

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 30/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Sri Gurukrupa Agro Industries, Nizamabad [PAN No. ABUFS4528A]	Vs.	Deputy Commissioner of Income Tax, Circle-1, Nizamabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR  
राजस्व द्वारा/Revenue by: Shri Vamshi Krishna, DR

सुनवाई की तारीख/Date of hearing: 26/06/2023  
घोषणा की तारीख/Pronouncement on: 20/07/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the order dated 07/11/2022 passed by the learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sri Gurukrupa Agro Industries ("the assessee") for the assessment year 2015-16, assessee preferred this appeal.

2. Brief facts of the case are that assessee is a partnership firm, engaged in the business of milling and trading of paddy, rice and broken rice at Nizamabad. While scrutinizing the return of income filed by the assessee for the assessment year 2015-16, learned Assessing Officer found that the assessee claimed the CST and VAT payments in the profit and loss account, but when called upon to produce the original and also the self-certified copies of the challans relating to the payment of CST and VAT, assessee failed to produce the same. Learned Assessing Officer, therefore, added a sum of Rs. 11,25,426/- and Rs. 74,97,596/- said to have been paid by the assessee towards CST and VAT payments.

3. Assessee preferred appeal before the learned CIT(A). The impugned order shows that on an earlier occasion, the learned CIT(A) dismissed the appeal, but a Co-ordinate Bench of the Tribunal by order dated 11/01/2019, remitted the matter to the file of learned CIT(A) with a direction to examine the issue afresh. Learned CIT(A) while considering the issue in the second round of appeal, directed the learned Assessing Officer to provide one more opportunity of hearing to the assessee to furnish the proof of payments of CST and VAT and if the amount claimed as 'expenditure' in the profit and loss account was paid before the due date of filing of return of income, the same shall be allowed. Simultaneously, evidence including the available challans of payment, copy of CST and VAT returns for the current year and subsequent year.

4. Aggrieved by such a direction, assessee preferred appeal before us stating that the learned CIT(A) erred in directing the learned Assessing Officer to verify the challan copies of CST and VAT, instead of treating the impugned amount as a loss due to embezzlement by one of the partners of the firm.

5. Learned AR submitted that due to absconding of the accountant, they are unable to produce any evidence other than the DCB report in respect of CST and VAT and to establish that there was no existing demand, which un-mistakably indicate that the amounts were properly paid. Learned AR prays that the learned Assessing Officer may be directed to consider the aspect that the VAT payment cannot separately be established, because such an amount is included in the challan and the payment of CST and VAT could be inferred from the non-existence of any demand.

6. Learned DR submitted that in the absence of any evidence whatsoever, the authorities are justified in denying the claim of the assessee. He submits that the new plea taken by the assessee that the payments towards CST and VAT could be inferred through DCB reports and the non-existence of any demand in force, needs factual verification and *per se* the assessee is not entitled for any relief.

7. We have gone through the record in the light of the submissions made on either side. It could be seen from the impugned order that the plea of the assessee is that all the relevant material was kept with the accountant, who absconded himself without handing over any challans or other material. The assessee produced the DCB reports in respect of CST and VAT and submits that if there is any doubt in respect of non-existence of any demand in force, such a fact could be verified from the concerned departments and merely because the challans are not available with the assessee, assessee cannot be fastened with huge liability. We are in agreement with the submission of the learned DR that DCB reports and the submissions of the assessee that non-existence of demand would only go to show that there were proper payments to the concerned department, needs factual verification. We, therefore, further direct the learned Assessing Officer to take into consideration the DCB reports also and to consider the same in the light of the submissions of the assessee that

non-existence of any demand for the relevant period towards CST and VAT amounts proper payment. We hold and direct so. Grounds are accordingly treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 20<sup>th</sup> day of July, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 20/07/2023

TNMM

Copy forwarded to:

1. M/s. Sri Gurukrupa Agro Industries, C/o. P. Murali & Co.,  
Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.
2. Deputy Commissioner of Income Tax, Circle-1, Nizamabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD