

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.101/RPR/2023

निर्धारण वर्ष / Assessment Year : 2013-14

Shiv Trading Co.
Saranggarh Road, Chhatamuda Chowk,
Raigarh-496 001 (C.G.)
PAN : AAQFS3990K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
NFAC, Delhi.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, CA
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.06.2023

घोषणा की तारीख / Date of Pronouncement : 04.07.2023

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 02.02.2023, which in turn arises from the order passed by the A.O. under Sec. 147 r.w.s. 144 r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2022 for the assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal:

“1 That the order is bad in law as well as on facts and the Ld. CIT(A) erred in confirming the action of Ld. AO in making addition of Rs.26,88,000/- under section 69C of the income tax act, 1961.

2. The learned CIT(A) erred in sustaining the disallowance of Rs.26,88,000/- made on account of bogus purchases without appreciating that the disallowance was made mechanically without considering the evidences furnished by the assessee and also without rejecting the books of account.

3 Without prejudice to Ground No.1 & 2 above, the Ld. CIT(A) erred in not appreciating the fact that based on the judicial dictum at best only a percentage of the alleged bogus purchases could have been disallowed and not the entire claim of Rs.26,88,000/-.

4. On the facts and circumstances of the case, the order of the Ld. CIT(A) is bad in Law, having been passed in a mechanical manner without following the principles of natural justice, without providing adequate opportunity of being heard, without providing the copies of reasons recorded for issuing notice u/s.147, without providing copies of statements of third

parties and also without providing cross examination of those parties.

5 The above grounds are independent and without prejudice to one and another.

6. The Appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal.”

2. Succinctly stated, the assessee firm which is engaged in the business of custom milling of rice and paddy, had filed its return of income for A.Y.2013-14 on 31.10.2013 declaring an income of Rs.3,53,710/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. On the basis of information that the assessee firm was one of the major beneficiaries of bogus purchase bills aggregating to Rs.26.88 lacs that were procured from a bogus entity, viz. M/s. Shri Khand Agrotech, the A.O reopened its case u/s.147 of the Act. As the assessee had failed to comply with the notice issued u/s.148 of the Act dated 31.03.2021, therefore, the A.O. vide his order u/s.147 r.w.s. 144 r.w.s. 144B dated 28.03.2022 made an addition of the entire amount of bogus purchases of Rs.26.88 lacs u/s.69C of the Act.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the Ld. authorized representatives of both the parties, 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 them to drive home their respective contentions.

7. After arguing at length, Shri Prafulla Pendse, the Ld. Authorized Representative (for short "AR") for the assessee confined his contentions to two issues, viz. (i) that the A.O had grossly erred in law and facts of the case in making an addition of the entire amount of purchases of Rs.26.88 lacs without rejecting the books of account of the assessee firm; and (ii) that the A.O had grossly erred in making the impugned addition u/s.69C of the Act.

8. As is discernible from the records the assessee had admittedly failed to substantiate the authenticity of the purchases aggregating to Rs.26.88 lacs that were claimed to have been made from M/s. Shri Khand Agrotech. On the contrary, a perusal of the assessment order reveals that Shri Narad Sahu i.e. proprietor of the aforesaid concern had admitted in his statement of having provided bogus purchase bills through his aforesaid concern. As the assessee had failed to

substantiate the authenticity of its claim of having made genuine purchases from the aforementioned concern, therefore, I find no infirmity in the orders of the lower authorities who had rightly held the same as bogus purchases.

9. At the same time, I cannot remain oblivion of the fact that the A.O had neither rejected the books of account of the assessee firm nor dislodged the sales accounted for by the assessee firm in its regular books of account. Considering the totality of the facts involved in the present case, it can safely be concluded that the assessee firm had procured the goods in question not from the aforementioned party but had purchased the same at a discounted rate from the open/grey market and had routed the said transaction through its books of account on the basis of bogus purchase bills procured from the aforementioned bogus concern.

10. Apropos the addition that was called for in the hands of the assessee firm, I am of the considered view that the same is liable to be restricted only to the extent of 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, I 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.20,98,62 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, I am of the considered view that on the same lines the profit made by the assessee in the case before me i.e. 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.

11. I, thus, in terms of my 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.

Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

12. In the result, appeal of the assessee is allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 04th day of July, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 04th July, 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, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur