

आयकर अपीलीय अधिकरण, हैदराबाद पीठ, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL,
HYDERABAD BENCHES, HYDERABAD

Before Shri Laliet Kumar, Hon'ble Judicial Member
And
Shri Madhusudan Sawdia, Hon'ble Accountant Member

आयकर अपील सं./ I.T.A. No.272/Hyd/2023
(निर्धारण वर्ष / Assessment Year:2013-14)

Musaddilal Jewellers Private Limited, Hyderabad. PAN: AAECM1213A (अपीलार्थी/ Appellant)	Vs.	ACIT, Circle-16(2), Hyderabad. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	CA Bhupesh Kumar Dand
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rahul Singhanian, DR
सुनवाई की तारीख / Date of Hearing	:	14/05/2024
घोषणा की तारीख/Date of Pronouncement	:	21/05/2024

O R D E R

PER Madhusudan Sawdia, Accountant Member :

This appeal is filed by Musaddilal Jewellers Private Limited (“the assessee”), is directed against the order of the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad [“Ld. CIT(A)”] dated 23/3/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [“the Act”] for the AY 2013-14.

2. In this appeal, the assessee has raised the following grounds of appeal:

- “1. The order passed by the Ld. CIT(A) is erroneous in law and is against the facts of the case.
2. The Ld. CIT(A) erred in confirming the addition of Rs. 38,30,824/- made by the Assessing Officer towards bogus purchase of untenable reasons.
3. Any other ground/s that may be urged at the time of hearing.”

3. The Brief facts of the case are that the assessee-company is engaged in the business of jewellery making and trading, filed its return of income for AY 2013-14 on 17/9/2013 admitting a total income of Rs. 3,62,89,380/-. The case of the assessee was selected for scrutiny and the assessment was completed by the learned Assessing Officer (“ Ld. AO”) u/s 143(3) of the Act on 30/03/2016 making a total disallowance of Rs. 54,70,351/- (including the disallowance made on account of bogus purchases of Rs. 38,30,824/-) and thereby assessing the total income at Rs. 4,17,59,731/-.

4. Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A). Out of the total disallowance of Rs. 54,70,351/- made by the Ld. AO, the Ld. CIT(A) deleted the disallowance of Rs. 16,39,527/- towards ROC fees & 14A disallowance, but confirmed the disallowance of Rs. 38,30,824/- on account of bogus purchases.

5. Aggrieved by the said order of the Ld. CIT(A), assessee is in appeal before the Tribunal. The learned Authorized Representative [AR] submitted that the basis for making of addition in the hands of the assessee was Question No.15 at page-2 of the order of the Ld. AO which is reproduced as under:

“Q.15. It is brought to your notice that this office has received information from Investigation Wing of Mumbai with respect to accommodation entries provided by Mr. Bhanwarlal Jain Group related to your company M/s. Musaddilal Jewellers Pvt Ltd., during FY 2012-13 worth Rs. 14,78,190/- from M/s. Ankita Exports, Rs. 23,51,914/- from M/s. Pankaj Exports and Rs. 66,30,396/- from M/s. Megha Gems. Can you please elaborate on the transactions?”

Ans: These are purchase of diamonds and we have made the payments for the same through cheque and we can produce the original purchase invoices for these purchases.”

6. Before us, the learned AR further submitted that no proper reason was given by the learned revenue authorities for making the disallowance of Rs. 38,30,824/- on account of bogus purchases. The Learned AR also submitted that, from perusal of above extract of order of Ld. AO, it is clear that the Ld.AO made an allegation on purchase of Rs. 14,78,190/- from M/s. Ankita Exports, Rs. 23,51,914/- from M/s. Pankaj Exports and Rs. 66,30,396/- from M/s. Megha Gems. It was the contention of the assessee that, the assessee has provided the copies of the invoices, bank statements and other contemporaneous documents before the learned revenue authorities for all the three transactions. However, the similar documents have been accepted by the Ld. AO with respect to a major purchases of Rs. 66,30,396/- in the case of M/s. Megha Gems. It was further submitted that even the reasoning given by the Ld. AO in the order was silent on the aspect of addition of Rs. 38,30,824/-. The learned AR also submitted that the Revenue has accepted the sales made by the assessee, however, wrongly disallowed the purchases made by the assessee from the two entities namely M/s. Ankita Exports and M/s. Pankaj Exports. It was also submitted that the Ld. AO has not verified as to what had happened to the transactions made in the hands of the M/s. Ankita Exports and M/s. Pankaj Exports. It was the contention of the assessee that in the identical cases, wherein the Hon'ble Supreme Court and various High Courts have taken a uniform stand by not making the addition in the hands of the assessee on account of alleged transactions and for the reasoning the learned AR relied on the following case laws:

- (i) CIT vs. Nikunj Eximp Enterprises (P.) Ltd [2013] 35 taxmann.com 384/216 Taxman 171 (Mag.) / [2015] 372 ITR 0619
- (ii) Pr. CIT vs. Vaman International (P.) Ltd [2020] 422 ITR 0520 (Bom.)
- (iii) CIT vs. Odeon Builders (P.) Ltd [2019] 110 taxmann.com 64/418 ITR 315/266 Taxman 461 (SC)
- (iv) DCIT vs. Rajeev G. Kalathil [2014] 51 taxmann.com 514 / [2015] 67 SOT 0052 (Mumbai)
- (v) PCIT vs. Tejua Rohitkumar Kpadia (SC) Special Leave Petition (Civil) Diary No. 12670 / 2018, dated 4/5/2018
- (vi) PCIT vs. Shapporji Pallonji & Co. Ltd (Bombay High Court) Appeal No. 1298 of 2017, dated 4/3/2020.

Further, before us the learned AR has also made written submissions in support of his argument.

7. Per contra, learned DR relied on the orders of the learned Revenue Authorities. Before us, the learned DR has made the following written submissions:

“This case was listed on 14/5/2024 before the Hon’ble Bench with the following GOA and the arguments presented by the Revenue orally before the Hon’ble Bench which is hereby being submitted in writing. The grounds of appeal taken by the assessee do not speak about the statement recorded dated 15/3/2016 of one of the Director Sh. Nitin Gupta, who is unable to answer the questions asked and has not raised the issue of cross examination as is raised now because of burden to prove is on the assessee in which it is failed miserably.

In this case, the search action was conducted on 3/10/2013 on the entry provider named Bhanwarlal Jain located at Mumbai and it was found that the assessee is one of the beneficiary. As per the statement of the Director of the assessee company the following points are emerged:

1. *The assessee has purchased very first time from Ankita Exports and Pankaj Exports.*
2. *The assessee does not remember that from whom these purchases are made.*
3. *Thereafter the Director, Sri Nitin Gupta was provided with a copy of a statement recorded on oath of Sh. Bhanwarlal Jain in which the names of Ankita Exports and Pankaj Exports were mentioned.*
4. *The Director stated that he does not know this Bhanwarlal Jain and his son.*

5. *The Director was asked that because the entries is exactly matching from the piece of information received from Investigation Wing, it is the burden on the assessee to prove that the parties from whom the purchases are made are genuine and does not belong to the entry operating group providing accommodation entry.*
6. *The Director failed repeatedly to substantiate that what he has stated earlier eg., we do not entertain any new suppliers, we make enquiries about the dealers and then only order is placed.*
7. *In reply to Question No.14, the Director replied that he is not able to recollect the details.*
8. *The copy of the statement recorded by the AO is enclosed herewith which sufficiently prove that the assessee has taken accommodation entry and nothing is known about the seller party.*

The complete statement of the Director must be considered which was recorded after issuance of the summon dated 10/03/2016 and therefore the AO has rightly concludes that “mere admission of making purchases, payments made through cheques, entry in purchase invoices and stock registers does not entail the assessee-company to claim the above expenditure, as the company which was said to have sold the stock itself admitted that the company is a bogus entry provider of these accommodation entries. In this scenario, the expenditure claimed by the assessee company in respect of purchases made from M/s. Ankita Exports of Rs. 14,78,190/- and M/s. Pankaj Exports of Rs. 23,51,914/- is not allowable and added back to the income returned by the assessee company.”

There are plethora of judgments of various High Courts and the Hon’ble Supreme Court in which the onus is on the assessee to establish the genuineness of the purchase made and that only bank transaction is not sufficient to prove the genuineness.

With regard to cross examination as one of the ground taken by the assessee, the opportunity was provided to the assessee by the AO to rebut the material on the basis of which the AO was intended to proceed. There are number of cases namely-

In the case of Nokia India Private Limited vs. DCIT (2015) 59 taxmann.com 212 (Delhi Tribunal) – in which statement was duly provided to the assessee during proceedings before the AO but the assessee never asked for cross examination hence this plea of cross examination raised at such later stage is not justified.

M/s. Pebble Investment and Finance Limited vs. ITO 207-TIOL-238-SC-IT – The Hon’ble Supreme Court has ruled so far as request for cross examination is concerned, we find that assessee during the first round of proceedings before the AO did not raise any such issue the request of the assessee is not tenable.

Roger Enterprises (P) Ltd vs. CIT (2016) 72 taxmann.com 167 (SC) – The Hon’ble Supreme Court while dismissing the SLP against High Court

ruling that the evidence of witness was by itself sufficient to draw adverse inference against the assessee.

GTC Industries Ltd vs. ACIT of ITAT Mumbai [1998] 65 ITD 380 (Bom.) – Where statements and subordinate material used to buttress main matter connected with amount of addition, it has to be held that there was no denial of principle of natural justice.

It is further to state that the assessee needs to substantiate his claim of purchase which is actually made very first time from the said parties which itself is against own principles that the purchases are made always from someone known or known of someone and payment is made after the end of the credit time but these principles here is not applied by the assessee and the hefty payment is made in one go to the first timer and without knowing the name of the person from whom alleged purchase is made.

Therefore the purchase is actually bogus and that is sufficiently proved that the assessee has failed to discharge his onus with regard to the genuinely and which is rightly held by the first appellate authority.”

8. We have heard the rival contentions, perused the material available on record and gone through the orders of the Revenue authorities. In the present case, the Ld. AO in para-3 of his order has mentioned that the statement of the Director of the assessee-company was recorded and has reproduced various questions asked to the Director of the assessee-company. During the recording of the statement, the Ld.AO made an allegation on purchase of Rs. 14,78,190/- from M/s. Ankita Exports, Rs. 23,51,914/- from M/s. Pankaj Exports and Rs. 66,30,396/- from M/s. Megha Gems. It was the contention of the assessee that, the assessee has provided the copies of the invoices, bank statements and other contemporaneous documents before the learned revenue authorities for all the three transactions. However, the similar documents have been accepted by the Ld. AO with respect to a major purchases of Rs. 66,30,396/- in the case of M/s. Megha Gems by recording that merely because the assessee had submitted the record of making purchases, by making the payments through cheques, purchase invoices, stock register does not entail the assessee to claim the expenditure. It is the case of the

assessee before us that in the appellate proceedings, the said findings of the Ld.AO were not disturbed by the Ld. CIT(A). Further, the submission of the assessee before us is that the assessee has discharged its initial onus cast on it by producing the record of the purchases made by the assessee viz., purchase invoices, bank statement, stock register etc. However, the Ld.AO has not granted any relief to the assessee with respect to the purchases made from M/s. Ankia Exports and M/s. Pankaj Exports. The Ld. AO has failed to brought on record that more additional documents or evidences could have been produced by the assessee to elucidate whether the purchases made by the assessee were genuine or not. Once the assessee has produced the documents evidencing the purchases of the goods from the said two entities viz., M/s. Ankia Exports and M/s. Pankaj Exports and the payments made thereto, the onus to prove the negation is shifted to the Ld.AO. The Ld. AO should have been examined M/s. Ankia Exports and M/s. Pankaj Exports by issuing summons U/s. 131 of the Act or calling for informations u/s 133(6) of the Act and find out whether these two entities existed or non-existed or in alternative should have been brought on record any evidence to prove that the invoices produced by the assessee were not genuine. No positive evidences were brought on record by the Revenue to show that the expenditure claimed by the assessee by way of purchase of jewellery were not genuine. Further, we are also of the opinion that once the sales made by the assessee have been considered & accepted and taxes have been collected from the assessee, then it is difficult to accept the contention of the Ld. AO that the purchases made by the assessee were not genuine. In the case on hand also, once the Revenue has accepted the sale of the assessee and taxed the assessee, then the Revenue cannot charge solely on the basis of alleged bogus purchases. Further, we may also draw the support from the decisions referred to by the

assessee (supra) in support of his case, wherein it was held in the case of bogus purchases, only some percentage of the bogus purchases is required to be considered as additional income. In the light of the above, we find no merit in the argument of the learned DR and therefore the same is required to be rejected.

9. In the written submissions made by the Revenue, the learned DR has referred to the decision of the ITAT, Delhi Benches in the case of Nokia India Private Limited (supra) wherein the Tribunal has held that unless the assessee asked for the cross-examination, the assessee cannot be permitted to raise such ground at a later stage. Similar view was also taken in the other judgments cited by the learned DR herein above.

10. Though, during the course of argument one of the contentions raised by the learned AR for the assessee is that the assessee has not been given the opportunity of cross-examination and therefore on that ground also the order passed by the lower authorities is not tenable. However, to counter the argument of the learned AR, the learned DR had filed the written submissions which are reproduced herein above.

11. In the present case, the assessee during the proceedings before the Ld. CIT(A) vide Ground No.3 has raised the following ground:

“3. The entire additions were made without accosting the appellant with full report of the DIT(Inv.) Mumbai and in not producing the Department witness Mr. Bhanwarlal Jain for cross-examination thus violating the principles of natural justice and fair play and not this ground alone the addition can be quashed.”

12. On perusal of the above Ground No.3 raised by the assessee before the Ld. CIT(A), it is abundantly clear that the assessee has raised

the specific ground with respect to the violation of principles of natural justice. However, the Ld. CIT(A) at paragraph-16 of his order has dealt with the above said issue in the following manner:

“The Ground No.3 pertains to claim of the appellant that no opportunity of cross examination was provided. The appellant has been harping upon certain cross verifications to be required with certain parties on the basis of certain evidences relied upon by the Ld. AO. The appellant has claimed the purchase as genuine, when there are evidences indicating that the same has been an accommodation entry. The appellant has claimed the expenditure and therefore the onus to prove the same is on the part of the appellant and it is free to produce the above persons as part of its defence but however the appellant has failed to produce any such person involved in the transaction which clearly shows that the appellant has no bonafide case in the matter. The appellant has further requested for cross examination of the persons whose statement has been relied upon, it is noted that person has been examined by the Investigation Wing and there is a very elaborate and a detailed statement in that regard and the appellant has not been able to rebut a single affirmation by that person and therefore just to ask for a physical presence of the person is only to delay the matter and also as no basis has been brought out effectively by the appellant, the same has been rightly not accorded by the Ld. AO. It is also important to understand the background that large number of people have been involved in this dubious activity of accommodation entries and for the Department to be expected to make that person present in each and every case and in multiple locations all over the country is virtually impossible and therefore unless anything specific is brought out and when the statement of the person is backed by the evidence and financial data of such financial fraud on the tax liability, there is no basis to use such ground as an escape route to the liability of the appellant. The appellant has not provided a single evidence of usage of these purchases in sale or stock which is the primary onus of the appellant. The onus of the appellant is to prove its purchases and not of the AO and the evidences submitted does not discharge the onus of the appellant. In view of the above discussion, the ground No.3 is dismissed.”

13. On perusal of the above, it is abundantly clear that the Ld. CIT(A) has rejected the ground raised by the assessee for the reason that physical presence of the person is not required for effective adjudication of the matter.

14. We are of the considered opinion that the right to cross-examine is a matter of right vested in the assessee by virtue of the various pronouncements of the Hon'ble Supreme Court and also in the realm

of principles of natural justice. The law is clearly settled that no person should be criticised and is subjected to any civil liability unless a chance to rebut and cross-examine is granted to the assessee. For the above said propositions, we hereby rely upon the ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE(2015) 62 Taxmann.com 3 (SC) and CIT vs. Odeon Builders (P.) Ltd (supra). Therefore, in our considered view this objection of the Revenue is also without any merit. To conclude, in the light of the above observations, we hereby allow the appeal of the assessee.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st May, 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Dated : 21.05.2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Musaddilal Jewellers Private Limited, 8-2-120/88 & 89/MB Shntikiran, Road No.2, Banjara Hills, Hyderabad
2. राजस्व/The Revenue – The Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **हैदराबाद** / DR, ITAT, Hyderabad.
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER