

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 Nos. 250 & 251/RPR/2023
निर्धारण वर्ष / Assessment Years : 2015-16 & 2016-17

Chaitanya Solvex Private Limited
58, Gandhi Chowk, Neora,
Raipur (C.G.)-493 114
PAN : AAACC9874F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-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 : 25.08.2023

घोषणा की तारीख / Date of Pronouncement : 05.09.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 05.06.2023, which in turn arises from the orders passed by the A.O. u/s.143(3) r.w.s.147 of the Income-tax Act, 1961 (for short 'Act') dated 24.12.2018 & 13.12.2018 respectively for assessment years 2015-16 & 2016-17. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.250/RPR/2023 for A.Y.2015-16, and the order therein passed shall mutatis mutandis apply for disposal of the other appeal filed by the assessee in ITA No.251/RPR/2023 for A.Y.2016-17. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. CIT(A) erred in dismissing the appeal without adjudicating the appeal on merits. The appellate order passed by Ld. CIT(A) is illegal inasmuch as the same is contrary to principles of natural justice and the requirements of law.

2. Ld. CIT(A) erred in confirming disallowance of Rs.28,99,318/-, being 25% of Rs.1,15,97,275/-, made by AO on account of alleged bogus purchase. The disallowance made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless and not justified.

3. Ld. CIT(A) erred in confirming addition of Rs.8,00,000/- on account of alleged unexplained investment in purchases which were held to be bogus by AO. The addition made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless and not justified.

4. Ld. CIT(A) erred in dismissing the grounds relating to legality of reassessment proceedings without appreciating facts of the case properly. The order passed by the A.O is bad in law, illegal, without jurisdiction and the same has been passed without disposing off the objections against reopening raised by the appellant.

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

3. Succinctly stated, the assessee company which is engaged in the business of manufacturing and trading of Rice bran, crude oil, De-oiled Rice bran, Rice bran refined etc. had e-filed its return of income for A.Y. 2015-16 on 27.09.2015, declaring an income of Rs.31,44,830/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had claimed to have made purchases of paddy/broken rice from the following tainted party:

Sr. No.	Name of the party	Total purchase
1.	M/s. Tulsi Agro	Rs.1,15,97,275/-
	Total	Rs.1,15,97,275/-

The A.O considering the fact that the aforesaid tainted party from whom the assessee company had claimed to have made purchases of Rs.1,15,97,275/- 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 company failed to discharge the onus that was cast upon it 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, purchase register etc., therefore, the A.O rejected its claim of having made genuine purchases from the aforementioned parties and dubbed the same as bogus purchases.

5. The A.O further in the course of the assessment proceedings observed that a survey operation u/s.133A of the Act was 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 facts 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 activities 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. It was also observed by the A.O that the assessee had failed to substantiate the genuineness of the purchases that were claimed to have

been made from the aforementioned parties on the basis of supporting documentary evidences.

6. The A.O after treating the impugned purchases of Rs.1,15,97,275/- in question as bogus, rejected the books of accounts of the assessee u/s.145(3) of the Act. The A.O by relying on the judgment of the Hon'ble High Court of Gujarat in the case of Sanjay Oil Cake Industries Vs. CIT (2009) 316 ITR 274 (Guj.), was of the view that the assessee company had purchased the goods in question not from the aforementioned tainted parties from whom only bills were procured for routing the same through its books of account, but had purchased 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.28,99,318/- to the assessee's returned income. Further, observing that the assessee company had also made an unexplained investment of Rs.8,00,000/- for carrying out the aforesaid transactions, the A.O made an addition of the said amount in the total income of the assessee company. On the basis of his aforesaid deliberations the A.O vide his order passed u/s.143(3) r.w.s. 147, dated 24.12.2018 determined the income of the assessee company at Rs.68,44,148/-.

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

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

9. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the treating of the aforesaid purchases made from aforementioned party as bogus by the lower authorities. It was the claim of the Ld. AR that as the assessee had supported its claim of having made genuine purchases from the aforementioned parties on the basis of documentary evidences, therefore, there was no justification for the A.O in drawing any adverse inferences as regards the same. Apart from that, it was the claim of the Ld. AR that as the purchases made by the assessee during the year under consideration were in no way inflated as in comparison to the preceding year, therefore, the genuineness of such purchases on the said count itself was proved to the hilt. On a specific query by the Bench as to whether the copies of delivery challans as regards the purchases made from the above-mentioned parties were made available either before the A.O or before the CIT(Appeals), the Ld. AR answered in the negative.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the A.O. It was vehemently submitted by the Ld. DR that as the assessee had failed to discharge the primary onus that was cast upon it as regards proving the authenticity of its claim of having made purchases from the aforementioned tainted party, therefore, the A.O had in all fairness disallowed 25% of the value of such bogus purchases which had been rightly sustained by the CIT(Appeals).

11. 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 pronouncements that have been pressed into service by them to drive home their contentions.

12. 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 quantification of the profit which the assessee would have made by procuring the same at a discounted value from the open/grey market. Admittedly, as the assessee company had failed to place on record copies of delivery challans a/w. other supporting documents which would have proved to the hilt the authenticity of the aforesaid purchase transactions in question, therefore, the lower authorities had concluded that no genuine purchases were made by the assessee company from the aforementioned party.

13. As the assessee company had failed to discharge the primary onus that was cast upon it as regards proving the authenticity of its claim of having made genuine purchases from the aforementioned party in question, therefore, it can safely be concluded that it had procured the goods in question not from the said parties 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 purchased the goods from the open/grey market at a discounted value as against that booked in its books of accounts on the basis of bogus bills of the aforementioned tainted party.

14. Ostensibly as the assessee company had not made any genuine purchases from the aforementioned party in question, therefore, we shall now deal with the quantification of the profit which it would have made by procuring the goods under consideration at a discounted value from the open/grey market i.e. as against the inflated value at which the same had been booked on the basis of bogus bills in its books of account.

15. We find on a careful perusal of the order of the A.O that he had 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 judgment of the Hon'ble High Court of Gujarat in the case of Sanjay Oil Cake Industries Vs. CIT (2009) 316 ITR 274 (Guj.). Also, we are not impressed with the manner in which the CIT(Appeals) had sustained the same. As the very basis adopted by the lower authorities in making/sustaining the addition in the hands of the assessee company is neither supported by any material or cogent basis, therefore, we are unable to persuade ourselves to subscribe to the same.

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

17. Admittedly the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which it 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 the 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 as those 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 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.

18. The Ld. AR during the course of hearing of the appeal had sought to place on record a working/calculation sheet revealing the comparative GP rate of impugned bogus/unproved purchases vis-à-vis duly accounted genuine purchases. However, as the aforesaid working/calculation sheet was neither filed before the lower authorities; nor the same was accompanied with an application under Rule 29 of the Appellate Tribunal

Rules, 1963 for placing on record the same as additional evidence, therefore, the same is not being taken on record. At the same time, we may herein observe that the assessee appellant shall remain at a liberty to file the aforesaid working/calculation sheet (supra) in the course of set-aside proceedings before the A.O who is directed to take cognizance of the same after carrying out necessary verification.

19. 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 w.r.t the impugned bogus/unverified purchases made by the assessee 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.

20. In the result, appeal of the assessee in ITA No.250/RPR/2023 for A.Y.2015-16 is allowed for statistical purposes in terms of our aforesaid observations.

ITA No.251/RPR/2023
A.Y.2016-17

21. As the facts and issues involved in the captioned appeal remains the same as were there before us in the assessee's appeal in ITA

No.250/RPR/2023 for assessment year 2015-16, therefore, our order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal i.e., ITA No.251/RPR/2023 for assessment year 2016-17. In this case also, we restore the matter to the file of the A.O with similar directions as were recorded in ITA No.250/RPR/2018 for A.Y.2015-16.

22. In the result, appeal of the assessee in ITA No.251/RPR/2023 for A.Y.2016-17 is allowed for statistical purposes in terms of our aforesaid observations.

23. In the combined result, both the appeals of the assessee are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 05th day of September, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 05th September, 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, 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.