

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 PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.156/RPR/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Harsha Rice Mills Pvt. Ltd.
D-22, Sector-5, Devendra Nagar,
Raipur (C.G.)-492 001
PAN : AABCH7123H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.170/RPR/2019
निर्धारण वर्ष / Assessment Year : 2014-15

The Income Tax Officer-3(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Harsha Rice Mills Pvt. Ltd.
D-22, Sector-5, Devendra Nagar,
Raipur (C.G.)-492 001
PAN : AABCH7123H

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : None

सुनवाई की तारीख / Date of Hearing : 23.02.2023

घोषणा की तारीख / Date of Pronouncement : 28.03.2023

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 18.02.2019, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act') dated 31.12.2016 for assessment year 2014-15. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

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

"1. Ld. CIT(A) erred in not adjudicating upon ground no.1 of appeal raised before him relating to addition of Rs.47,75,397/- made by the A.O on account of gross profit, rejecting the books of accounts and estimating the GP in place of GP disclosed in books. The addition made by the A.O is arbitrary and is not justified.

2. In the facts and circumstances of the case, Ld. CIT(A) erred in sustaining the addition of Rs.95,81,300/- out of the addition of Rs.7,30,31,125/-made by the A.O on account of profit on alleged bogus purchases holding such purchased to be not genuine. The

purchases made by the appellant are genuine and addition made by A.O and partly sustained by CIT(A) is not justified.

3. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”

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

“1. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition Rs. 6,81,64,321/- out of total addition of Rs.7,30,31,125/- ignoring the fact that these purchases are nothing but bogus purchases managed through bogus bills?"

2. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) having concurrent powers of the AO u/s. 250(4) of the Act, was justified in deleting the addition of 6,81,64,321/- out of total addition of Rs.7,30,31,125/- made by the AO when the assessee could not substantiate the alleged transaction as genuine by producing the documentary evidence from genuine dealers from genuine purchases?

3. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee without taking cognizance of facts brought on record by the Assessing officer that there was no any actual purchases made from bogus dealers and only cheques were issued by the assessee in the name of bogus dealers followed by immediate cash withdrawal from their bank accounts, thereby coloring the transaction as genuine?

4. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of the landmark decision of the Supreme Court in the case of McDowell and Co. Ltd. Vs Commercial Tax Officer 154 ITR 148 (SC), as the same ratio of this landmark decision is applicable to the facts and circumstances of the instant case of the assessee?"

5. "Whether on points of law and on facts & circumstances of the case, the ITAT was justified in giving a decision without discussing the issue on merits and without giving any cognizance to the decision of the Hon'ble Supreme Court in the case of M/s N. K. Protien in SLP 759 of 2017 dated 16.02.2017.

6. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of the ITAT Mumbai in the case of Soman Sun City Vs. JCIT, wherein it is held that purchases could not be treated as genuine even if the purchase bill produced and payment is made through banking channel and other evidence is lacking?"

7. Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of Hon'ble Delhi High Court in the case of CIT-II vs. Jansampark Advertising & Marketing (P.) Ltd. reported in [2015] 56 taxmann.com 286(Delhi) held that "though it is obligation of assessing officer to conduct proper scrutiny of material, in even of assessing officer failing to discharge his functions properly, obligation to conduct proper inquiry shifts to commissioner(Appeals) and Tribunal and they cannot simply delete addition made by assessing office on ground of lack of inquiry."

8. "Whether on points of law and on facts and circumstances of the case, the Ld. CIT(A) was justified in giving a decision, thereby without considering and distinguishing the ratio of the judgment of the cases such as Rameshwar Prasad Bagla 68 ITR 653 (Allahabad) & Homi Vs CIT 41 ITR 135, 142 by (Supreme Court) wherein it is stated that the totality of circumstances must be considered in a case of circumstantial evidenced and the totality of the circumstances has to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular act is proved.

9. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in accepting the fresh evidence produced by the assessee without allowing the AO if any, proper opportunity to examine the same, thereby violating the provision on law under Rule 46A of I T Rules?"

10. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 6,81,64,321/- ignoring the fact available on record viz the alleged concerns have not sold any items to the assessee, indulgence of such concerns in providing of bogus bills to the assessee only in lieu of commission, thereby rendering a decision, which is perverse?"

11. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) has erred in law by holding the decision in favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which without conclusion is based?"

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

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

3. Succinctly stated, the assessee company which is engaged in the business of rice milling had e-filed its return of income for A.Y. 2014-15 on 10.11.2014, declaring an income of Rs. Nil. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have purchased paddy/broken rice aggregating to an amount of Rs.29,12,24,500/- from the following six parties, as under:

S. No.	Name of the party	Total purchase
1.	Agrawal Agro	413,20,000/-
2.	Shri Annpurna Foods	40,00,000/-
3.	Shri Bajrang Food Products	230,60,000/-
4.	Shri Riddhi Siddhi Foods	28,00,000/-
5.	Shri Sarswati Paddy	19,76,47,000/-
6.	Shri Shyamji Rice Agrotech	223,67,500/-
	Total	29,12,24,500/-

A survey operation u/s.133A of the Act was conducted at the business premises of Shri Sanjay Sharma, Hanuman market, Raipur and Shri Kamlesh Kesharwani, commission Agent, Ramsagarpara, Raipur on 15.03.2016, which revealed that certain rice millers would procure bogus bills from brokers/entry operators without any actual purchase of goods. It was observed by the A.O that substantial incriminating material evidencing the aforesaid facts were found in the course of the aforesaid proceedings. The A.O also noticed that survey action was carried out in the case of Nagarik Sahakari Bank, Raipur where some of the brokers/entry operators maintained their bank accounts. It was further observed by the A.O that brokers/entry operators had in their respective statements that were recorded on oath u/s.131 of the Act had admitted of having provided bogus bills to rice traders and millers without any actual supply of goods. Also, it was noticed by the A.O that certain rice millers had in their statements that were recorded on oath admitted of being involved in the nefarious activities of providing bogus bills without any corresponding sales of goods. After deliberating at length on the modus-operandi that was adopted by the brokers/entry operators and certain rice millers who had admitted of their involvement in providing/facilitating bogus bills in lieu of commission, and referring to their statements which were recorded u/s.131 of the Act a/w. those recorded in the course of their cross examination by rice millers who were alleged by them as beneficiary, it was

observed by the A.O that brokers namely, Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamelsh Kesharwani, Shri Ghanshuam Rijwani and Shri Narad Sahu had stated on oath that they had provided bogus entries or bogus bills to various rice millers. It was also observed by the A.O that the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties on the basis of supporting documentary evidences, viz. delivery challans.

5. Considering the fact that the 6 parties from whom the assessee company had claimed to have made purchases of Rs.29.12 crores (approx.) were in the course of investigation found to be bogus firms, the A.O called upon the assessee to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. In reply the assessee company in its attempt to substantiate the authenticity of purchase transactions produced before the A.O bilties and also took support of the fact that it had made payment of 80%-90% of the purchase bills. However, the A.O was of the view that as the assessee company as in a case where bogus purchase bills were procured, had failed to support its claim of having made genuine purchases from the aforementioned 6 parties by producing delivery challans and also the mode of inward transport, Mandi passage and Anugya etc., therefore, its claim of having made genuine purchases did not merit acceptance. As the assessee had failed to substantiate the authenticity of the purchases claimed to

have been made from the aforementioned six parties, therefore, the A.O held the same as bogus purchases. The A.O in the totality of the facts involved in the case held the entire purchase of Rs.29,12,24,500/- as bogus.

6. After treating the impugned purchases in question as bogus the A.O rejected the books of accounts of the assessee u/s.145(3) of the Act. The A.O by relying on the order of the ITAT, Ahmadabad in the case of Vijay Proteins Vs. ACIT, (1996) 58 ITD 428 (Ahd.), and impliedly being of the view that the assessee had purchased the goods in question not from the aforementioned tainted parties from whom only bills were procured for routing the same through its books of account, but had procured such goods at a discounted value from the open/grey market, thus, disallowed 25% of the value of bogus purchases and made a consequential addition of Rs.730,31,125/- to the assessee's returned income. On the basis of his aforesaid deliberations the A.O vide his order passed u/s.143(3), dated 31.12.2016 determined the income of the assessee company at Rs.778,06,520/-.

7. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) being of the view that the addition made by the A.O @25% of the value of the impugned purchases was exorbitant restricted the said disallowance to 3.29% i.e. GP rate of the assessee

company for the year under consideration. Accordingly, the CIT(Appeals) scaled down the disallowance made by the A.O to 3.29% of the value of the impugned purchases and sustained an addition of Rs.95,81,300/- (out of total addition of Rs.7,30,31,125/- made by the A.O.).

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

9. As the department despite having been put to notice about the hearing of the appeal, had neither put up any representation nor filed any application seeking adjournment before us, therefore, we are constrained to dispose off the appeal after hearing the Ld. Authorized Representative (for short 'AR') for the assessee and perusing the orders of the lower authorities.

10. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset had assailed the treating of the aforesaid purchases claimed by the assessee to have been made from aforementioned 6 parties as bogus by the lower authorities. It was the claim of the Ld. AR that as the assessee had supported its claim of having made genuine purchases from the aforementioned parties on the basis of documentary evidences, therefore, there was no justification on the part of the A.O in drawing any adverse inferences as regards the same. Apart from that, it was the claim of the Ld. AR that as the purchases made by the assessee during the year

under consideration were in no way inflated as in comparison to the preceding year, therefore, the genuineness of such purchases on the said count itself was proved to the hilt. On a specific query by the Bench as to whether the copies of delivery challans as regards the purchases claimed by the assessee company to have been made from the above-mentioned parties were made available either before the A.O or before the CIT(Appeals), the Ld. AR answered in the negative.

11. We have heard the Ld. AR, 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 him to drive home his contentions.

12. We have given a thoughtful consideration to the issue in hand, i.e., dubbing of the impugned purchases as bogus by the lower authorities, as well as quantification of the profit which the assessee would have made by procuring the same at a discounted value from the open/grey market. As the assessee company had failed to place on record copies of delivery challans pertaining to the impugned purchase transactions in question, therefore, it can safely be held that no infirmity does emerge from the orders of the lower authorities that no genuine purchases were made by the assessee company from the aforementioned parties. Apart from that, we may also observe that the mode of inward transport, Mandi passage

and Anugya etc. qua the purchases in question were not produced by the assessee in the course of proceedings before the lower authorities. On a careful perusal of the assessment order, we are of the considered view that as observed by the A.O and, rightly so, the assessee company had failed to substantiate the veracity of its claim of having made genuine purchases from the aforementioned parties in question.

13. As the assessee company had failed to discharge the onus that was cast upon it as regards proving the authenticity of its claim of having made genuine purchases from the aforementioned 6 parties in question, therefore, it can safely be concluded that it had the procured goods in question not from the said parties but from the open/grey market. Considering the aforesaid facts, we are principally in agreement with the lower authorities that the assessee would have procured the goods from the open/grey market at a discounted value as against that booked by him on the basis of bogus bills in its books of accounts.

14. As we have upheld the view taken by the lower authorities that the assessee company had not made any genuine purchases from the aforementioned 6 parties in question, therefore, we shall now deal with the quantification of the profit which it would have made by procuring the goods under consideration at a discounted value from the open/grey

market i.e. as against the inflated value at which the same had been booked on the basis of bogus bills in its books of account.

15. On a careful perusal of the order of the A.O, we find that he had not given any cogent reason for working out the disallowance @25% of the value of the impugned bogus/unsubstantiated purchases. In fact, the only reason which can be gathered from a perusal of the assessment order is the reliance placed by the A.O on the order of the ITAT, Ahmedabad in the case of Vijay Proteins Ltd. (1996) 58 ITD 428 (Ahd.). Also, we are not impressed with the manner in which the CIT(Appeals) had scaled down the disallowance to 3.29%. As the very basis adopted by the lower authorities in making/sustaining the addition in the hands of the assessee company is neither supported by any material or the basis, therefore, we are unable to persuade ourselves to concur with the same.

16. Ostensibly the assessee had purchased the goods in question not from the aforementioned six parties but at a discounted value from the parties operating in open/grey market. Our indulgence in the present appeals in the backdrop of our aforesaid observations wherein we have upheld the dubbing of the impugned purchases as bogus, thus, boils down to the quantification of the profit which the assessee would have made by procuring the goods in question at a discounted value from the open/grey market.

17. Admittedly 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 were booked on the basis of the bogus bills in its books of account. 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 is concerned, 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.

18. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O, with a direction to him 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.

19. Before parting, we may herein observe that the Ld. AR had placed on record bifurcated details of average purchase rates of viz. (i) bogus/unsubstantiated and genuine purchases of paddy; and (ii) bogus/unsubstantiated and genuine purchases of broken rice, as under:

Overall purchase average rate				Remark
Paddy	Qty.	Amount	Avg. rate	
	86,520	11,19,22,500	1,293.60	
Less alleged bogus purchases				
	24,108	3,11,00,000	1,290.03	
Difference			3.57	

Overall purchase average rate				Remark
Broken Rice	Qty.	Amount	Avg. rate	
	2,08,000	28,75,56,750	1,382.48	
Less alleged bogus purchases				
	1,88,474	26,00,94,500	1,380.00	
Difference			2.48	

As the aforesaid details filed by the Ld. AR before us were not there before the lower authorities, therefore, we herein direct the A.O to consider the same in the course of the set-aside proceedings after making necessary verifications to his satisfaction. Be that as it may, the A.O shall quantify the profit element which the assessee company would have made by procuring the goods in question at a discounted value from open/grey market after considering the judgment of the Hon'ble High Court of Bombay in the case of Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Haji Adam & Company (supra). Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

20. In the result, both the 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 : 28th March, 2023
*****SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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