

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1241/MUM/2023 (A.Y. 2013-14)

M/s. Portfolio Fashions Pvt. Ltd., 5A, Jindal Mansion Dr. G. Deshmukh Marg Mumbai - 400026 PAN: AADCP7858D	v.	CIT (A) Delhi
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Hiro Rai
Department Represented by	:	Shri H.M. Bhatt
Date of Conclusion of Hearing	:	04.09.2023
Date of Pronouncement	:	25.10.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 17.02.2023 for the A.Y.2013-14.

2. Brief facts of the case are, assessee filed its return of income for the A.Y. 2013-14 on 30.09.2013 declaring NIL (after set off of brought forward losses). The case was selected for scrutiny and the notices u/s.143(2) and 142(1) of Income-tax Act, 1961 were issued and served on the assessee. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

3. Assessee is in the business of trading activities of various apparels and accessories of its own brand viz "Muse". The assessee is also into trading of products / apparels of "Sabyasachi" brand for which it receives commission. The assessee also receives rental income in respect of letting off of part of its premises viz. "Upadrastha House" own by it. During the year under consideration, assessee has declared revenue from operations at ₹.22,78,62,111/-. After considering the submissions of the assessee with regard to sales, purchases and expenses, Assessing Officer observed that assessee has declared in Note 16 of the Profit and Loss Account that assessee has worked out cost of purchases after excluding purchases return of ₹.6,98,35,282/- (Previous Year ₹.3,06,11,947/-) and closing balance of goods on consignment amounting to ₹.3,31,04,233/- (previous year ₹.3,85,86,048/-). In this regard, assessee was asked to furnish

complete details of the purchases return and goods on consignment and also asked to justify its allowability.

4. In response, Ld. AR of the assessee submitted that assessee has not purchased the goods in actual but taken up on consignment basis, the details of purchases return of consignment goods is not maintained. However, the presentation has been made in profit and loss account only for the purpose of VAT Audit since under VAT Act, goods on consignment are deemed as purchase.

5. After considering the submissions of the assessee the Assessing Officer rejected the same by observing that assessee by its own admission in accounting the purchases and consignment basis in a differential manner for the purpose of Income Tax and for the purpose of VAT. By doing so the opening and closing stock of Inventories are not being reflected properly in the profit and loss account resulting in suppression of actual taxable profits. Assessee has admittedly not established the correctness and its allowability as expenditure with regard to purchases return and goods purchased on consignment.

6. Further, he observed that assessee was asked to justify variation in G.P. ratio as compared to the immediately preceding year. The assessee has shown a GP of 14.24% at the turnover of ₹.18,03,83,463/- for A.Y.2012-13 and GP has been shown at 6.33% on the turnover of ₹.22,78.62,111/- for A.Y. 2013-14. Similarly, the NP ratios for the A.Y. 2012-13 and A.Y.2013-14 are shown at 4.57% and 0.87% respectively.

7. Further, he observed that as per the accounting norms, any purchase return has to be excluded from the value of closing stock and required to be reversed through debit notes to concern parties. In absence of such practice and accounting adopted by assessee the purchases return remains unproved. The Assessing Officer arrived the difference of ₹.6,98,35,282/- as a suppressed profit by not valuing the closing stock to the extent of above said amount.

8. Aggrieved assessee preferred an appeal before the Ld.CIT(A), and raised grounds of appeal and made the following submissions: -

"Appellant's Submission:-

*"Most respectfully, with reference to the above appeal, we would like to make following submissions for your Honor's kind consideration:
1. The Appellant Company is a resident Company and is in the*

business of Trading Activities of various apparels and accessories of its own brand "Muse"

2. *During the year under consideration, the Appellant has income from Business and Income from House Property*

3. *The Appellant E filed its Return of Income for the above assessment year on September 09, 2013 declaring Nil income with a claim for carried forward Business loss amounting to Rs.5,30,91,237, unabsorbed depreciation of Rs 1,62, 16,486/- and claimed refund amounting to Rs 29,15,982/-*

4. *The appellant's case was selected for scrutiny and completed u/s 143(3)(ii) of the Act and following additions/disallowances were made in the assessment*

a. Addition on account of purchase return of Rs. 6,98,35,282/-

5. *After making the above addition the total income of the appellant was determined at Rs. 2,59,23,120/- after set off of brought forward loss of Rs. 5,46,01,204/- instead of Rs. Nil income claimed by the appellant.*

6. *Aggrieved from the assessment the appellant filed an appeal before CIT(A) challenging the additions made in the assessment order. In the light of above facts, we hereby make following submissions for your*

Honor's kind consideration:

Ground 1 ADDITION On ACCOUNT OF PURCHASE Return - Rs.6.98.35.282/-

1.1 *The Learned Assessing Office (the "LAO") has erred in law and on the fact of the case in making disallowance of Rs.6,98,35,282/- without understanding the reconciliation between the books and the VAT returns.*

1.2 *The appellant is a Consignment Agent of M/s Sabyasachi Couture and earns commission on the sales done by it.*

1.3 *As explained to the LAO and also as explained in statement of facts in case of consignment purchase the goods are received on returnable basis and get accounted as purchase only when they are actually sold to the third party*

1.4 *The LAO was explained the accounting treatment in case of consignment purchase and sales during the course of the assessment. The LAO has failed to understand the accounting treatment of purchase in case of consignment basis. As explained in*

the foregoing paragraph, purchase gets accounted only when the property in goods get transferred to the third party ie. the buyer. Thus in case of consignment sales, when the sales actually take place, the purchase gets accounted

1.5 However as per the VAT Law entire goods received on consignment basis are presented in the Statement of Profit and Loss Account as purchase and unsold goods returned to the dealer is shown as purchase return. The cost of purchase worked out by the LAO in para vii of the Assessment Order is baseless and without understanding the accounting principles. The LAO has worked out the cost of the purchase at Rs. 26,14,46,259 ignoring the purchase return of Rs 6,98,25,282 which is backed by Form F, issued under the VAT Act

1.6 The LAO has disallowed the purchase return of Rs.6,98,35,282 and alleged that the valuation of closing stock is suppressed to that extent. By disallowing purchase return, the cost of purchase has increased from audited figures of Rs. 19,16,10,977 to Rs 26,14,46,259. Basically, the LAO has failed to understand the basic principles of accounting If there is an increase in cost of purchase, then there is a corresponding increase in valuation of closing stock and there will not be any impact on income. The LAO has failed to understand the basic double entry principle of accounting and has increased the income by Rs 6,98,25,282 by increasing the value of stock without corresponding increase in cost.

1.7 The audited financial statements of the appellant are attached as Annexure 1 which is clearly reflecting purchase returns of Rs.6,98,35,282 in Note 16. Thus, the LAO has failed in ignoring the audited financial statements and additions made therefore is without any base and illegal and should to be deleted.

1.8 Without prejudice to the above, details of purchase return and copy of Form F submitted during the course of assessment is enclosed as Annexure 2. Thus, the LAO has grossly erred in ignoring the details submitted and adding the purchase return to income.

Ground 2 and Ground 3: Addition made without issuing any show cause notice and addition without proper justice thus violating the principle of natural justice.

2.1 Without prejudice to submissions in Ground 1. The appellant has not been given any further opportunity for understanding the transactions nor any show cause notice issued before making any addition The appellant came to know about the addition of Rs.6,98,35,282/-only on receipt of the Assessment Order thus violating the principle of natural justice which is illegal and bad in law and needs to be deleted

2.2 Reliance is placed on the following rulings of various Court and various High Courts (1) MAP REFOILS INDIA LTD. vs National E Assessment Centre Delhi 2022 TAXSCAN (HC) 1103

According to the petitioner, the respondent authority passed the final assessment order, which contained a significant addition of Rs.92,42,86,979, without giving the petitioner a chance to be heard

The matter was relating to assessment done under the National Faceless Assessment Scheme. The Hon'ble High Court held as under

"It is not in dispute that in facts of the case no draft assessment along with show cause notice as required under section 144B(1) and section 144B(7) is given to the petitioner so as to enable the petitioner to give explanation for proposed addition during the hearing before the National Faceless Assessment Centre.

Section 144B(1)(xii) provides that on receipt of show cause notice, assessee may furnish his response to the National Faceless Assessment Centre and as per clause (xiv), assessment unit shall make a revised draft assessment order after considering the response of the assessee and send it to the National Faceless Assessment Centre. As per the provisions of Section 1448(7) in case of variation prejudicial to the assessee as proposed in the draft assessment order, the assessee is entitled to request for personal hearing and upon such request, the personal hearing may be provided by the authority, if the case of the assessee is covered by circumstances provided therein in exercise of powers under sub-clause (h) of clause (xii) of section 144B(7) of the Act, 1961.

In view of above, it can be safely be said that the impugned order was passed by the respondent in violation of principles of natural justice without affording an opportunity of personal hearing by not following the prescribed procedure laid down as per the provisions of section 1448 of the Act, 1961 for Faceless assessment

In the result, this petition succeeds and is accordingly allowed.

(ii) Padam Traders & others v. State of U.P. & others, (2009) 47 STJ 392 (All).

It was held by the Hon'ble High Court that "An opportunity of being heard is the most important component of the principle of Natural Justice. It implies a proper opportunity of hearing The Courts have consistently held that where a Show Cause Notice has been issued requiring the assessee to reply within a short period (say 1-3 days), such a notice is against the principles of natural justice. equity & good conscience. Undue haste is against the principle of fairness and such a conduct of the assessing officer deserves to be deprecated.

Adequate & proper opportunity of hearing should be provided to ensure fair hearing and fair deal to the assessee"

(iii) Centum Finance Limited Vs National Faceless Assessment Centre

Delhi & Anr. W.P.(C) 6977/2021 & CM APPL. 22034/2021 (Delhi High Court) Hon'ble high court held that impugned assessment order has been passed without providing adequate opportunity to submit reply in response to the show cause-cum-draft assessment order dated 23rd May, 2021.

High Court observed and opined that these notices required compliance when the e-filing portal was dysfunctional, thus violative of the principle of natural justice.

The Respondent/Revenue will be at liberty to call for further information, if thought necessary, before proceeding to frame the Assessment Order"

(iv) Shiv Kishor Construction Private Limited Vs UOI (Patna High Court)

Hon'ble High Court held that it is not disputed that one of the impugned orders stands passed in violation of principles of natural justice. Impugned order dated 2nd of March, 2020 is passed by the Deputy Commissioner of State Tax, Patna Central Circle, Bihar, Patna who issued a notice asking the petitioner to show cause by a particular date. However, for unexplained reasons and circumstances, without any prior intimation or knowledge, the matter was preponed and without affording any opportunity of hearing, decided, holding the view of the revenue. The order does entail civil and pecuniary consequences, causing prejudice to the petitioner. On all fours, principles of natural justice. stand violated.

(v) Andaman Timber Industry vs CCE (2015) 127 DTR 241/281 CTR 241 (SC) Hon'ble Supreme Court held that no doubt, the Ld.CIT(A), as a principle of natural justice, should have facilitated this opportunity of cross examining the parties by the assessee. We, by respectfully following the decision of the Hon'ble Apex Court in Andaman Timber Industry vs CCE (supra), deem it fit to quash the assessment order on the basis of violation of principles of natural justice

(vi) M. R. Metals Vs Deputy Commissioner, Writ Petition No.31148 of 2022 (9) TR 6517 (Andhra Pradesh High Court)

Hon'ble High Court held that the assessment order was passed without furnishing the important documents which are the base of the order to the petitioner enabling the petitioner to make a

representation or produce any material contra to the same. Such order is against the principles of natural justice.

As mentioned above, it was held by the Hon'ble Supreme Court and Hon'ble High Courts that not giving an opportunity of being heard or non-issue of show cause notice is denial of natural justice. In the case of appellant also natural justice was denied by non-issue of show cause notice before making the additional disallowance of Rs. 6,98,35,282/- Thus, disallowance is bad in law and should be deleted."

9. After considering the submissions of the assessee Ld.CIT(A) reproduced the findings of the Assessing Officer in his order and sustained the additions based on the findings of the Assessing Officer.

10. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

"1. The Learned Commissioner of Income Tax-(Appeals) (hereinafter "the LCIT (A)") has erred in law in upholding the addition of Rs.6,98,35,282 made by the Learned Assessing Officer on account of purchase return disregarding the submissions made by the AR and without appreciating the fact that as per the double entry accounting principles, if there is an increase in cost of purchase, then there is a corresponding increase in valuation of closing stock and there will not be any impact on income.

2. Without prejudice to Ground 1, the Leaned Commissioner of Income Tax- (Appeals) has erred in law in not giving directives to the Assessing Officer to do reassessment after proper verification.

3. Without prejudice to Ground 1 and Ground 2, the appellant was not given reasonable opportunity during the assessment nor show cause notice was issued by the LAO proposing addition of Rs.6,98,35,282 thus denying the principle of natural justice to the appellant.

4. *The Appellant craves leave to add, amend, alter or delete any of the above ground of appeal."*

11. At the time of hearing, Ld. AR of the assessee brought to our notice Page No. 2 of the Assessment Order and submitted that purchases return was not considered by the Assessing Officer and further, he submitted that Ld.CIT(A) at Page No. 12 of the order gave the finding merely relying on the Assessment Order. Ld. AR of the assessee submitted that the tax authorities have not considered the fact that purchases were not claimed by the assessee as an expense in first place. He raised the question can the Assessing Officer make disallowance when assessee itself has not claimed it as an expenditure. Further, he brought to our notice Page No.18 of the Paper Book and he brought to our notice Note -14 of notes forming part of the financial statements where assessee has declared sale of Sabyasachi products and also commission received from Sabyasachi products. He submitted that in Note-16 as observed by the Assessing Officer assessee has made the reconciliation of purchase of products from Sabyasachi wherein assessee had opening balance of goods kept on consignment basis as under: -

"Note 16
Purchase of sabyasachi products
(Amount in Rupees)

Particulars	Year ended March 31, 2013	Year ended March 31, 2012
Opening balance of goods on consignment	38,586,408	13,070,211
Purchases	255,964,084	202,677,977
Purchase returns	(69,835,282)	(30,611,947)
	224,715,210	185,136,241
Less: Closing balance of goods on consignment	(33,104,233)	(38,586,048)
Total	191,610,977	146,550,193

12. He submitted that assessee is selling the products on the basis of consignment basically and assessee received commission income from the sale of above said goods from Sabyasachi products. He submitted that based on the requirement of VAT assessee has to declare sale and purchases in its Books of Accounts and to that above requirement, assessee has declared sale of products of Sabyasachi and assessee has declared the relevant purchases in its Books of Accounts and the sale of Sabyasachi products are declared in its financial statements at ₹.19,15,84,311/- and purchases of ₹.19,16,10,977/-. The above purchases and sales declared by the assessee will show that both the figures are almost equal except certain minor variations and the revenue from operation declared by the assessee will clearly shows that assessee has earned only commission income to the extent of ₹.1,97,39,066/-.

With regard to variation of G.P. and N.P ratio he submitted that it is a trading result which varies year on year.

13. On the other hand, Ld. DR relied on the orders of the lower authorities.

14. Considered the rival submissions and material placed on record, we observe from the record that assessee is in the business of trading as well as trader of Sabyasachi products for which assessee receives commission on the basis of consignment sale. We observe from the record that assessee's main as well as major income is from commission. It is very much visible from the statement of profit and notes forming part of the financial statements in particular Note - 14 and Note – 16. It clearly shows that the assessee's main income is commission income which matches with the revenue from operation declared by the assessee. It is brought to our notice that assessee has to declare purchases and sales received from Sabyasachi products which is on consignment basis. However, as per the requirement of VAT, assessee has to declare both the purchases as well as sales in its Books of Accounts and assessee has to declare the goods kept under its control i.e., opening goods on consignment basis

and total purchases for the year less purchase returns during the year under consignment.

15. Since the goods are received by the assessee on consignment basis assessee may have to return consigned goods back to Sabyasachi in case of defective or unsold stocks. In the line of trade particularly with respect to consignment sales assessee is not the owner of the goods and he is responsible to make the sales on behalf of the other party and in return assessee is eligible to get only the percentage of agreed commission. Based on the record submitted by the assessee we observe that assessee has squared up the purchases and sales in its financial records and no doubt assessee has declared substantial amount as purchases return back to Sabyasachi. It is the responsibility of Sabyasachi to declare the above activities in its Books of Accounts. Since assessee is only a commission agent assessee has recorded the transactions to square up the sales and purchases in its Books of Accounts and declared only the commission income as its main source of income. Therefore, we are not inclined to accept the findings of the Assessing Officer in this regard. With regard to variation in G.P and N.P ratio we observe that assessee has received percentage of commission lesser than the previous year turnover and also the assessee has declared additional employee cost compared to previous

year, since these issues were not contested before us, we are not inclined to make further comments on these issues. Accordingly, Ground No. 1 raised by the assessee is allowed.

16. With regard to Ground No. 2 and 3 which is not argued before us even though these are connected issues. Accordingly, these grounds of appeal are dismissed as such.

17. In the result, appeal filed by the assessee is partly allowed.

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

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 25.10.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum