

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीयश्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीयश्रीमनोमोहनदास, न्यायिक सदस्यके समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND SHRI MANOMOHAN DAS, HON'BLE JM

आयकर अपील सं./ITA Nos. 449 & 450/Chny/2023
(निर्धारण वर्ष / Assessment Years: 2018-19)

R. Muralidhara No. 32/65, Murugappa Street, Purasawalkam, Chennai – 600 007.	बनाम/ Vs.	ITO, CHE-W-(110)(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AHNPM-8222-G		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri M. Karunakaran (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT) – Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	26-02-2024
घोषणाकी तारीख / Date of Pronouncement	:	26-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Year (AY) 2018-19 arises out of separate orders passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 07-02-2023 confirming certain quantum addition as well as penalty levied by learned Assessing Officer (AO) u/s 270A of the Act. The assessment has been framed by Ld. AO u/s 143(3) r.w.s 144B of

the Act on 10-05-2021 whereas the penalty has been levied vide order dated 14-02-2022. Though the assessee has raised multiple grounds of appeal in quantum appeal ITA No.449/Chny/2023, however, the same, in sum and substance, assails the disallowance of purchase of Rs.75.84 Crores as made by the assessee during this year.

2. The Ld. AR submitted that almost entire purchases have been disallowed which could not be held to be justified. The Ld. CIT-DR, on the other hand, submitted that notices issued u/s 133(6) to the suppliers revealed that the purchases were not genuine. Having heard rival submissions, our adjudication would be as under. The assessee being resident individual carried on trading of iron and steel under the name and style of 'Magnum Trading'.

3. During the course of assessment proceedings, to verify the genuineness of the purchase, notices u/s 133(6) were issued to all the 69 suppliers. Evidently, only 5 suppliers confirmed having supplied the material to the assessee whereas 3 suppliers denied having made any transaction with the assessee. The rest of the suppliers did not respond to the notices. The assessee could not file even single confirmation from any of the suppliers. Accordingly, purchases to the extent of Rs.75.84 Crores out of total purchase made by assessee for Rs.76.82 Crores were held to be excess purchases and added to the income of the assessee. Another disallowance made by Ld. AO was disallowance u/s 40(a)(ia) for Rs.4.81 Lacs for want of TDS on certain interest payments.

4. The Ld. CIT(A) rendered its findings with respect to purchases at para 5.2 of the impugned order as under: -

5.2 I have gone through the submission of the appellant. No attempt has been made to provide me the list of purchases made, their G.S.T. No. and payments through banking channels. Only general submission has been made. Co-relation should have been made of major items of purchases and sale. Ledger accounts of purchase and sales have not been submitted before me. Bank statements of purchasers and sales have not been produced. Party wise details of purchases and sales have not been submitted. Even Audited Books of Accounts reflecting party wise sales and purchases have not been produced before me. Even if cash purchases and sales have been done, the appellant should have produced the Audited cash book account before me but the same has not been produced. Hence, no attempt has been made before me to controvert the findings of the Assessing Officer, to explain the genuineness of the purchases and to co-relate purchases with the sale. Hence, I find force in order of the Assessing Officer. The addition of Rs.75,84,16,139/- made on account of bogus purchases is confirmed and the appeal of the appellant is dismissed on this ground.

Aforesaid factual findings could not be controverted before us. It could thus be seen that the assessee miserably failed to prove the genuineness of substantial purchases made by it during the year. The disallowance u/s 40(a)(ia) was also confirmed since no details could be provided by the assessee. Aggrieved, the assessee is in further appeal before us.

5. From the findings of Ld. AO as well as Ld. CIT(A), it is quite clear that the assessee has miserably failed to prove the genuineness of substantial purchases made by it during the year. However, it is also a fact that the assessee was engaged in trading activities and therefore, no sale can take place without actual purchase of material. Considering this fact and keeping in mind the prayer of Ld. AR, we deem it fit to provide another opportunity of hearing to the assessee. Therefore, we set aside the impugned order and restore this issue back to the file of Ld. CIT(A) for fresh adjudication with a direction to the assessee to provide requisite details including confirmation of suppliers and other evidences etc. to substantiate its case. The complete onus, in this regard, would lie

on the assessee. The corresponding grounds stand allowed for statistical purposes.

6. On the issue of disallowance u/s 40(a)(ia), Ld. AR sought shelter of second proviso to Sec.40(a)(ia). It was also submitted that few of the payments would not require TDS. Considering the same, this issue is also restored back to the file of Ld. CIT(A) for fresh consideration with a direction to the assessee to substantiate its case. The corresponding grounds as well as the appeal stand allowed for statistical purposes.

7. In ITA No.450/Chny/2023, the assessee is aggrieved by levy of consequential penalty u/s 270A. The penalty order would show that the assessee has remained non-compliant during penalty proceedings. The Ld. CIT(A) has confirmed the penalty against which the assessee is in further appeal before us. Since the quantum additions against which impugned penalty has been levied has been restored back by us to the file of Ld. CIT(A) for fresh adjudication, we restore the consequential penalty also back to the file of Ld. CIT(A) for fresh adjudication in the light of his adjudication in quantum appeal. The appeal stand allowed for statistical purposes.

8. Both the appeals stand allowed for statistical purposes.

Order pronounced on 26th February, 2024.

Sd/-
(MANOMOHAN DAS)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 26-02-2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF