

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.20/Ind/2019
Assessment Year: 2014-15

M/s. Matharlal Mungalal Agrawal, Khandwa	<u>बनाम/</u> Vs.	ITO-1, Khandwa
(Appellant / Assessee)		(Respondent / Revenue)
PAN:AAJFM1808P		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.12.2022	
Date of Pronouncement	25.01.2023	

आदेश/ O R D E R

Per B.M. BIYANI, AM:

Feeling aggrieved by appeal-order dated 15.10.2018 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 16.12.2016 passed by learned ITO-1, Khandwa[**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year[**“AY”**] 2014-15, the assessee has filed this appeal on following grounds:

“1. The learned CIT(A) has erred in sustaining that the addition made by Assessing Officer at Rs 31,49,684 u/s 69(c) is correct.

2. The learned CIT(A) has erred in concluding that the purchase of Rs. 31,49,684 is bogus.

3. The learned CIT(A) erred in concluding that the amount withdrawn by M/s Shekh Brothers has been obtained by the appellant.

4. That the learned CIT(A) has erred in confirming the addition by Assessing Officer for bogus purchase without considering the corresponding quantity of sales.

5. That without prejudice to above the learned CIT(A) ought to have considered the addition of Gross Profit instead of entire purchase of Rs. 31,49,684.

6. That the appellant crave leave to add, alter or amend any grounds of appeal before the appeal is heard and finally disposed off.”

2. When the case was called, none appeared on behalf of assessee. However, the Ld. DR representing the revenue was ready to argue the case and submitted that it can be decided on the basis of material held on record and after hearing him. Accordingly, the hearing was proceeded.

3. Briefly stated the facts are such that the assessee-firm is engaged in trading of grains. The assessee submitted return of income of the relevant AY 2014-15 on 09.11.2014 declaring a total income of Rs. 69,490/- which was subjected to scrutiny proceeding u/s 143(3) of the Act and the Ld. AO completed assessment after making an addition of Rs.31,49,684/- on account of bogus purchases. Aggrieved, the assessee went in first-appeal but could not succeed. Now, the assessee has come in this appeal before us assailing the orders of lower authorities.

4. Drawing our attention to the orders of lower authorities, Ld. DR submitted that the department received an information from a news item published in different news-papers that the assessee had made bogus purchases on the basis of fake licences of Krishi Upaj Mandi, Bhandar. Based

thereon, when the authorities made enquiry, it came to the knowledge that the assessee made/declared bogus-purchases of Rs.31,49,684/- of Soyabeen through fake licenseNo.72,73,74 of Krishi Upaj Mandi from M/s Shekh Brothers, Bhandar. To verify further, when the Ld. AO called for details directly from Krishi Upaj Mandi u/s 133(6), the authorities of Krishi Upaj Mandi informed that their license book No.5168 had been stolen by someone and the impugned licenseNo.72,73,74 were part of that book. The Ld.AO further called for information from M/s Shekh Brothers u/s 133(6) but, however, they could not/did not submit documentary evidences of the alleged transactions such as bilty, receipt of toll tax, receipt of mandi tax, etc. Then, the Ld. AO also communicated directly to Buldhana Urban Cooperative Bank, Buldhana Branch to enquire about the transaction done in bank account held by M/s Sekh Brothers (proprietor Shri Manoj Gupta), whereupon it further got unearthed that the cheques of Rs. 14,00,000/- dated 12.08.2013; Rs. 7,68,000/- dated 13.08.2013; and Rs. 8,31,700/- issued by assessee towards payments against the alleged purchase-transactions were deposited in that bank account and immediately on the very same dates, the sum of Rs. 14,00,000/-; Rs. 7,68,000/-; and Rs. 8,31,500/- were cash-withdrawn through self-cheques. Ld. AO has reported abstract of bank account Page No.4 of the assessment-order. These all evidences and circumstances led the Ld. AO to observe that the purchases declared by assessee were fake-purchase and not real. The Ld. AO also recorded statements of Shri Akash Agrawal (partner of assessee) as well as Shri Harish Sharma (accountant of assessee) and found contradictions, which again strengthened that the impugned purchases were actually bogus-purchases. With such evidences collected by Ld. AO, he finally arrived at a strong conclusion that the assessee made/declared bogus-purchase just to claim deduction of expenditure. Finally, the Ld. AO rejected the books of account of assessee by invoking section 145(3) and made addition.

5. During first-appeal before Ld. CIT(A), the assessee made a detailed submission which is incorporated by Ld. CIT(A) in para 3 of appeal-order and ultimately the assessee made two alternative prayers, viz. (i) to delete the addition of Rs.31,49,684/- fully or (ii) to adopt concept of real income and restrict the addition to suppressed income of Rs.1,84,571/- @ 5.86% on sales corresponding to the alleged bogus purchases. However, the Ld. CIT(A) considered the findings and observations of the Ld. AO and finally rejected both prayers of assessee and sustained the addition fully.

6. Before us, Ld. DR placed a heavy reliance on the orders of lower authorities. Ld. DR contested that there are so many evidences, documentary as well as statements, as noted by Ld. AO in assessment-order which clearly demonstrate that the assessee has recorded bogus purchases in the books of account and thereby claimed a false business-deduction. Then, he argued that any kind of bogus-deduction is not allowed under the scheme of Income Tax Act, 1961 and therefore the lower authorities have rightly made/confirmed the said addition of Rs. 31,49,684/-. Ld. DR, accordingly, prayed to uphold the same.

7. We have considered rival submission of both sides and perused the material held on record. We find that the Ld. AO has made detailed enquiries from different sources with regard to the impugned purchases and thereafter arrived at a reasoned conclusion that the purchases shown by assessee were bogus. During first-appellate proceeding, the Ld. CIT(A) has also considered the entire material and agreed with the action of Ld. AO. On a careful consideration, we do not find any reason to upset the findings of lower-authorities. However, we are conscious of several decisions where it has been categorically held that if the purchases are found lacking *bona fides* but the assessee has declared corresponding sales, the addition/disallowance has to be of the profit-element which can be expected to be earned by assessee and not of the entire purchase. Therefore, holding the same view, we are of the

considered opinion that it is not justifiable to make full addition of Rs.31,49,684/- as done by lower authorities. We agree to the second alternative raised by assesseebefore Ld. CIT(A) as well as in Ground No.5 before us, whereby the assessee agrees to restrict the addition to the extent of the profit element. We further observe that the assessee has requested for profit element of 5.86% before Ld. CIT(A) but taking guidance from section 44AD of Income- Tax Act, 1961 which prescribes 8% profit on sales-turnover, we are also persuaded to accept 8% profit in the present case. Since the sum of Rs. 31,49,684/- is ofpurchase and not sales, we extrapolate it mathematically to the level of sales and thereby arrive at the net profit of Rs. 2,73,884/- (Rs.31,49,684*8/92). Accordingly, we restrict addition to Rs. 2,73,884/- and direct the Ld. AO to delete the rest of the addition of Rs. 28,75,800/- [Rs. 31,49,684/- minus Rs. 2,73,884/-]. Thus, the assessee succeeds partly in this appeal.

8. Resultantly, this appeal of assessee is partly allowed.

Order pronounced as per Rule 34 of ITAT Rules, 1963 on 25/01/2023.

Sd/-

(MADHUMITA ROY)
JUDICIALMEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANTMEMBER

Indore

दिनांक /Dated : 25.01.2023

Patel/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	20.1.23
2.	Date of typing & draft order placed before the Dictating Member	20.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	20.1.23
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	