

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. 36/RPR/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Suresh Sharma
Mandi Road, Neora,
Raipur (C.G.)-493 114
PAN: ATSPS6445A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-1(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 01.08.2023

घोषणा की तारीख / Date of Pronouncement : 04.08.2023

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 29.12.2022, which in turn arises from the order passed by the A.O. under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 20.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. CIT(A) erred in estimating the net profit @1.45% in place of 0.82% disclosed by the appellant. The addition made/confirmed/enhanced by ld. CIT(A) is arbitrary, baseless and not justified.

2. Ld. CIT(A) erred in adopting net profit @1.45% which resulted into enhancement of Rs.50,45,981/-, without appreciating facts of the case properly. The enhancement made by Ld. CIT(A) is illegal in as much as the enhancement is without due and proper opportunity to the appellant.

3. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Succinctly stated, the assessee who is engaged in the business of manufacturing and trading of rice and its by-products had e-filed his return of income for A.Y. 2014-15 on 30.09.2014, declaring an income of Rs.39,74,580/-. Subsequently, the case of the assessee 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 had claimed to have made purchases of broken rice from the following tainted party:

Sr. No.	Name of the Bogus firm	Amount of purchase	Peak purchase amount	Date of peak purchase
3.	M/s. Krishna Processors, Raipur	Rs.31,00,000/-	Rs.25,00,000/-	19/06/2013
	Total Bogus purchase	Rs.31,00,000/-	Rs.25,00,000/-	

The A.O considering the fact that the aforesaid tainted party from whom the assessee had claimed to have made purchases of Rs.31,00,000/- was in the course of investigation found to be a bogus firm, thus called upon the assessee to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. As the assessee failed to discharge the onus that was cast upon him 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, delivery challans of goods, entry in purchase and stock register, confirmation of the party etc., therefore, the A.O rejected his claim of having made genuine purchases from the aforementioned party and dubbed the same as bogus purchases.

4. The A.O further in the course of the assessment proceedings observed that survey operations u/s.133A of the Act were 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 fact 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 activity 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.

5. The A.O after treating the impugned purchases of Rs. 31,00,000/- under consideration as bogus rejected the books of accounts of the assessee u/s.145(3) of the Act. Thereafter, the A.O by relying on the order of the ITAT, Ahmedabad in the case of Vijay Proteins Ltd. Vs. ACIT, (1996) 58 ITD 428 (Ahd.) was of the view that the assessee company had purchased the goods in question not from the aforementioned tainted party from whom only bills were procured for routing the same through his books of account but had procured such goods at a discounted value from the open/grey market. Accordingly, the A.O on the basis of his aforesaid conviction disallowed 25% of the value of bogus purchases and made a consequential addition of Rs.7,75,000/- to the assessee's returned income. Apart from that, the AO holding a conviction that the assessee would have rolled his unaccounted income for carrying the business outside his books of accounts on an estimate basis made an addition of Rs. 25 lac towards such unexplained investment. Although the AO had rejected the books of account of the assessee but he thereafter after referring to individual head of expenses made certain independent additions/disallowances, as under:

Particulars	Amount
Addition of unaccounted railway rack booking charges	Rs. 3,55,319/-
Disallowance out of labour expenses (on ad-hoc basis)	Rs. 1,00,000/-
Disallowance out of <i>hamali</i> expenses (on ad-hoc basis)	Rs. 2,00,000/-
Disallowance out of office expenses, car and vehicle expenses (on ad-hoc basis)	Rs. 40,000/-

On the basis of his aforesaid deliberations the A.O vide his order passed u/s. 143(3), dated 20.12.2016 determined the income of the assessee at Rs.79,44,900/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). It was observed by the CIT(Appeals) that the claim of the assessee company that the payments to the supplier were made through account payee cheques could not be treated as sacrosanct to justify the authenticity of the purchase transactions in question. Also, it was observed by him that the assessee neither in the course of assessment proceedings nor before him could substantiate on the basis of supporting delivery challans, weighbridge bills and receipts the authenticity of his claim of having made genuine purchases from the aforesaid supplier under consideration. Further it was noticed by the CIT(Appeals) that the assessee company had chosen not to cross-examine the brokers who had stated on oath that they had indulged in arranging bogus purchase bills without

actual delivery of goods. Considering the totality of the facts involved in the case before him, the CIT(Appeals) was of the view that as the A.O had rejected the books of accounts, therefore, he could not have thereafter made additions based on individual head of expenses accounted for in the said books of accounts. Accordingly, the CIT(Appeals) not finding favour with the manner of quantification of the income by the A.O substituted the same by estimating the profit of the assessee by adopting his average NP rate for the last three years at 1.45% and applied the same to his total turnover of Rs.62.21 crore. Accordingly, the CIT(Appeals) directed the A.O to vacate the additions made by him under the individual heads of expenses and substitute the same by adopting NP @ 1.45% on the total turnover of Rs.62.21 crore of the assessee company for the year under consideration. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:

“6.5. In relation to addition on account of bogus purchases, argument of the appellant that the purchase bills from the party and payment is made by way of accountPayee cheque to the party is not tenable specially in the context of findings of the survey team where it has been found that above-mentioned brokers were indulged in arranging bogus purchase bills without actual delivery of goods. Bills issued and payment through cheque itself was questioned and found to be bogus during survey proceedings.

6.6. Further during assessment proceedings, on demand by assessing officer, appellant could not produce delivery challans and weighbridge bills and receipts which could have proved actual movement of the goods, Appellant also chose not to cross examine brokers who have given statement under oath that they were indulging in arranging bogus purchase bills without actual delivery of goods even after giving such opportunity by assessing officer. To

prove the claim of such purchases, it is the duty of assessee to produce working records and copies of quantity wise stock taken of purchases, material consume, sales made and buy product produced as part of regular books of accounts, maintenance and as part of working papers and files their audit.

6.7. Assessee has produced nothing of this sort during assessment proceedings as well as appellate proceedings. The fact that assessing officer did not verify Sales does not amount to alleged claim of matching of quantity of sales, consumption and purchase quantity of material. In view of these discrepancies, assessee himself had offered 10% profit on these bogus purchases during statement recorded during assessment proceedings.

6.8. In respect of disallowances made of milling, wages, expenses, transportation and Hamali expenses and office expenses, assessee has just mentioned that once books of accounts are rejected, there cannot be addition based on figures contained in those ledgers. However, assessee has not submitted any supporting bills and vouchers or other evidences to prove these expenses specially in the context of Discrepancies found out by AO as mentioned in assessment order.

6.9. In view of findings of survey action and above-mentioned discrepancies and lack of supporting evidences for the expenses claimed by the assessee; assessing officer rightly did not had satisfaction about completeness and correctness of books of accounts of the assessee and rejected books of accounts. For the reasons mentioned above, this action of assessing officer of rejection of books of accounts is upheld.

6.10. However, It is settled position of law that the Assessing Officer cannot rely on the same books of accounts which are rejected for the purpose of making any other additions as held by the Hon'ble Andhra Pradesh High Court in the case of Indwell Constructions vs. CIT, 232 ITR 776 (Andhra Pradesh), Hon'ble Rajasthan High Court in the case of Malpani House of Stones vs. CIT, 395 ITR 385 (Rajasthan) and Hon'ble Punjab & Haryana High Court in the case of CIT vs. Gian Chand Labour Contractors, 316 ITR 127 (P&H).

6.11. In view of above judicial pronouncements, additions based on individual ledger head expenses accounts will not be justified since books of accounts are rejected. Net profit of the assessee needs to estimated on fair basis for assessment propose. As mentioned in page 2 of AO order assessee has shown net profit at 2.21% for the turnover of Rs.16,52,21,882/- for A.Y.2012-13, at 1.30% for the turnover of Rs.32,56,27,112/- for A.Y.2013-14 and at 0.82% for the turnover of Rs.62,21,07,711/- for the AY under consideration. IN

view of this, estimating profit at rate of 1.45% for turnover of Rs.62,21,07,711/- will be fair to assessee as well as revenue. Hence, A.O is directed to delete the additions made under individual accounts head and instead to adopt net profit at the rate of 1.45% of the turnover of A.Y. under this A.Y. under consideration.

Thus, grounds of assessee on these issues are partly allowed.”

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

8. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the treating of the aforesaid purchases made by the assessee from the aforementioned supplier party, viz. M/s Krishna Processor, Raipur as bogus by the lower authorities. It was the claim of the Ld. AR that as the assessee had supported his claim of having made genuine purchases from the aforementioned party on the basis of documentary evidences, therefore, there was no justification for the AO in drawing any adverse inferences as regards the same. It was also submitted by the Ld. AR that there was no basis either for the A.O to disallow 25% of the value of such bogus purchases or for the CIT(Appeals) to scale down the same to 1.45% of the total turnover. Alternatively, it was submitted by the Ld. AR that the disallowance could have been restricted only to the extent of the 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 allegedly booked on the basis of

bogus bills in his books of account. Ld. AR in support of his aforesaid contention had relied on the judgment of 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.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was vehemently submitted by the Ld. DR that as the assessee had failed to discharge the primary onus that was cast upon him as regards proving the authenticity of his claim of having made genuine purchases from the aforementioned tainted party, therefore, the A.O had in all fairness disallowed 25% of the value of such bogus purchases. It was further submitted by the Ld. DR that the CIT(Appeals) considering the totality of the facts involved in the case before him had in all fairness restricted the addition to 1.45% of the assessee's total turnover of Rs. 62.21 crore (approx.) for the year under consideration.

10. We 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 pronouncement that has been pressed into service by the Ld. AR to drive home his contention.

11. 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 the differential approach adopted by the lower authorities for quantifying the income of the assessee for the year under consideration. As the assessee had failed to place on record documentary evidence which would prove to hilt the genuineness of the purchase transactions under consideration, therefore, it can safely be held that no infirmity does emerge from the orders of the lower authorities that no genuine purchases were made by him from the aforementioned party. On a careful perusal of the assessment order, we are of the considered view that as observed by the A.O and, rightly so, the assessee had failed to substantiate the veracity of his claim of having made genuine purchases from the aforementioned party in question.

12. As the assessee had failed to discharge the onus that was cast upon him as regards proving the authenticity of his claim of having made genuine purchases from the aforementioned party, viz. M/s Krishna Processors, Raipur, therefore, it can safely be concluded that he had procured the goods in question not from the said party 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 by him on the basis of bogus bills in his books of accounts.

13. As we have upheld the view taken by the lower authorities that the assessee had not made any genuine purchases from the aforementioned party, therefore, we shall now deal with the second facet of the issue before us, i.e. quantification of the profit which the assessee would have made by procuring the goods under consideration at a discounted value from the open/grey market as against the inflated value at which the same had been booked by him on the basis of bogus bills in his books of account.

14. On a careful perusal of the order of the A.O, it transpires that he has not given any cogent reason for working out the disallowance @25% of the value 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 applying of the average NP rate of preceding three years i.e. of 1.45% on the total turnover of Rs.62.21 crore (supra) of the assessee company by the CIT(Appeals). We, say so, for the reason that for unverified purchases of Rs.31 lacs (out of total purchases of Rs.58.13 crore made by the assessee during the year under consideration) i.e. 0.53% of the total purchases, there appears to be not much of justification for the

CIT(Appeals) to have approved the rejection of the books of accounts of the assessee u/s.145(3) of the Act and applying of the average net profit of the last three years i.e.1.45% to his total turnover of Rs.62.21 crore (supra) for the year under consideration. As neither of the basis adopted by the lower authorities for making/sustaining the addition in the hands of the assessee is backed by any logical reasoning, therefore, we are unable to persuade ourselves to concur with the same.

15. Ostensibly the assessee had purchased the goods in question not from the aforementioned party but at a discounted value from some supplier/suppliers operating in open/grey market. Our indulgence in the present appeal boils down to the quantification of the profit which the assessee would have made by procuring the goods in question at a discounted value from the open/grey market.

16. Admittedly the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which he 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 his 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, 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 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, 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.

17. 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 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.

18. At the same time, we may herein observe that the A.O while framing the assessment had also pointed out certain discrepancies/infirmities as

regards the assessee's claim for deduction of certain expenses pertaining to his duly accounted business transactions, viz. (i) unaccounted railway rack booking charges; (ii) unverifiable labour expenses ; (iii) unverifiable *hamali* expenses; and (iv) unverifiable office expenses, car and vehicle expenses. Accordingly, the A.O had made addition of the unaccounted railway rack booking charges and also on an ad-hoc basis disallowed the assessee's claim for deduction of the remaining expenses, viz. labour expenses, hamali expenses and office/vehicle expenses. On appeal, the CIT(Appeals) was of the view that once the A.O had rejected the assessee's books of account u/s.145(3) of the Act, then he was precluded from relying upon the same books for carrying out disallowance of ledger head expenses by referring to the said rejected books of accounts. Although, we are principally in agreement with the aforesaid view of the CIT(Appeals), i.e. once the books of account of the assessee had been rejected by the A.O u/s.145(3) of the Act, then, he could not have thereafter relied upon the said rejected books of accounts for making additions by separately disallowing any part of the ledger head expenses, but at the same time, are unable to persuade ourselves to subscribe to the part-rejection/rejection of the books of account of the assessee by the lower authorities for the standalone reason that the assessee could not verify/substantiate to the hilt the purchases of Rs.31 lacs (out of total purchases of Rs.58.13 crore made during the year) i.e. 0.53% of the total purchases and thus, set-aside

the part-rejection/rejection of the books of account u/s.145(3) of the Act of the assessee by the lower authorities. As observed by us hereinabove, the A.O had made certain independent additions/disallowances, viz. addition of unaccounted railway rack booking charges, disallowance of unverifiable labour expenses, disallowance of unverifiable hamali expenses and disallowance out of office expenses, car and vehicles which thereafter, were telescoped by the CIT(Appeals) by applying the NP rate (average) of 1.45% to his total turnover for the year under consideration. As we have set-aside the aforesaid methodology adopted by the CIT(Appeals) for computing the assessee's income, therefore, as a consequence thereto the aforesaid issue is also restored to the file of the A.O for fresh adjudication. The A.O shall in the course of the set-aside proceedings re-adjudicate the assessee's claim for deduction of the aforesaid expenses. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee. The **Grounds of appeal No.1 & 2** are allowed for statistical purposes in terms of our aforesaid observations.

19. The **Ground of appeal No.3** being general in nature is dismissed as not pressed.

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

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

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 04th August, 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, Raipur-1 (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.