

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.99/RPR/2021
निर्धारण वर्ष / Assessment Year : 2016-17

M/s. Shanti Parboiling Industries,
Behind Doctor Somnath Sahu,
Ramsagarpara, Raipur (C.G.)
PAN : AAOFS5287P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-2(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.03.2023

घोषणा की तारीख / Date of Pronouncement : 17.04.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 18.08.2021, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 20.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. That there is no jurisdiction either in law or on facts with the Ld. CIT(A) to sustain the addition of 48,16,049/- on ground of alleged bogus purchase made from four parties, as same has already been fully and sufficiently disclosed by the Appellant under the Income disclosure scheme 2016 and thereon even paid tax on such undisclosed income ;

2. That the CIT(A) was not justified in upholding the rejection of declaration made by the Appellant under income disclosure scheme 2016, wherein the Appellant had categorically declared the undisclosed income in form of alleged bogus purchase @ 8.83% to income and has already made corresponding and applicable payment of tax (along with interest) on such undisclosed income under income disclosure scheme 2016 ;

3. The under the facts and circumstances of the case, the learned Assessing Officer erred in presuming and holding the purchases made from the four parties totaling Rs.2,97,87,500/- as 'bogus', merely on the basis of statement recorded of third party Shri Kamlesh Kesharwani u/s.131 of Income Tax Act, 1961. The resultant disallowance @ 25% of total purchase from four parties only on the basis of statement of the aforesaid third person (which could not even be rebutted by the Appellant for want of opportunity and cross examination) renders such disallowance violative of principles of natural justice;

4. That the Ld.CIT (A) was not justified in confirming the disallowance of 25 % of total purchase as the same is unjustified, especially in light of the factum that books of accounts have been properly maintained and verified; and hence the addition made by rejecting the books of accounts is unwarranted;

5. That the Ld. CIT (A) was justified neither in law nor on facts in confirming the invocation of the provisions of section 145(3) of the Act and in rejection of the books of accounts of the appellant;

6. That under the facts and circumstances of the case, the learned Assessing Officer has erred in invoking the provision of section 145(3) of the I.T. Act and in rejecting the books of Accounts of the appellant on the basis of statement recorded by Jt. CIT, Range -1 during a survey operation u/s.133A in the case of third /unrelated/unconnected persons and by using such statements behind the back of the Appellant, without giving any opportunity of rebutting and cross-examining such statements. The rejection by the AO of the books of accounts in such opaque and arbitrary manner is in gross violation of sacred principles of natural justice and is liable to be interfered with.

7. That without prejudice to afore-mentioned grounds, the quantum of addition sustained by the Ld. CIT (A) is arbitrary and excessive under the facts and circumstances of the case and also, there is no justification for the Ld. CIT(A) to sustain the disallowance of 25% of alleged bogus purchase, as explained above; and

8. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

2. At the very outset, we find that the captioned appeal filed by the assessee involves a delay of 39 days. The assessee has filed an application dated 19.11.2021 seeking condonation of the delay of 39 days. It is stated in the application that as during the relevant period the authorized signatory of the assessee appellant firm was out of station and thereafter, due to Dussehra and Diwali festival the present appeal could not be filed within the stipulated time period. It is also submitted by the assessee that

the failure to file the present appeal within stipulated time period was also due to the on-going Covid-19 pandemic and the circumstances arising on account of the same. It is further submitted by the assessee that the Hon'ble Supreme Court on March 08, 2021 vide its suo-motto order had initially excluded the period from March 15, 2020 till March 14, 2021 for calculating the period of limitation. It is further submitted that the Hon'ble Supreme Court had thereafter vide its order dated April,27, 2021 restored its earlier order dated March 08, 2021, and it was provided that the period of limitation w.e.f. March 15, 2020 would stand extended till further order. It is also submitted by the assessee that in view of the second Covid-19 wave in India, the Hon'ble Apex Court had pursuant to its aforesaid orders directed that the period of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further order. It is further submitted by the assessee that considering the extended period of limitation no delay was involved in filing of the present appeal by the assessee company. Alternatively, it is submitted by the assessee that in case delay, if any, was involved in filing of the present appeal, then the same be condoned as the assessee for sufficient reasons was prevented from filing its appeal within the stipulated time period.

3. Per contra, the Ld. Departmental Representative (for short 'DR') did not object to the seeking of condonation of the impugned delay involved in filing of the present appeal by the assessee appellant.

4. We have given a thoughtful consideration and considering the circumstances leading to the impugned delay involved in filing of the present appeal r.w the aforesaid order of the Hon'ble Apex Court admit the same.

5. Succinctly stated, the assessee company which is engaged in the business of rice milling and trading of paddy, rice, broken rice etc. had filed its return of income for the A.Y.2016-17 on 28.02.2017, declaring an income of Rs.36,69,590/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

6. 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.2,97,87,500/- from the following four parties, as under:

S. No.	Name of the party	Total purchase
1.	Shri Sainath Agrotech, Raipur	20,00,000/-
2.	M/s. Kesharwani Rice Mill	1,45,00,000/-
3.	M/s. Bhagwati Paddy Process, Raipur	58,87,500/-

4.	M/s. Agrawal Agro, Raipur	74,00,000/-
	Total	2,97,87,500/-

7. It was observed by the A.O that 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.

8. The A.O considering the fact that the 4 parties from whom the assessee company had claimed to have made purchases of Rs.2,97,87,500/- were in the course of investigation found to be bogus firms, thus, called upon it to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. The assessee firm failed to lead any documentary evidence to substantiate the authenticity of its claim of having made any genuine purchases from the aforesaid tainted parties. Considering the aforesaid facts, 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 4 parties by producing

transport challans or weigh bridge slips 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 four 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.2,97,87,500/- as bogus.

9. The A.O after treating the impugned purchases in question as bogus rejected the books of accounts of the assessee u/s.145(3) of the Act. The A.O by relying on the order of Hon'ble High Court of Gujarat in the case of Sanjay Oil Cake Industries Vs. CIT (2009) 216 ITR 274 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.74,46,875/- (being 25% of Rs.2,97,87,500/-) to the assessee's returned income. Observing that as the assessee had declared a sum of Rs.26,30,826/- being 8.83% of the amount of bogus purchases in the IDS, 2016 declaration, therefore, the A.O taking a just and reasonable view allowed the credit of the aforesaid amount of Rs.26,30,826/-. Accordingly, the A.O vide his order passed u/s.143(3), dated 20.12.2018 after making an addition of Rs.48,16,049/-

[Rs.74,46,875/-(-) Rs.26,30,826/-] determined the income of the assessee company at Rs.84,85,639/-.

10. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). Observing that the addition made by the A.O @25% of the value of the impugned purchases was justified, the CIT(Appeals) confirmed the disallowance made by the A.O of Rs.48,16,049/-(net).

11. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of appeal had failed to put up an appearance, therefore, we are constrained to proceed with and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, i.e, after hearing the respondent revenue and perusing the orders of the lower authorities.

12. We have heard the Ld. DR, 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.

13. 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 goods in question 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 emerges 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 bilti/transport challans or weigh bridge slips etc. as regards 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.

14. 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 4 parties in question, therefore, it can safely be concluded that it had procured the 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 the value at which the

said goods were booked on the basis of bogus bills in its books of accounts.

15. As we have upheld the view taken by the lower authorities that the assessee company had not made any genuine purchases from the aforementioned 4 parties in question, therefore, we shall now deal with the quantification of the profit which it would have made by procuring the goods in question 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.

16. 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 Hon'ble High Court of Gujarat in the case of Sanjay Oil Cake Industries Vs. CIT (supra.). Also, we are not impressed with the manner in which the CIT(Appeals) had confirmed the disallowance made by the A.O. 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 basis, therefore, we are unable to persuade ourselves to concur with the same.

17. Ostensibly the assessee had purchased the goods in question not from the aforementioned four parties but at a discounted value from the parties operating in open/grey market. Our indulgence in the present appeal in the backdrop of dubbing of the impugned purchases by us 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.

18. 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 No.1004 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 is 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.20,98,62 1.88 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.

19. 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. Be that as it may, the A.O in the course of the set-aside proceedings 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, the appeal of the assessee is 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 PADMAHALI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 17th April, 2023.
SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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