

**।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR**

[VIRTUAL HEARING AT PUNE]

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.42/NAG/2021
निर्धारण वर्ष / Assessment Year : 2011-12**

S R Technical Services, C/o. K N D & Associates, 502-503, Satyam Apartment, Dhantoli, Wardha Road, Nagpur – 440012. PAN: ABMFS6131K	Vs	The Principal Commissioner of Income Tax, Nagpur – 2.
Appellant/ Assessee		Respondent/Revenue

Assessee by	None
Revenue by	Shri Kailash G. Kanojiya – Sr.DR
Date of hearing	21/09/2023
Date of pronouncement	21/11/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of
ld.Principal Commissioner of Income Tax, Nagpur-2 dated
19.02.2021 for A.Y.2011-12 emanating from assessment order

under section 147 r.w.s.143(3) of the Act, dated 18.12.2018.

The grounds of appeal filed by the Assessee are as under :

“1. The assessee had submitted its return of income declaring Total income at Rs. 2,72,461/- on 30/09/2011. The assessee was issued notice u/s 148 of the Income Tax Act, 1961 and order u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 was passed by the A.O on 18/12/2018 assessing the income at Rs. 2,72,460/-. The case of the assessee was referred for revision proceeding u/s 263 of the Income Tax Act, 1961 and order was passed by the Hon'ble Principal Commissioner of Income Tax, Nagpur-2 setting aside the order passed by the Assessing Officer and directing the Assessing Officer to reassess the income of the assessee.

2. The assessee had made purchases of Rs. 31,64,175/- which includes purchase of Rs. 5,38,125/- from M/s National Trading Company, Mumbai and Rs. 26,26,050/-from M/s Linion Trade Link, Mumbai. The said dealers have been declared as Hawala Dealers by VAT Department. However, in the case of the assessee, even in the order passed by the VAT Department, the Department had stated that the dealer has proved the genuineness about movement of goods of purchase transactions made by the assessee with all required details. The VAT Department had only disallowed the Input VAT Credit availed by the assessee on the grounds that the VAT on the said transactions was not paid by the dealers to the Sales Tax Department. Hence, the penalty levied in VAT assessment was deleted by the Appellate Authority of VAT Department. Thus, the genuineness of the purchases made by the assessee was accepted by the VAT department.

3. The assessee had also produced the bank statements, invoice

copy for purchases made and lorry receipts for movement of goods to prove the genuineness of the purchase transaction made by the assessee. The said documents were verified by the A.O and found to be correct. Thus, the documents that the assessee was required to maintain and produce for the said transactions had been furnished by the assessee to the A.O. Also, the A.O had nowhere disputed the factum of sales made by the assessee as without the purchases made by the assessee from the said parties, the assessee would not have been able to sell the goods.

Hence, the said purchases should not be disallowed for the assessee. The same contention was made by the assessee before the Hon'ble Principal Commissioner of Income Tax, Nagpur-2, however instead of accepting the contention of the assessee, the Hon'ble Principal Commissioner of Income Tax, Nagpur-2 had ordered the Assessing Officer to reassess the income of the assessee.

4. Being aggrieved the assessee prefer this appeal on the following amongst other grounds.

1) The order passed by Hon'ble PCIT. is illegal, invalid and bad in law.

2)On the facts and in the circumstances of the case and in law, the Hon'ble PCIT erred in overlooking the explicit finding in the order passed by the Hon'ble Dy. Commissioner of Sales Tax(Appeals).

3)On the facts and in the circumstances of the case and in law, the Hon'ble PCIT erred in appreciating the fact that the assessee had produced bank statements, photocopy of

invoices and lorry receipts for proving the genuineness of the purchase transactions.

4) On the facts and in the circumstances of the case and in law, the Hon'ble PCIT erred in not considering that the AO had nowhere disputed the factum of sales made by assessee

5) That the Appellant craves leave to alter, amend, vary or add any other grounds of Appeal.”

2. No one appeared on behalf of the assessee on 21/09/2023 for hearing. No adjournment letter has been filed by the assessee. Therefore, we heard the Ld. Departmental Representative (ld.DR) and perused the record. On perusal of the record, it is observed that earlier the assessee had filed an adjournment letter dated 25.10.2021, accordingly, the hearing scheduled on 28.10.2021 was adjourned. Then, none appeared on 08.06.2022, 17.02.2022, therefore, hearings were adjourned. Even today, no one appeared on behalf of assessee. Since sufficient opportunity has been granted to the assessee, we proceeded with the hearing by hearing ld.DR.

Findings & Analysis :

3. As seen from the statement of facts filed by the assessee, along with the appeal memo, assessee had made purchases of

Rs.5,38,125/- from National Trading Company, Mumbai and Rs.26,26,050/- from LENION Trade Link, Mumbai. These two parties i.e. National Trading Company and LENION Trade Link have been identified as Hawala Dealers by Sales Tax Department. The information related to these two parties National Trading Company and LENION Trade Link was forwarded by DGIT(Investigation), Pune to the Assessing Officer(AO), Pune. The AO issued notice under section 148 of the Act. The AO passed an order under section 143(3) r.w.s 147 of the Act, on 18.12.2018 accepting the returned income. There is no discussion in the assessment order regarding the impugned purchases. The Id.Pr.CIT issued notice under section 263 of the Act on the ground that assessment order is erroneous and prejudicial to the interest of the revenue as AO failed to carry out necessary enquiries with reference to impugned purchases from hawala dealers. The Id.Pr.CIT after considering the submission of the assessee passed the order under section 263 of the Act on 19.02.2021, setting aside Assessment Order to Assessing Officer for denovo adjudication.

4. The assessee has not filed any document before us to demonstrate that the AO had carried out enquiries with reference to impugned purchases. The assessee has not filed the so-called order passed by VAT Authorities which is referred by assessee in the statement of facts. In these facts and circumstances of the case, we are of the opinion that no enquiry was carried out by the AO with reference to impugned purchases. It was the duty of the AO to verify genuineness of the purchases. However, on perusal of the assessment order it seems that no enquiry had been carried out by the AO. We have already mentioned that assessee had not filed any document to prove genuineness of the said purchases.

5. The decision of the Hon'ble Bombay High Court in the case of Shoreline Hotel P. Ltd. Vs. CIT [2018] 259 Taxman 49 (Bom) (order dated 11.09.2018), wherein the CIT had passed order u/s 263 on the ground that AO failed to add value of Hawala Purchases is squarely applicable to the present case. The Hon'ble Bombay High Court has held as under :

“4. It is stated that the appellant is a company engaged in the business of running of a Five Star Hotel called "Hotel Marine

Plaza". In order to run the hotel in an efficient manner and to attract guests, the appellant is required to maintain a high standard of operations and it, therefore, purchases numerous goods and articles from various suppliers from time to time. All payments are made by the appellant by account payee cheques and the purchases are supported by bills and delivery challans in some cases. During the assessment proceedings, the Assessing Officer called upon the appellant to prove the genuineness of the purchases aggregating to Rs.3,60,24,582/-. Though voluminous documentary evidence was produced to establish the genuineness of these purchases, the Assessing Officer was not satisfied therewith and asked the appellant to show cause why this entire amount should not be assessed as non-genuine purchases. With a view to buy peace and to avoid unending litigation, the appellant/assessee offered that the gross profit rate of the said purchases may be assessed as income. After considering the submissions of the appellant/assessee, the Assessing Officer passed the Assessment Order dated 28th March 2014 under section 143(3) read with section 145(3) of the Income-tax Act 1961 and held that 15% of the said purchases be assessed as income. Though the said view was taken by the Assessing Officer after a careful consideration of the facts and circumstances of the case, the respondent/Commissioner of Income Tax took a view that this assessment is erroneous insofar as it is prejudicial to the interest of the Revenue and for that purpose, invoked section 263 of the Income-tax Act 1961. He passed an order dated 27th January 2015 to this effect.

5. The view of the Commissioner was that the Assessing Officer ought to have treated the entire purchases as non-genuine and not assessed only 15% thereof.

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25. Once we do not find that in this case there is any substitution of the views of the Assessing Officer, but there was a clear failure to abide by the statutory mandate and by making an estimate so also accepting a vague and general explanation of the assessee, the assessment has been made, then, it will undoubtedly be erroneous insofar it is prejudicial to the interest of the Revenue. It is erroneous insofar as the same is prejudicial to the interest of the Revenue because the Assessing Officer has failed to carry out his statutory obligation and duty and failed to discharge it by holding further probe and inquiry. More so, when the assessee virtually had no answer to his notice. Secondly, very reliable and genuine information was received from the VAT and Sales Tax authorities with regard to the operations with these dealers styled as 'hawala traders'. This certainly brought the matter within the purview of section 263 of the Income-tax Act 1961. No error of law or perversity is committed either by the Commissioner or the Tribunal. We do not find that their order raised any substantial questions of law.”

6. In the above-mentioned decision of the Hon'ble High Court, facts are identical to the case of the assessee, as in that case also there was information from Sales Tax Department regarding Hawala Purchases and Id.CIT had invoked jurisdiction under section 263 of the Act. In the case under consideration we have already observed that no enquiry has been conducted by the AO on the issue of impugned hawala purchases. No document

has been filed by the assessee to demonstrate that AO had conducted necessary enquiries. In these facts and circumstances of the case, respectfully following the decision of the Hon'ble Bombay High Court(supra), we uphold the order under section 263 of the Act, accordingly, grounds of appeal raised by the assessee are dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 21st November, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st November, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.

ITA No.42/NAG/2021
S R Technical Services [A]

S.No	Details	Date	Initials	Designation
1	Draft dictated on			Sr. PS/PS
2	Final Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			