balance sheet for the A.Y. 2012-13, it is seen that Rs.30,02,54,353/- has been shown as ‘creditors for goods’ in the balance sheet. The turnover of the company in this year is Rs.43,17,07,827/-. In spite of huge turnover, the company earns a meagre profit of Rs.59,652/-.

In view of the above, the assessee was asked to furnish the details of creditors for goods shown during the year. No details or explanation with evidences has been furnished by the assessee in this regard. Hence, in the absence of any evidences, the amount of creditors for expenses of Rs.30,02,54,353/- is treated as unexplained credit in the hands of the assessee u/s 68 of the I.T. Act.

Addition: Rs.30,02,54,353/-

Penalty proceeding us/ 271(1)(c) is initiated against the assessee for concealing Rs.30,02,54,353/-.

In view of the documents and clarifications filed as well as discussions made as above, the total income of the assessee is computed as under:-

*Total income as per return : Rs.59,652/-
Add. Bogus creditors for goods
(As discussed in para 2.4 above): Rs.30,02,54,353/-*

Total Income : Rs.30,03,14,005/-“.

7. Dissatisfied with the assessment order, the assessee carried the matter before the ld. CIT(Appeals). The ld. 1st Appellate Authority has granted number of opportunities to the assessee, but every time the assessee has made a

request for adjournment. The ld. 1st Appellate Authority has gone through the record and thereafter has restricted this addition to 5%. The finding of the ld. CIT(Appeals) reads as under:-

"4. Perusal of the assessment order shows that assessee belongs to Sonthalia Group of companies where search had taken place u/s 153A and proceedings relating to search assessment was completed on 31.03.2014 by the same AO who has passed this assessment order. AO has mentioned that assessee was showing huge turnover but a very small income. It was also showing huge outstanding amount as 'creditors for goods'. But failed to provide the details of such creditors when AO asked to furnish the details. Hence, AO has added Rs.30,02,54,353/- u/s 68 of the Income Tax Ac, 1961, which is the amount shown outstanding as 'creditors for goods'.

5. Sonthalia Group had introduced huge amount of its undisclosed income as share capital in the Group companies. Subsequently, action u/s. 132(1) had taken place and search assessments were completed on 31.03.2014. Perusal of the AO's comments shows that Group has manipulated its accounts by showing bogus entries and artificial business transactions have been shown in many of the Group Companies by doing circular trading among themselves. Although, AO has not specifically said anything about this particular Company but his comments suggests that the business transactions shown in the books of the Company may not be genuine and the assessee had indulged into such window dressing with ulterior motive. If at all probability the sales and purchases both are bogus in many of the group companies. However, AO has not examined the sales part and he has concentrated only on the purchases made and expenses claimed to have been incurred. AO has made huge disallowance on account of unverified 'creditors for goods'. The turnover of the assessee, separately, reported by the AO is Rs.43,17,07,827/-. Out of these, AO has made a disallowance of Rs.30,02,54,353/-. This way the gross profit of the business would be about 70%, which is not possible in any genuine trading activities. Although, AO gives an impression that both the sales and the purchases

of the assessee company are bogus but in the absence of any evidence in this regard it is presumed that assessee was doing some genuine business. Under the circumstances, the profit margin assessed by AO is not sustainable. Assessee has claimed to have traded in cotton hosiery fabrics/cotton hosiery yarn.

In the case of PCIT, Vadodara-2 Vs. Synbiotecs Ltd. (2019) 106 taxmann.com 316 (Guj), the Hon'ble High Court of Gujarat has held that where AO made addition on account of bogus purchase of raw material by assessee company and since CIT(A) and ITAT concurrently found that assessee had yielded huge profits during the year from sales which would not be possible without utilizing huge raw material, tribunal was justified in restricting impugned additions on account of bogus purchases to 25%.

In the case of Puja Paper Trading Company Pvt. Ltd. Vs. ITO-4(3)(1), Mumbai (299) 104 taxmann.com 95(Bombay), the Hon'ble High Court of Mumbai didn't find any substantial question of law in assessee's appeal when AO had found that assessee was involved in hawala transactions and substantial purchases made by it were bogus in nature and he disallowed the purchases. In this case of, CIT(A) held that even if purchase transactions were not verifiable what was taxable was only income component and not entire purchase. He adopted average profit rate at 3.67% which was enhanced to 12.05% by the ITAT. Appeal of the assessee, against order of ITAT was dismissed as the Hon'ble High Court did not find any question of law involved here.

In the case of PCIT-15, Mumbai Vs. Jakharia Fabrick Pvt. Ltd. (2020) 118 taxmann.com 406 (Bombay), the Hon'ble Bombay High Court has held that where information was received by AO to the effect that 8 parties from whom purchases were made by assessee engaged in job work of dyeing of fabric were howala dealers who had issued bogus bills and the AO treated such purchases as bogus purchases, and since without purchase of materials it was not possible for assessee to complete job work of dyeing, then entire purchases could not be added as bogus. Only profit element embedded in such transactions had to be added to total income of the assessee.

It is apparent from several judicial pronouncements that if sales receipts are considered as genuine, appropriate allowances for purchase of raw material / traded goods have to be allowed, even if the assessee does not produce

supporting documents regarding purchases made. It is only the profit element in the sales made is to be brought to tax. Entire purchases or a very substantial part of purchases cannot be disallowed. In the present case, AO's actions would lead to as abnormally high profit element, which is not justifiable in view of several judicial pronouncements.

Around 10 appeals of this Group, for AY: 2012-13 and AY: 2013-14, are pending before me on the same issue. In all these cases, AO has made huge disallowances on account of bogus purchases and has further made disallowance of administrative and personnel expenses. However, 3 appeals of AY: 2J314-15 in the case of M/s. Magnetic Niryat Pvt. Ltd., Raunak Vanijya Pvt. Ltd. & Agni Trade Com. Pvt. Ltd. (all Group Companies) are also pending for disposal. These assessments were completed in the subsequent year. AO is also different. While completing assessments in these cases, AO has taken the net profit (consequently net income) at 5% of total turnover. Given the background of the Group and the doubts about genuineness of its business Transactions I am of the opinion that assessing the net income for the current year at 5% of the total turnover of the assessee company would serve the ends of justice. Further, there is no need to make any disallowances on account of any administrative, personnel, financial expenses etc., as the estimated profit has taken into account all purchases and expenses.

The turnover of the assessee company in the current year is Rs.43,17,07,827/-. Hence, the net income (total income) of assessee company @ 5% of the turnover may be taken as Rs.2,15,85,391/-. Hence, additions to the extent of Rs.2,15,85,391/- only is confirmed”.

8. The ld. CIT(DR) was unable to bring any material to our notice persuading to us set aside the impugned order of ld. CIT(Appeals). The ld. Assessing Officer has not recorded any finding as to why he is adding more than thirty crores of rupees to the income of the assessee. On the other hand, ld. 1st Appellate Authority has appreciated the issue with an angle that total turnover of the assessee is Rs.43,17,07,827/-, out of that ld.

Assessing Officer has made addition of the alleged total purchases. In other words, either turnover of the assessee is bogus or that purchases are also bogus, there should be some certain specific instances pointing out as to how only purchases are required to be added. On the other hand, ld. 1st Appellate Authority in the finding extracted supra has estimated the element of income in whole details maintained by the assessee.

9. After going through the well reasoned order of the ld. CIT(Appeals), which is based on the limited information available on record, we could not persuade ourselves to differ with the finding of the ld. CIT(Appeals). Hence, this appeal of the Revenue is dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 23rd December, 2022.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 23rd day of December, 2022

*Copies to :(1) Assistant Commissioner of Income Tax,
Central Circle-2(2), Kolkata,
Aayakar Bhawan Poorva, 4th Floor,
110, Shantipally, E.M. Bypass,
Kolkata-700107*

**(2) M/s. Magnetic Niryat Pvt. Limited,
9, Vivekanand Road, Kolkata-700007**

(3) Commissioner of Income Tax (Appeals)-20,
Kolkata;

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.