

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 295/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Maa Chandi Rice Industries,
Shop No.7, Bhothali Road,
Kurud, Dhamtari-493 663 (C.G.)

PAN : AAOFM6916H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-Dhamtari (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.10.2023

घोषणा की तारीख / Date of Pronouncement : 25.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 20.07.2023, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 15.12.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, reasons recorded is only reasons to suspect without having any tangible material in his possession; not sufficient to believe for escaped income of Rs.28,47,000.; reassessment proceedings cannot be initiated only to examine the facts of the case unless there is reason to believe rather than suspect; in the absence of a valid reasons recorded as mandated by law u/s.148/147, reassessment proceedings u/s.147/148 would be invalid and is liable to be quashed.

"2. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in sustaining the addition of Rs.28,47,000 made u/s.69C on the count of bardana purchase' treating it as bogus/unexplained expenditure; while it is recorded in the books of account; books of account has not been rejected; consumption/ sale of bardana has been accepted; addition of Rs.28,47,000 is unjustified and is liable to be deleted."

"3. On the facts and circumstances of 'the case and in law, the Id CIT(A) has erred in sustaining the addition of Rs.2,11,532 on the count of GP estimation @7.43% on bardana purchase' of Rs.28,47,000, merely on presumption & surmises, without rejecting the books of account &. without applying sec145(3) and more so, assessment has not been made u/s.144; addition of Rs.2,11,532 is unjustified and is liable to be deleted."

2. Succinctly stated, the assessee firm, which is engaged in the business of running a rice mill, had filed its return of income for A.Y.2011-12 on 29.02.2012, declaring an income of Rs. Nil. On the basis of information that the assessee firm had made bogus purchases of Rs.28.47 lacs from M/s. Goyal Jute Udyog, Raipur, the A.O. reopened its case u/s. 147 of the Act.

3. During the assessment proceedings, it was observed by the A.O. that the assessee firm had claimed to have made purchases of Rs.28.47 lacs from M/s. Goyal Jute Udyog, Raipur. The A.O., in order to verify the authenticity of the aforesaid purchase transaction, issued notice u/s.133(6) of the Act to M/s. Goyal Jute Udyog, Raipur, wherein it was called upon to furnish details of the material supplied to the assessee firm, along with a copy of the account of the assessee firm in its books of account and copies of bills issued regarding the supply of material. However, the notice u/s.133(6) of the Act was returned unserved by the postal authority with the remark "UNCLAIMED."

4. The A.O. brought the aforesaid facts to the notice of the assessee firm and called upon it to furnish the correct address of M/s. Goyal Jute Udyog, Raipur, so that purchase transactions could be verified. The assessee, in its reply vide letter dated 27.11.2018, expressed its inability to provide the new address of the aforesaid firm. As the assessee firm failed to substantiate the authenticity of its claim of having made purchases from the aforesaid concern, viz. M/s. Goyal Jute Udyog, Raipur, on the basis of corroborating material viz. bilty receipts, delivery challans, etc., therefore, the A.O held a conviction that it had not made any genuine purchases

from the aforesaid concern. Accordingly, the A.O relying on the order of the N.K Proteins Ltd. Vs. DCIT, (2004) 83 TTJ Ahd 904, therein, disallowed 25% of the total purchases which the assessee firm had claimed to have made from the aforementioned concern, viz. M/s. Goyal Jute Udyog, Raipur. Also, the A.O. made a separate addition @7.43% of the value of the impugned bogus purchases of Rs.28.47 lacs, i.e., Rs.2,11,532/-. Accordingly, the A.O. vide his order passed u/s. 147 r.w.s 143(3) dated 15.12.2018 determined the income of the assessee firm at Rs.30,58,532/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals), after deliberating the contentions advanced by the assessee, did not find favour with the same and approved the view taken by the A.O, observing as under:

“5. Decision:

5.1 The statement of facts, grounds of appeal, submission of the appellant and assessment order passed u/s 143(3) r.w.s. 147 of the Act dated 15.12.2018 have been perused carefully. At the outset, it is worth mentioning that the appellant has raised certain new issues in its submission dated 20/02/2021, which had not been raised in grounds of appeal. I am confining my decision to grounds of appeal raised in Form no.35 only.

5.2 Brief facts of the case are that the case of the assessee was re-opened on the basis of information that the assessee has made bogus purchase of Rs. 28,47,000/- from M/s Goyal Jute Udyog, Raipur. The AO made addition amounting to Rs.28,47,000/- on account of unexplained expenditure u/s 69C. Further, addition of Rs.2,11,532/-was also made treating profit @ 7.43 on Rs.28,47,000/-. Grounds no. 1, 2 & 3 of the appeal is against addition of Rs. 28,47,000/-, whereas ground no. 4 is against addition of Rs. 2,11,532/-. Facts emerging from assessment order is as under:

As per information available to this office, it was learnt that the assessee has bogus purchase of Rs. 28,47,000/- from M/s Goyal Jute Udyog, Raipur in its financial year 2010-11. Maa Chandi Rice Industries, A.Y. 2011-12 Page 1

books of accounts. Therefore, the assessee vide notice u/s 142(I) of the Act required to furnish the details of the purchase alongwith the name, address of the parties and amount involved from the said party i.e. Goyal Jute Udyog from whom the purchase was made during the year under consideration. In response, the assessee furnished the required details of M/s Goyal Jute Udyog from whom the purchase was made during the year. Thereafter, to verify the genuineness of the said purchase, notice u/s 133(6) of the Act was issued to M/s Goyal Jute Udyog requiring them to furnish details of the material supplied to the assessee alongwith the copy of accounts of the assessee in their books, copy of ledger details and copy of bills issued regarding the supply of material. In response, the notice u/s 133(6) of the Act was returned unserved by the postal authorities with a remark "UNCLAIMED".

Thereafter, vide notice u/s 142(I) dated 24.11.2018, the assessee was intimated about the said unserved notice u/s 133(6) of the Act and he was provided with one more opportunity to furnish the correct address of M/s Goyal Jute Udyog so that the genuineness of the purchase claimed by the assessee could be verified by this office. In response, the assessee vide its letter dated 27.11.2018 stated that the assessee did not know the new address of M/s Goyal Jute Udyog except the address mentioned in their bills. As the assessee has only furnished the copy of purchase bills of M/s Goyal Jute Udyog, he is not able to furnish the supporting document to justify his claim of purchase with the said party. He has not able to furnish the delivery challan/bilty for the delivery of goods from M/s Goyal Jute Udyog.

5. As the assessee has neither been able to establish the identity of M/s Goyal Jute Udyog nor any supporting documents e.g. bilty receipt, delivery challan etc. regarding the said purchase of Rs. 28,47,000/- from M/s Goyal Jute Udyog in the financial year 2010-11 relevant to the A.Y. 2011-12, therefore, it is clear that no delivery of good was received from the said party as it was not in existence.

6. In view of the above facts and necessary enquiries made, it is clear that no delivery of goods was made and the assessee has taken only bogus bills from of M/s Goyal Jute Udyog, Raipur and accommodated the entries of the said amount i.e. Rs. 28,47,000/- in the purchase of his books. Further, reliance is also placed on the case of N. K. Proteins Ltd. Ahmedabad where the AO has added the entire amount of bogus purchase made by the assessee. The Id. CIT(A) confirmed the addition in the said case whereas the Hon'ble ITAT confirmed the disallowance of 25% of the total purchases shown on the basis of fictitious invoices are established as bogus, restricting the addition to a certain percentage goes against the principles of section 68 and 69C of the IT. Act. The appellant in the case of N. K. Proteins Ltd. filed an SLP against the order of the Gujrat High Court and the Hon'ble Supreme Court dismissed the SLP vide its order dated 16.01.2017 [2017-TIOL-23-SC-IT].

In view of the facts mentioned above and considering the facts and circumstances of the case, the amount of Rs. 28,47,000/- is treated as unexplained

expenditure u/s 69C of the Act and added to the total income of the assessee for the year under consideration. I am satisfied that the assessee has concealed his income to the tune of Rs. 28,47,000/-, therefore, penal proceedings u/s 271(1)(c) of the Act is being separately.

7. Further, during the year under consideration, the assessee has declared the gross profit of 7.43% of the total turnover. As discussed above, the assessee has made bogus purchase of Rs. 28,47,000/- out his total sales of Rs. 7,29,04,825/-, therefore, 7.43% of the sales of Rs. 28,47,000/- i.e. Rs. 2,11,532/- is hereby disallowed and added to the total income of the assessee for the year under consideration. I am satisfied that the assessee has concealed his income to the tune of Rs. 2,11,532/-, therefore, penal proceedings u/s 271(1)(c) of the Act is being separately.

5.3 It is clear from assessment order that the assessee failed to establish identity of M/s Goyal Jute Udyog. It also could not produce supporting documents to prove genuineness of purchases e.g. buy receipts, delivery challan etc.. The AO has held that the assessee has taken only bogus bills from M/s Goyal Jute Udyog, Raipur and accommodated entry of Rs. 28,47,000/- in the purchase of his books. Further, the AO has relied upon case of N. K. Proteins Ltd., Ahmedabad as discussed in assessment order given above. Hence, other case laws relied upon by the appellant are not relevant.

The appellant apparently has not made any claim before the AO regarding double addition of gunny bag accounts. It has been raised during the appellate proceedings, and that too without furnishing any documentary evidences. In fact, the appellant has failed to comply with three notices issued by the undersigned recently. Therefore, any claim of the appellant, not substantiated by documentary evidence, cannot be entertained. Considering overall facts of the case, addition amounting to Rs.28,47,000/- on account of unexplained expenditure u/s 69C of the Act is confirmed. Hence, grounds no. 1, 2 & 3 are dismissed.

5.4 Ground no. 4 is against addition of Rs. 2,11,532/- made by the AO @ 7.43 % of bogus purchase amounting to Rs. 28,47,000/-. Figure of 7.43% has been derived from gross profit margin shown by the appellant on total turnover of Rs, 7,29,04,825/-. The AO has assumed that bogus purchase amounting to Rs. 28,47,000/- was also part of total sale amounting to Rs.7,29,04,825/-. The appellant has raised

objection with respect to this addition. However, addition of Rs. 2,11,532/- made by the AO is reasonable in my opinion. Hence this ground is dismissed.


5.5 Ground no.5 is general in nature and nothing in this regard was submitted during the appellate proceedings. Hence, dismissed.

6. In the result, appeal of the appellant is dismissed.”

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

7. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities as well as considered the material available on record.

8. At the very threshold of hearing the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee assailed the validity of the jurisdiction assumed by the A.O for initiating proceedings u/s.147 of the Act. The Ld. AR had drawn my attention to the copy of the “reasons to believe”, based on which proceedings u/s.147 of the Act were initiated in the case of the assessee, which reads as under:


GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
OFFICE OF THE INCOME TAX OFFICER
SHANKARDAH ROAD, HARAFTARAI, DHAMTARI (C. G.)
Email: dhamtari.ito@incometax.gov.in Ph: 07722-241130

F.No. ITO/DTR/148 /2018-19 **Date: 26.11.2018**

PAN: AAOFM6916H

To,
Maa Chandi Rice Industries
Shop No. 07, Bothli Road,
Kurud
Dhamtari - 493773

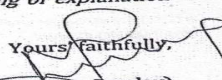
Sir,


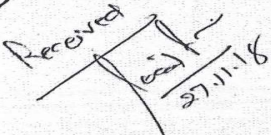
Sub: - Assessment proceedings for A.Y. 2011-12-reg-



Please refer to the above and your letter dated Nil received in this office on 18.08.2018 wherein you have also requested to provide the reasons recorded for re-opening/re-assessment of the case under section 147 of the I.T. Act for the aforementioned year. In this regard, the extract of reason recorded for escapement of income is mentioned as under for your information:

"As per the information available to this office, during the F.Y. 2010-11 relevant to A.Y. 2011-12, the assessee has shown bogus purchase of Rs. 28,47,000/- which was shown to have purchase from Gokul Jute Udyog.

The assessee has filed his return of income for the A.Y. 2011-12, however, on the basis of information available with this office as mentioned above and in view of the facts of the case, I have reason to believe that income of Rs.28,47,000/- which is chargeable to tax for F.Y. 2010-11 relevant to A.Y. 2011-12 has escaped from assessment within the meaning of explanation 2(b) of section 147 of the I.T. Act, 1961. "

Yours faithfully,

(Manoj Kumar Pandey)
Income Tax Officer,
Ward- Dhamtari (C.G.)


Received

27.11.18

Elaborating on his contention, it was submitted by the Ld. AR that as proceedings u/s.147 of the Act had been initiated not on the basis of any bonafide belief but on the basis of reason to suppress, i.e., a pretense, therefore, the very basis/foundation for assumption of jurisdiction by the A.O for initiating impugned proceedings was ill-founded and was liable to be vacated on the said count itself.

9. I have thoughtfully considered the aforesaid issue and am unable to persuade myself to subscribe to the same. I, say so, for the reason that as is discernible from

the “reasons to believe,” the A.O. had before him sufficient material to arrive at a belief that the income of the assessee chargeable to tax had escaped assessment. As observed by the **Hon’ble Apex Court** in the case of **Raymond Woollen Mills Ltd. Vs. Income-Tax Officer And Ors. (1999) 236 ITR 34 (SC)**, what was required for validly initiating proceedings u/s.147 of the Act was the availability of some material on the basis of which the department could reopen the case and the sufficiency and correctness of the material was not a thing to be considered at that stage. Accordingly, in the backdrop of the judgment of the Hon’ble Apex Court in Raymond Woolen Mills Ltd. (supra), the challenge thrown by the Ld. AR, as regards the validity of the jurisdiction assumed by the A.O u/s 147 of the Act, on the ground of sufficiency of the material available before him for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment, cannot be accepted. Thus, the **Ground of appeal No.1** raised by the assessee being devoid and bereft of any force of law is dismissed in terms of the aforesaid observations.

10. Apropos the merits of the addition made by the A.O u/s. 69C of the Act, it was submitted by the Ld. AR that the A.O. had proceeded on the basis of incorrect facts. Elaborating on his aforesaid contention, the Ld. AR submitted that the assessee had accounted for purchases from the abovementioned supplier party, viz, M/s Goysal Jute Udyog, Raipur, made purchases of bardana of Rs.14,40,195/-, and not Rs.28,47,000/- as observed by the lower authorities. The Ld. AR, in order to buttress his aforesaid claim, had drawn my attention to the copy of the account of M/s. Goyal Jute Udyog, Raipur, appearing in the books of account of the assessee firm, Page

46-47 of APB. Also, the Ld. A.R., in order to support his aforesaid claim that the assessee firm had made purchases of Rs.14,40,195/-, had drawn my attention to “Bardana purchase A/c” as appearing in its books of account, Pages 29-31 of APB. Further, the Ld. AR had taken me through the stock register of Bardana (relevant extract), Pages 32 to 45 of APB, wherein purchases made by the assessee firm from M/s Goyal Jute Udyog, Raipur, were disclosed. Backed by his aforesaid contention, the Ld. A.R. submitted that the A.O. had proceeded with the matter on the basis of misconceived and incorrect facts and had wrongly made an addition of Rs.28,47,000/- in the hands of the assessee firm. The Ld. AR, in support of his aforesaid contention, had taken me through his reply dated nil filed with the CIT(Appeals), Raipur, wherein he had vide its “written submissions,” dated 20.02.2021 [Page 3 of CIT(Appeals) order] submitted before him that the A.O had wrongly alleged that the assessee firm had made bogus purchases of Rs.28,47,000/-, while for the fact was that out of his total purchases of Bardana of Rs. 42,04,909/- made during the year under consideration, he had made purchases, viz. Bardana: Rs. 14,23,500/- and Sutli: Rs. 16,695/- from M/s Goyal Jute Udyog, Raipur. For the sake of clarity, the relevant extract of the submission of the assessee firm before the CIT(Appeals) is culled out as follows:

“1. The assessee has purchases from Goyal Jute Udyog bardana worth Rs.14,23,500/- sutli worth of Rs.16695/- as per copy of A/c. & copies of bills submitted. From where learned A.O has taken Rs.28,47,000/- which is double of actual purchases of bardana valued at Rs.14,23,500/-. Hence, it may kindly be corrected. Total bardana purchased by the assessee was Rs.4204909/- as per copy of A/c. filed. Out of this Rs.14,23,500/- was from M/s. Goyal Jute Udyog, Raipur.”

11. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities. On being confronted with the claim of the assessee that the A.O had proceeded with on the basis of incorrect facts and made an addition of Rs.28,47,000/- in the hands of the assessee firm, while for latter had made purchases of only Rs.14,40,195/- from M/s Goyal Jute Udyog, Raipur, the Ld. DR candidly submitted that the said fact requires to be verified.

12. I have given thoughtful consideration to the aforesaid issue in hand, i.e., sustainability of the addition of Rs 28,47,000/- (supra) made by the A.O as regards the purchases that were claimed by the assessee firm to have been made from M/s Goyal Jute Udyog, Raipur which was dubbed by the A.O/CIT(Appeals) as bogus. I may herein observe that as the assessee had failed to discharge the onus that was cast upon it as regards proving the authenticity of the purchases that it had claimed to have made from M/s Goyal Jute Udyog, Raipur, therefore, I find no infirmity in treating of the same as bogus purchases by the lower authorities. At the same time, I find substance in the claim of the Ld. AR that as the assessee firm had during the year made total purchases of Rs.14,40,195/- from M/s Goyal Jute Udyog, Raipur; therefore, there could be no justification for the lower authorities to have based their adverse inferences by taking the amount of purchases at Rs. 28.47,000/-. In fact, I find that the aforesaid fact was though specifically brought by the assessee firm to the notice of the CIT(Appeals) vide his "Written submissions", dated 20.02.2021 (supra), but the same was not dealt with the said first appellate authority. At the same time, I cannot remain oblivion of the fact that the said claim of the Ld. AR cannot be

summarily accepted on the very face of it, and as rightly stated by the Ld. D.R. requires to be verified. I, thus, on the basis of the aforesaid facts involved in the present case of the assessee firm, restore the matter to the file of the A.O. with a direction to re-adjudicate the issue in the backdrop of my aforesaid observations. Needless to say, the A.O. shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee firm, which shall remain at liberty to substantiate its claim on the basis of fresh documentary evidence.

13. Before parting, I may herein observe that as I have restored the matter to the file of the A.O. for fresh adjudication on the aforesaid issue, I refrain from dealing with the merits of the case, which, thus, are left open.

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

Order pronounced in open court on 25th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 25th 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-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.