

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2310/M/2023
Assessment Year: 2010-11**

Income Tax Officer- 19(3)(1), Piramal Chamber, Room No.405, Lalbaug, Mumbai – 400 012	Vs.	M/s. Sadaf Trading Company, 2 nd Floor 7, Kika Street, Kikabhai Mansion Gulal Wadi, Mumbai – 400 004 PAN: AAOFS4343Q
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anant Shejale, A.R.
Revenue by : Shri Ajeya Kumar Ojha, D.R.

Date of Hearing : 18 . 10 . 2023
Date of Pronouncement : 10 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Income Tax Officer-19(3)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 01.05.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2010-11 on the grounds inter-alia that :-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was erred in deleting the addition made on account

of bogus purchase @ 100% of total bogus purchase ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purchase.

2. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has erred in admitting the new evidences without asking remand report from Assessing Officer as prescribed in rule 468 of Income tax Rule, 1962?.*

3. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting unexplained purchase amount which was added by the assessing officer as the assessee was not complied to any notices and purchase was made from the parties who has indulged in bills-trading without there being no actual trading activity?*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer.*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was erred in deleting the addition made by the Assessing Officer amounting to Rs. 17,35,829/- without appreciating the ratio of the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd, wherein the Court has held that when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed?*

6. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition made by the Assessing Officer without appreciating the facts that during the assessment proceedings assessee has failed to substantiate the sales corresponding to bogus purchases whereas the Ld.CIT(A) has relied on the case law's relevant to the cases wherein the assessee submitted its reply of bogus purchases and the correspondence sale with substantive proof.*

7. *This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No.3 of 2018 dated 11.07.2018 as amended vide F.No.279/Misc. 142/2007-ITJ(Pt) dated 20.08.2018.*

8. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of information received from Maharashtra Sales Tax Authority that "certain entities are indulging into bill/trade without there being no actual trading activity and one such entity was M/s. Sadaf Trading Company, PAN No.AAOFS4343Q, the assessee in this case, who has debited such expenditure of in genuine purchase transactions in its profit and loss account in order to suppress its true profits from the business". Assessment was reopened in case of the assessee by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act') after recording reasons to believe that the income for A.Y. 2010-11 has escaped assessment due to failure on the part of the assessee to disclose fully and truly. The assessee has failed to put in appearance and the Assessing Officer (AO) proceeded to make best judgment assessment under section 144 of the Act. The AO preceded to hold that the assessee has failed to explain the accommodation entry transaction amounting to Rs.17,35,829/- which was accommodation transaction and thereby added the same to the total income of the assessee. The AO accordingly framed the assessment under section 144 read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition by allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the AO has made the addition of Rs.17,35,829/- being the bogus accommodation transactions made by the assessee during the year under consideration on the basis of information received from Maharashtra sales tax authority that "assessee has taken accommodation entries from 5 entities" which are detailed as under:

SR. NO.	NAME OF THE HAWALA PARTY/PARTIES	F.Y.	AMOUNT IN RS.
1	NIDDHISH IMPEX	2009-10	2,49,124
2	SIDDHIVINAYAK STEEL	2009-10	2,00,639
3	CHANCHAL TUBE CORPORATION	2009-10	2,03,112
4	ASIAN STEEL	2009-10	2,03,580
5	KOTSON IMPEX PRIVATE LIMITED	2009-10	8,79,374
TOTAL			17,35,829

6. It is also not in dispute that no independent investigation has been carried out by the AO except issuing the notice under section 133(6) of the Act, which was received back unserved with the remarks that "left/not known". It is also not in dispute that the assessee has not appeared before the AO nor produced any documents to prove these transactions.

7. In the backdrop of the aforesaid undisputed facts the Ld. CIT(A) has deleted the addition by making observations that the assessee has submitted copies of purchase invoices for purchases made from 5 entities in question, copy of bank statement reflecting payment made to above parties in respect of the

purchases made, summary of purchases affected from above mentioned parties and their corresponding sales to customers in support of said purchases by making observations as under:

“The appellant stated that he was engaged in the business of trading in metal tubes and fittings in the name of his proprietary concern M/s. Sadaf Trading Company. The Assessing Officer was of the view that the identity of the purchasers and genuineness of transactions was not established by the appellant. On the basis of the same, the Assessing Officer made addition of the purchases of Rs. 17,35,829/- in the total income of the appellant u/s. 69C as non genuine and unexplained expenditure.

The appellant submitted copies of purchase invoices for purchases made from above referred parties during the year under consideration, Copies of bank statements reflecting payments made to the above parties in respect of the purchases made, Summary of purchases affected from the above mentioned parties and their corresponding sales to customers in support of the said purchases which have been added to the income of the appellant as unexplained expenditure u/s. 69C.

The appellant relied upon CIT V. Radhika Creation [2011] 10 taxmann.com 138 (Delhi), wherein the Honourable High Court INCOM ME held as under:

"the focus of section 69C is on the source of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of account and it is because of this reason that the Income-tax Appellate Tribunal had observed: "As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of section 69C are not applicable as there was no unaccounted expenditure"

P. Rama Gopal Varma v. Dy. CIT [2002] 76 TTJ (Hyd.) 205 The Honourable ITAT held that unexplained expenditure for the purpose of section 69C means the expenditure incurred by the assessee for which he offered no satisfactory explanation about the source of such expenditure. The thrust is, towards the source of expenditure only, and not towards the nature of expenditure.

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In view of the above submissions and judgments, these grounds of appeal are, accordingly, allowed and the addition made by the Ld. AO on this account is, hereby, deleted.”

8. Bare perusal of the findings returned by the Ld. CIT(A) goes to prove that except the submissions made by the assessee before the Ld. CIT(A) no analysis has been made nor any remand report has been called from the AO. Neither the Ld. CIT(A) himself shown to have examined the evidence brought on record by the assessee during the first appellate proceedings nor the same has got examined or verified from the AO nor specific findings have been returned with the evidence brought on record by the assessee if the same actually pertains to the transactions in question. In other words the impugned order passed by the Ld. CIT(A) is a cryptic one.

9. In the given circumstances, we are of the considered view that the entire evidence brought on record by the assessee during the first appellate proceedings need to be examined/verified with proper reasoning by the Ld. CIT(A) by himself or by calling a remand report from the AO and as such the impugned order passed by the Ld. CIT(A) is not sustainable in the eyes of law, hence set aside to be passed afresh after providing opportunity of being heard to the assessee.

10. Resultantly, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 10.11.2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 10.11.2023.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.