

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

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 217/RPR/2019
निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer-2(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Goyal Agro Industries,
21/570 Puran Dal Mill,
Ramsagar Para, Raipur (C.G.)
PAN : AAEEFG6054E

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 20.04.2023

घोषणा की तारीख / Date of Pronouncement : 28.04.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 04.07.2019, 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 31.03.2016 for A.Y. 2013-14. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs. 1,72,43,900/- being bogus purchases, despite accepting the fact that it was a bogus purchase?
2. Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the adding of Rs.1,72,43,900/- and sustaining an amount of Rs.6,60,442/- ignoring the undisclosed investment made by the assessee on the bogus purchase?
3. Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs. 1,72,43,900/- and estimating G.P. on bogus purchases without assigning any sound basis?
4. Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs.5,00,000/- being bogus hamali charges, ignoring the facts that when the purchase is bogus, the corresponding hamali charges will also be bogus?
5. Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs.5,20,000/- being bogus milling charges ignoring the fact that when the purchase is bogus, the corresponding milling expenses will be bogus?
6. The order of Ld. CIT(A) is erroneous both in law and on facts.
7. Any other ground that may be adduced at the time of hearing.”

2. Succinctly stated, the assessee firm which is engaged in the business of running a rice mill and trading of rice, broken rice and bran had e-filed its return of income for A.Y. 2013-14 on 26.09.2013, declaring an income of Rs.7,82,250/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee firm had claimed to have made purchases of paddy, rice, broken bran and bardana from the following tainted parties:

Sr. No.	Name of the Bogus firm	Amount of purchase
1.	M/s. Bajrang Food Products	Rs.12569950/-
2.	Shri Khand Agro Tech, Raipur	Rs.4674000/-
	Total Bogus purchase	Rs.17243900/-

The A.O considering the fact that the aforesaid tainted parties from whom the assessee firm had claimed to have made purchases of Rs.1,72,43,900/- were in the course of investigation found to be bogus firms, thus called upon the assessee to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. As the assessee firm failed to discharge the onus that was cast upon it as regards substantiating the authenticity of the aforesaid purchase transactions in question by placing on record supporting

documentary evidence, viz. gate entry pass, proof of transportation, purchase register etc., therefore, the A.O rejected its claim of having made genuine purchases from the aforementioned parties and dubbed the same as bogus purchases.

4. The A.O further in the course of the assessment proceedings observed 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 survey 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 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 Ghansham 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 that were claimed to have been made from the aforementioned parties on the basis of supporting documentary evidences.

5. The A.O after treating the impugned purchases of Rs.1,72,43,900/- in question as bogus, relied on the order of the ITAT, Ahmedabad in the case of Vijay Proteins Ltd. Vs. ACIT, (1996) 58 ITD 428 (Ahd.), and was of the view that the assessee firm had not purchased the goods in question from the aforementioned tainted parties. Accordingly, the A.O on the basis of his aforesaid conviction disallowed the entire amount bogus purchases and made a consequential addition of the same 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 31.03.2016 determined the income of the assessee firm at Rs.1,90,46,150/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) was of the view that in the line of business of rice millers in the state the GP rate varied from 3% to 10% depending on various factors such as price of paddy paid by the government, level of crop production and quantity of procurement committed by the state government. Accordingly, the CIT(Appeals) adopting the GP rate @8%, therein, referring to the GP rate of 4.17% that was disclosed by the assessee firm during the year made an addition @ 3.83% [8%(-) 4.17%] on the bogus purchases of Rs.1,72,43,900/- and sustained an addition of Rs.6,60,442/- (out of Rs.1,72,43,900/-).

7. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. As the assessee respondent despite having been intimated about the hearing of appeal had failed to put up an appearance before us, therefore, we are constrained to proceed with and dispose off the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963, i.e, after hearing the appellant revenue and perusing the orders of the lower authorities.

8. The Ld. Departmental Representative (for short 'DR') relied on the order of the A.O. It was vehemently submitted by the Ld. DR that as the assessee had failed to discharge the primary onus that was cast upon it as regards proving the authenticity of its claim of having made purchases

from the aforementioned 2 tainted parties, therefore, the A.O had in all fairness disallowed entire amount of such bogus purchases. It was further submitted by the Ld. DR that as the CIT(Appeals) had without any basis or reasoning restricted the addition to 3.83% of the value of the impugned purchases, therefore, the order so passed by him being devoid and bereft of any basis could not be sustained and was liable to be set-aside.

9. We have heard the Ld. DR, perused the orders of the lower authorities and the material available on record.

10. 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. Admittedly, as the assessee firm had failed to place on record copies of delivery challans a/w. other supporting documents which would have substantiated the authenticity of the aforesaid purchase transactions in question, therefore, the lower authorities had concluded that no genuine purchases were made by the assessee firm from the aforementioned parties.

11. As the assessee firm had failed to discharge the primary onus that was cast upon it as regards proving the authenticity of its claim of having

made genuine purchases from the aforementioned 2 parties in question, therefore, it can safely be concluded that it had procured the goods in question not from the said parties but at a discounted value 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 in its books of accounts on the basis of bogus bills of the aforementioned tainted parties.

12. As the assessee firm had not made any genuine purchases from the aforementioned 2 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.

13. We find on a careful perusal of the order of the A.O that he had not given any cogent reason for working out the disallowance of the entire amount 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 sustained the

disallowance at Rs.6,60,442/- i.e. @ 3.83% of the value of the unsubstantiated purchases of Rs.1,72,43,900/-. As the very basis adopted by the lower authorities in making/sustaining the addition in the hands of the assessee firm is neither supported by any material or basis, therefore, we are unable to persuade ourselves to subscribe to the same.

14. Ostensibly the assessee firm had purchased the goods in question not from the aforementioned 2 parties, but at a discounted value from the parties operating in open/grey market. Our indulgence in the present appeal boils down to the quantification of the profit element which the assessee would have made by procuring the goods in question at a discounted value from the open/grey market.

15. Admittedly the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which it 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 the 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 as those 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 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.

16. 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 w.r.t 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. Thus, **Grounds of appeal No.(s) 1 to 3** raised by the revenue are allowed for statistical purposes in terms of our aforesaid observations.

17. We shall now deal with the grievance of the revenue that the CIT(Appeals) has erred in vacating the disallowance of Rs.5 lac that was made by the A.O towards bogus hamali expenses i.e. loading and unloading charges.

18. On a perusal of the assessment order, it transpires that the A.O had observed that the assessee had though raised a claim of deduction of hamali expenses of Rs.19,70,192/- but the same were merely supported by self made vouchers. It was observed by the A.O that the assessee had not maintained any register for day to day works done by the hamals. It was further observed by the A.O that the vouchers did not contain the details of works and spot/location of the work. Apart from that, it was observed by the A.O that as the assessee had procured bogus purchases bills for substantial quantity of various goods, therefore, the corresponding hamali charges pertaining to the said bogus purchases could not be sustained. Accordingly, the A.O on the basis of his aforesaid observations, made an ad-hoc disallowance of Rs.5 lac out of assessee's claim of hamali expenses.

19. We have heard the Ld. DR as regards the aforesaid issue under consideration. Although the A.O had observed that the assessee's claim for deduction of hamali expenses were merely supported by certain self-made cash vouchers but strangely he had not referred any single instance where any such voucher was not found to his satisfaction. Apart from that, in the backdrop of our aforesaid observations that the assessee though had not procured goods in question from aforementioned parties from whom only purchase bills were obtained but had made such purchases from open/grey market, therefore, the very basis adopted by the A.O for drawing

adverse inferences with respect to hamali expenses on the ground i.e. no corresponding purchases were made, cannot be sustained.

20. We, thus, in terms of our aforesaid deliberations are unable to persuade ourselves to subscribe to the ad-hoc disallowance of Rs.5 lac towards hamali expenses made by the A.O. Accordingly, finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the said disallowance, uphold his order. Thus, **Ground of appeal No.4** raised by the revenue is dismissed in terms of our aforesaid observations.

21. We shall now deal with the grievance of the revenue that the CIT(Appeals) had erred in law and facts of the case in vacating disallowance of Rs.5.20 lac made by the A.O towards bogus milling charges, for the reason that now when the purchases in itself were found to be bogus, there could have been no occasion for incurring of corresponding expenses.

22. We have given a thoughtful consideration in the backdrop of the orders of the lower authorities. On a perusal of the assessment order, we find that the A.O had worked out an ad-hoc disallowance of Rs.5.20 lac (out of Rs.2258059/- of milling expenses) on the ground that the same were merely supported by self-made cash vouchers. Apart from that, it was observed by the A.O that the assessee had failed to maintain any register for day to day works done by labour a/w. their attendance sheet and

details of transportation of goods. It was observed by the A.O that the recipients of the aforesaid amounts were also not identifiable. However, the department has assailed the vacating of the disallowance of Rs.5.20 lac by the CIT(Appeals) on the solitary ground that now when the purchases have been found to be bogus then the corresponding milling charges are also to be dubbed as bogus. As we have concluded that the assessee though had made purchases in question not from the aforesaid parties but from open/grey market, therefore, the very basis on which the department has assailed the deletion of the disallowance of Rs.5.20 lac by the CIT(Appeals) does not survive and is liable to be rejected on the threshold. Apart from that we may herein observe that as the A.O had not pointed out any specific instance of the assessee's claim of expenditure which was not found by him to be either in order or bogus, therefore, the generalized approach adopted by him for arriving at an ad-hoc disallowance of the aforesaid expenses cannot be sustained.

23. We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the disallowance of Rs.5.20 lacs out of milling expenses, thus, uphold his order to the said extent. Thus, **Ground of appeal No.5** raised by the revenue is dismissed in terms of our aforesaid observations.

24. **Ground of appeal No.(s) 6 & 7** being general in nature are dismissed as not pressed.

25. In the result, appeal of the revenue is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 28th day of April, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 28th 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)-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.