

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.539/Kol/2023
Assessment year: 2013-14

Naresh Chandra Das.....Appellant
28/1, NA, D L Roy Road,
Bowbazar, Krishnagar,
Nadia – 741101.
[PAN: AACFN2632B]

vs.

ACIT, Circle-41, Nadia.....Respondent

Appearances by:

Shri Manish Tiwari, FCA, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 12, 2023

Date of pronouncing the order : September 12, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.02.2023 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. that on the facts and in the circumstances of the case as well as law on the subject, the NFAC/Ld. CIT(A) has erred in passing ex-parte order without giving proper opportunity to the appellant of being heard.

2. that on the facts and circumstances of the case, the NFAC/Ld. CIT(A) erred in confirming addition of Rs. 52,99,281/- towards alleged undisclosed income without going into the merits of the claim by the appellant in respect of accounting of Purchases and Credit Notes during the year.

3. that on the facts and circumstances of the case as well as on law on the subject, the NFAC/Ld. CIT(A) erred in confirming the addition of Rs.1,34,982/- u/a. 40A(3) without considering that no cash payment was made on 27.11.2012 or on any other day as alleged to Nagarjuna Fertilizer & Chemicals.

4. that on the facts and circumstances of the case, the NFAC/Ld. CIT(A) erred in confirming the mistake of the Ld. Assessing Officer when he had, in computation of total income in his order u/s. 143(3)/263, taken total income as per 143(3) as Rs. 29,15,197/- instead of Rs. 25,64,197/- as per order u/s. 143(3) / 251 of the Income Tax Act thereby making an addition of Rs.3,51,000/- for which a relief was allowed by Ld. CIT(Appeals).

5. that on the facts and in the circumstances of the case as well as on law, the order of NFAC/Ld. CIT(A) is not in accordance of the requirements of Sec 250 (b) of Act mandating that the Ld. CIT(A) is required to pass the order on points of determination, in the manner prescribed in law.

6. that the appellant craves leave to file additional grounds and/or amend or alter the grounds already taken, either before or at the time of hearing of the appeal.”

3. Ground No.1 – The assessee has not pressed Ground No.1. Therefore, Ground No.1 is dismissed as not pressed.

4. Ground No.2 – Vide Ground No.2, the assessee has agitated the confirmation of addition of Rs.52,99,281/- made by the Assessing Officer on account undisclosed purchases.

5. The brief facts relevant to the issue are that the Assessing Officer during the assessment proceedings noted that there was a difference of the amount of purchase shown by the assessee from certain credit notes furnished by the assessee. Since, the assessee could not reconcile the

difference of Rs.52,00,000/- on account of purchases through credit notes, therefore, the Assessing Officer treated the said purchases as undisclosed and added the entire amount of difference of Rs.52,99,281/- into the income of the assessee.

6. The ld. CIT(A) confirmed the additions so made by the Assessing Officer.

7. Before us, the ld. counsel for the assessee has submitted that all the purchases were accounted for in the books of account. That it was not a case of making of purchases out of any undisclosed income of the assessee. That even if the assessee could not reconcile the figure of purchases at the most only the profit element involved relating to the sales made out of the said purchases can be added. That the Assessing Officer has found the difference in purchases out of books of account only and it was not a case of purchases out of books of account. The ld. counsel has submitted that the aforesaid difference might have occurred due to some accounting/valuation method. However, it was not a case of purchases out of undisclosed income.

8. The ld. DR has also fairly agreed that at the most the profit element involved in relation to the said purchases can be added into the income of the assessee.

9. The ld. counsel has demonstrated that the average profit rate on purchases of the assessee was 2.2% of the purchases.

10. In view of the above submissions, the impugned addition made by the Assessing Officer is set aside and the addition is restricted to 2.2% of the amount of un-reconciled difference in purchases of Rs.52,99,281/-. This Ground of the assessee's appeal is accordingly partly allowed.

11. Ground No.3 - The ld. counsel has not pressed Ground No.3 and the same is dismissed as not pressed.

12. Ground No.4 - Vide Ground No.4, the assessee has pleaded some clerical error occurred in taking the total income of the assessee at Rs.29,15,197/- instead of Rs.25,64,197/-.

The Assessing Officer is directed to look into the matter and after giving opportunity of hearing to the assessee, take the correct figure of total income.

13. Ground Nos.5 & 6 are general in nature and do not need any adjudication.

14. In view of the observations made above, the appeal of the assessee is treated as partly allowed.

Kolkata, the 12th September, 2023.

Sd/-

[डॉक्टर मनीष बोराड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 12.09.2023.

RS

Copy of the order forwarded to:

1. Naresh Chandra Das
2. ACIT, Circle-41, Nadia
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches