

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. 293/RPR/2023
निर्धारण वर्ष / Assessment Year : 2015-16

Sanjay Grain Products (P) Ltd.
34-35, Adishwar Complex,
Ram Nagar Para, Raipur-492 001

PAN : AADCS5038G

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Virat Verma, Advocate
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.10.2023

घोषणा की तारीख / Date of Pronouncement : 16.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 06.07.2023, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act') dated 15.12.2017 for A.Y. 2015-16. The assessee company has assailed the impugned order on the following grounds of appeal before us:

“1.1. BECAUSE the learned CIT(A) has erred in law and on facts in summarily dismissing the appeal by holding that the appellant remained non-compliant despite service of several notices and is not interested in pursuing its appeal.

1.2. BECAUSE various notices as issued by the learned CIT(A) could not be complied with on account of the fact that the appellant's previous counsel who was looking after the income tax matters as also was in possession of login id and password of the Income Tax Portal, did not inform the appellant about issue of such notices and as such, there was no mala fide on part of the appellant.

1.3. BECAUSE the non-compliance, if any, was due to the reasons beyond control of the appellant and therefore, the same ought not to have been adversely viewed by the CIT(A).

WITHOUT PREJUDICE TO THE ABOVE

2.1. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining addition of Rs. 2,74,97,000.00 being 25% of the alleged bogus purchases of Rs. 10,99,88,000.00 under section 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2.2. BECAUSE the entire purchases of Rs. 10,99,88,000.00 were genuine and treating the same as bogus was against the facts and material on record.

2.3. BECAUSE in any case and without prejudice to the contentions raised in paragraphs 2.1. and 2.2. above, the estimation of 25% of profit on the alleged bogus purchases is highly excessive.

3.1. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs. 9,62,000.00 as unaccounted investment under section 68 of the Act.

3.2. BECAUSE all the investments were duly recorded in the regular books of accounts maintained by the appellant and therefore, the findings to the contrary in the assessment order are wholly unjustified and unwarranted.

4. BECAUSE the order appealed against is contrary to the facts, law and the principles of natural justice to the extent above.”

2. Succinctly stated, the assessee company, which is engaged in the business of manufacturing and trading of rice and its by-products, had filed its return of income on 16.09.2015 for A.Y.2015-16 declaring an income of Rs.3,20,00,770/-. The case of the assessee company was, thereafter, 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 company had claimed to have purchased aggregating to Rs.10,99,88,000/- from the following seven tainted parties:

Sr. No.	Name of Bogus Firm	Amount of purchase	Peak purchase amount	Date of peak purchase
1.	M/s. Saraswati Paddy Process	Rs.2,74,60,500/-	Rs.9,00,000/-	24/01/2015
2.	M/s. Anjani Agro-tech	Rs.26,20,000/-	Rs.3,27,500/-	11/03/2015
3.	M/s. Annapurna Foods	Rs.1,91,25,000/-	Rs.9,62,500/-	19/02/2015
4.	M/s. Eaden Rice Mill	Rs.66,50,000/-	Rs.3,32,500/-	08/11/2014

5.	Shri Shyamji Rice Agrotech	Rs.2,38,32,500/-	Rs.8,50,000/-	16/02/2015
6.	M/s. Agrawal Agro	Rs.1,25,72,500/-	Rs.5,00,000/-	08/11/2014
7.	M/s. Hanuman Food Products	Rs.1,77,27,500/-	Rs.8,50,000/-	16/03/2015
Total		Rs.10,99,88,000/-	Rs.9,62,500/-	19/02/2015

The A.O considering the fact that the aforesaid tainted parties from whom the assessee company had claimed to have made purchases of Rs.10,99,88,000/- were in the course of investigation found to be bogus firms, thus called upon it 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 held the same as bogus purchases.

4. 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 was 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 to 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 the brokers/entry operators adopted 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 beneficiaries, it was observed by the A.O. that brokers namely, Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamlesh 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 company 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 evidence.

5. The A.O in order to verify the authenticity of the assessee's claim of having made genuine purchases from the aforementioned seven tainted parties, issued summons u/s.131 of the Act to the assessee company and directed it to substantiate its aforesaid claim on the basis of supporting documentary evidence, viz. gate entry pass, proof of transportation and delivery challans of goods, entry in purchase and stock register, confirmation from respective parties etc. However, the assessee company failed to substantiate its aforesaid claim by producing relevant records. At the same time, the assessee company, in order to buy peace of mind, admitted 10% of the impugned purchases amounting to Rs.1,09,98,800/- as its income for the year under consideration.

6. The A.O based on his exhaustive deliberation, after rejecting the books of account of the assessee company u/s.145(3) of the Act and drawing support from certain judicial pronouncements, held 25% of the impugned purchases as bogus purchases. Backed by his aforesaid observation, the A.O made an addition of 10% of the impugned purchases (10% of Rs.10,99,88,000/-) to Rs.1,09,98,800/- (supra) that was offered by the assessee vide his statement recorded u/s.131 of the Act dated 13.12.2017 and made a further addition/disallowance of 15% of the value of the

aforementioned purchases of Rs.1,64,98,200/-. Also, the A.O held a conviction that the assessee company, in the process of making bogus purchases of Rs.10,99,88,000/-, must have invested its unaccounted income, which was being rolled into its business activities. Accordingly, the A.O., on the basis of his aforesaid conviction, made a further addition of the peak amount of purchases that were made by the assessee from the aforementioned bogus/tainted concerns of Rs. 9,62,000/-. Accordingly, the A.O., on the basis of his aforesaid observations, vide his order u/s.143(3) of the Act dated 15.12.2017 determined the income of the assessee company at Rs.6,04,59,770/-.

7. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), who dismissed the same in limine for the reason that the latter, despite having been afforded sufficient opportunity, had failed to prosecute its case before him. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:

“3.1 I have carefully perused the assessment order and the grounds of appeal submitted by the appellant. During the appellate proceedings, the following opportunities of being heard were granted- to the appellant vide notices u/s 250 of the Act issued through the ITBA portal which are summarized below:

Sr. No	Date of notice	Date of compliance	Remark
1.	19.04.2022	27.04.2022	Non compliance
2.	04.07.2022	11.07.2022	Non compliance
3.	05.09.2022	12.09.2022	Non compliance
4.	14.10.2022	19.10.2022	Non compliance
5.	23.06.2023	30.06.2023	Non compliance

The above table clearly demonstrates that the appellant has been allowed several opportunities to explain the contentions of this appeal but to no avail as the appellant has remained not-forthcoming and has not responded on the ITBA portal.

3.2 The aforesaid mentioned circumstances show that the appellant is not interested in pursuing its appeal and has no documentary evidence in support of the grounds of appeal filed by the appellant. The maxim 'vigilantibus non-dormientibus jura subvenunt' i.e. the law assists those who are vigilant and not those who sleep over their right, is applicable in this case.

3.3 The Hon'ble ITAT in ITA No. 1025-1027/CHD/2005 for the AY 2002-03 in the case of M/s Chhabra Land & Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee & other 118 ITR 461 [SC] held that the appeal does not mean merely filing of the appeal but effectively pursuing the same.

3.4 Considering the above facts and the records available, it is established that the appellant was provided many opportunities of being heard. However, the appellant has remained noncompliant. No material fact has been brought on record in support of the grounds of appeal or to rebut the findings of the Assessing Officer (AO). The appellant in spite of being given ample opportunities during appellate proceedings, failed to offer any explanation/supporting documents in respect of grounds of appeal raised by the appellant. I have carefully considered the assessment order and since the appellant has not furnished any documentary evidence in support of the grounds of appeal filed by the appellant, I do not find any reason to interfere with the order of the AO. Hence, addition of Rs.2,84,59,000/- is confirmed. Accordingly, all the grounds of appeal taken by the appellant are dismissed.

4. In result, the appeal is dismissed.”

8. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us. As observed by us hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issue that did arise from the impugned order and was assailed by the assessee before him. We are unable to persuade

ourselves to accept the manner in which the appeal of the assessee company has been disposed off by the CIT(Appeals). In our considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the “Explanation” to Sec.251(2) of the Act, reveals that the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arise from the impugned order before him. As per mandate of law, the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the Hon'ble **High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of [s. 251](#) of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under [s. 246A](#) of the

Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

9. We, thus, are not persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, and, therefore, set aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(Appeals) shall afford a reasonable opportunity of being heard to the assessee in the course of the de-novo appellate proceedings. The grounds of appeal raised by the assessee are disposed off in terms of the aforesaid observations.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 16th day of October, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 16th October, 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.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.