



॥ आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ, रायपुर में ॥

(Through Hybrid Hearing)



IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH, AT RAIPUR
BEFORE HON'BLE SHRI RAVISH SOOD, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.235/RPR/2016

निर्धारण वर्ष / Assessment Year : 2011-2012

Dy. Commissioner of Income Tax-
4(1), Raipur (C.G.)

..... अपीलार्थी / Appellant

बनाम / V/s.

Nand Kishore Agrawal,
Moti Nagar, Shiv Steel, Boria Road,
Raipur (C.G.)
PAN: AJDPA4766H

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri R. B. Doshi

Revenue by : Shri Piyush Tripathi

सुनवाई की तारीख / Date of conclusive Hearing : 24/03/2023

घोषणा की तारीख / Date of Pronouncement : 24/03/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal challenges the order of Commissioner of Income Tax (Appeals)-1, Raipur [for short "**CIT(A)**"] dt. 29/02/2016 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"] deleting the addition carried out by the Dy. Commissioner of Income Tax, Circle-2(1), Raipur [for short "**AO**"] vide assessment order dt. 27/03/2014 passed u/s 143(3) by for assessment year [for short "**AY**"] 2011-12.



2. After hearing to rival contention of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records and duly considered the facts in the light of settled legal position which are forewarned to respective parties.

3. During the course of hearing, the learned representative for the revenue [for short **"DR"**] adverting to order of first appellate authority has contended that the Ld. CIT(A) erred in deleting the impugned addition without appreciating the facts of the case. Further relying upon catena of judicial pronouncement including the decision of jurisdictional Chhattisgarh High Court in "K P Manhar Vs CIT" reported in 52 Taxman 335 (HC) prayed for reversal on the following grounds of appeal;

"1. Whether in law and on facts & circumstances of the case, the Ld.CIT(A) was justified in deleting the addition of Rs.2,30,05,870/- made by the A.O. on account of bogus purchases reported in books of accounts.

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

3. Any other ground that may be adduced at the time of hearing."



4. **Per contra**, the learned representative for the assessee [for short "**AR**"] adverting to records stated that, consequent to receipt of information through DGIT (Inv) received from Sales Tax Department, Mumbai the assessee was summoned u/s 131 of the Act and finally the assessment in the impugned case was made u/s 143(3) of the Act by disallowing total purchases made from two parties viz; (1) M/s Donnies Trading Co and (2) M/s Ceeport Iron & Steel for total sum of ₹2,30,05,870/- treating them as bogus. Further calling our attention to para 4 and 5 of the assessment order, the Ld. AR could evidently establish that, the sole reason for disallowance of such purchases made from aforesaid two vendor / creditor was delayed purchase payment by the assessee which were ranging from one & half months to three & half months.

5. We have given our thoughtful consideration to the facts and case laws referred by rival parties and found that, the solitary basis of disallowance of purchases made from aforesaid two parties was attributable to delayed payment to the respective creditors. As such there is no other basis or material brought on record nor any



inquiries found conducted by the Ld. AO to showcase or establish that the purchase so made by the assessee were bogus in any manner, for the reason we find force in the findings of the Ld. CIT(A) in holding the disallowance as unwarranted in terms decision rendered by Hon'ble Bombay High Court in "Babula Borana" reported at 282 ITR 251 and Nilunj Exim Enterprises Pvt. Ltd. 216 Taxman 171.

6. In the extant case, it remained an undisputed fact that the assessee after having purchased the goods has paid the purchase price to M/s Donnies Trading Co within one & half months therefrom and within three & half months to M/s Ceeport Iron & Steel. And we find that, this delayed payment alone construed a stout basis for treating the purchases as bogus and consequent disallowance while framing the assessment. In our considered opinion however, mere delayed payment to the creditors / vendors from whom the said purchases were made by the assessee **per-se** do not render the purchases as bogus, and in the absence of any deprecative material **vis-à-vis** findings establishing the purchases as non-genuine we find no reasons to subscribe the views of the Ld. AO.



7. Since the purchase price paid by the assessee towards stock-in-trade possesses all the characteristics enumerated in section 37(1) of the Act and the same remained undisputed during the course of assessment, the Revenue is thus forbidden from disallowing the cost of purchases as expenses at the whims and fancies of the assessing officer.

8. In the light of aforesaid discussion we find no reason to interfere with the order of Ld. CIT(A) and since nothing adverse was brought to our notice warranting us taking any other view, **the appeal of the Revenue is DISMISSED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 24th day of March, 2023.

-S/d-

RAVISH SOOD
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 24th day of March, 2023.

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

1. अपीलार्थी / The Appellant.
3. The Pr. CIT-I, Raipur (C.G.-India)
5. DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

2. प्रत्यर्थी / The Respondent.
4. The CIT(A)-I, Raipur (C.G.-India)

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.