

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2869/Del/2022
(ASSESSMENT YEAR 2008-09)**

Babulal Khandelwal 5888/3, 2 nd Floor, Basti Harphool Singh, Sadar Bazar, Delhi-110 006 PAN-AAHPK 6455G	Vs.	ITO, Ward-63(3), Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Ved Jain, Advocate Ms. Supriya Mehta, CA & Ms. Uma Upadhyay, CA
Respondent by	Mr. Kanv Bali, Sr. DR

Date of Hearing	01/06/2023
Date of Pronouncement	21/06/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [Ld. CIT(A)], for short], dated 31/10/2022 for Assessment Year 2008-09. Grounds taken in this appeal are as under:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner Income Tax (Appeals), National Faceless Appeal Centre (CIT(A), NFAC) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on the fact in law, in rejecting the contention of the assessee the initiation of the reassessment proceedings and the reassessment order are bad both on facts and in law liable to be quashed as the statutory conditions and procedure prescribed under the statute have not been complied with.

3. (i) On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of the assessee that the reassessment proceedings are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

(ii) On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of the assessee that the reassessment order passed by the A.O., is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded without application of mind on the part of the A.O.

4. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in confirming the addition of an amount of Rs.19,80,563/- u/s 69C of the AC on treating the purchases made by the assessee as not genuine.

5. (i) On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of assessee that the learned A.O. has erred both on facts & in law in holding that the firm Pashupati Enterprises is not engaged in the actual business ignoring the fact that during the course of the search substantial inventory in respect of the material being purchased by the assessee were found which confirm the fact that this firm was doing actual business.

(ii) That the inference drawn by the AO merely on the basis of a statement that these firms are not in actual business is baseless and contrary to the facts on record.

6. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of assessee that there being a complete tally of the quantity purchased and sold the allegation that the assessee has not made purchases cannot be sustained.

7. On the facts and circumstances of the case, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of assessee that the addition made by the learned AO is untenable in the eye of law having been made without providing opportunity to cross examine the person on the basis of whose statement the allegations have been made against the assessee and without following the principle of natural justice.

8. In the alternative and without prejudice to the above, the learned CIT(A), NFAC has erred both on fact and in law, in rejecting the contention of assessee that the learned AO has erred both on facts and in law in not taking the allegation to the logical conclusion after having held that the purchases are not genuine its the obvious implication would have been that the sales are also not genuine.

9. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

3. Brief facts of the case as per the order of the CIT(A) is that, the assessment order came to be passed u/s 143(3) read with Section 147 of the Act on 18/03/2016 wherein income of the assessee was determined at Rs. 23,11,563/- as against the total returned income of Rs. 7,21,090/- wherein the Ld. A.O. made addition of Rs. 19,80,563/- on account of bogus purchase. As against the assessment order dated 18/03/2016, the assessee preferred an appeal before the CIT(A) and the Ld. CIT(A) vide order dated 31/10/2022 dismissed the Appeal filed by the assessee. Aggrieved by the order of the

CIT(A) dated 18/03/2016, the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the case of the assessee is squarely covered by the order of the Coordinate Bench in assessee's own case for the Assessment Year 2007-08 and 2006-07 in ITA No. 196/Del/2021 and 1367/Del/2015 wherein the Tribunal has quashed the reassessment proceedings initiated by the A.O.

5. Per contra, the Ld. Departmental Representative has relied on the orders of the Lower Authorities and submitted that the appeal of the assessee is devoid of merit.

6. We have heard the parties and perused the material available on record. It is found that the Assessing Officer made an addition of Rs.19,80,563/- on account of purchases made by the assessee declaring the same as bogus purchases. The ld. CIT(A) while dealing with the issue held as under:-

“iii. Decision

I have gone through the facts of the case and have considered material on record in the case of the Appellant.

In this case, the AO found that the purchase of Rs.19,80,563/- is a bogus purchase and the same was added to income of the appellant under section 69C of the Act. The appellant challenged the reopening of the case. However, it is found that the AO reopened the case based on the information of bogus purchase. Therefore he has sufficient reason to believe that the income has escaped assessment. Hence this ground is not acceptable.

The appellant tried to explain that this is not a bogus purchase based on the documents produced by him before the AO like bank account statement, purchase documents etc.

In para 10 of the assessment order, Shri Vishesh Gupta, the bogus bill provider explained the procedure of issuing bogus bills. It is evident that in this bogus purchase transaction all the documents produced by the appellant are made/created to fool the department to evade tax.

The appellant also claimed that if this is bogus purchase then the sale should also be bogus. The bogus purchase is made only to reduce the profit, there is no correlation with the sale. Even sometime some purchases are also made illegally and false bills are purchased to show: that in book. There was no information on record that the sales are; bogus but the purchase are found to be bogus on verification of the investigation unit as well as by the AO.

The appellant also raised the point about cross examination. However, no such request was made during the assessment proceedings. Moreover, the AO has examined the owner of the bogus bill issuer and recorded the statement where the bogus nature of transaction is confirmed (Refer to the para 17 of the assessment order).

In view of the above discussion, the addition made by the AO is, hereby, confirmed.”

7. It is found that the issue of reopening has been dealt by the Coordinate Bench of the Tribunal in assessee's own case for the Assessment Year 2007-08 and 2006-07 in ITA No. 196/Del/2021 and 1367/Del/2015 respectively, wherein the Tribunal has quashed the reassessment proceedings initiated by the assessee. In the assessment year 2006-07 in ITA No. 1367 & 1373/Del/2015, while quashing the reassessment proceedings, the Tribunal held as under:-

“10. On careful consideration and vigilant perusal of the orders of the Tribunal including that of the Unique Metal Industries (supra), we observe the AO had recorded similarly worded reasons of the form whom the assessee alleged to have made bogus purchases were also same except the amount mentioned therein in the reasons recorded in the tabular form, as in the case of the present assessee. We, therefore, respectfully following the above decisions of the Tribunal in the case of Unique Metal Industries (supra) hold that the initiation of reassessment proceedings as well as issuance of notice u/s 148 of the Act was not valid and the same was vide ab initio and thus, liable to be quashed along with assessment order passed in pursuance thereto. Accordingly. Ground Nos. 2 and 3 of the assessee are allowed.”

Further relying on the order made in Assessment Year 2006-07 in ITA No. 1367 & 1373/Del/2015, the coordinate Bench of the Tribunal for the Assessment Year 2007-08 also allowed the Appeal filed by the assessee by directing the A.O to delete the impugned addition thereon.

8. Considering the facts and circumstances of the year under consideration, which are identical to the Assessment Year 2006-07, 2007-08 in the absence of any other binding precedents brought to the notice of the Bench by the Revenue, by respectfully following the order of the Tribunal for the Assessment Year 2006-07 and 2007-08 (supra), we allow the grounds of appeal of the assessee and direct the A.O. to delete the impugned addition.

9. In the result, the Appeal of the assessee is allowed.

Order pronounced in open Court on 21st June, 2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 21.06.2023

Pk/R.N Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI