

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 701/Ahd/2023
Assessment Year 2017-18**

Agrawal Dilsukhbhai Ramanand M/s Shri Bharat Trading Co. A-27, New Ganj Bazar Dairy Road, Palanpur-385001 PAN: AABHA5221N (Appellant)	Vs	The ACIT, Circle, Palanpur, Palanpur (Respondent)
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**Assessee Represented: Shri S. N. Divetia, A.R.
Revenue Represented: Shri H. Phani Raju, CIT-DR**

Date of hearing : 19-03-2024
Date of pronouncement : 14-06-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee as against the order of National Faceless Appeal Centre (NFAC), Delhi, in proceeding u/s 250 vide order dated 16/08/2023 passed for the Assessment Year 2017-18.

2. The assessee has raised the following Grounds of appeal:

1.1 The order passed u/s. 250 passed on 16.08.2023 by NFAC(CIT(A) Delhi (for short 'NFAC')) for AY 2017-18 upholding the addition of Rs.9,96,03,575/ in respect of the transactions of sale and purchase of caster seeds as belonging to

appellant instead of third parties as profit of the appellant is wholly illegal, unlawful and against the principles of natural justice.

1.2 The NFAC has grievously erred in law and or on facts in holding that no reply nor adjournment were received in respect of notices dated 21.01.2021, 04.11.2022 and 14.02.2023: The appellant states that there was due compliance to the aforesaid notices as evident from the IT Portal itself. Thus, the NFAC has disposed off the appeal in a careless manner and in gross dis-regard to the submissions and evidence produced before him. Therefore the impugned order is liable to be quashed in toto.

1.3 That in the facts and circumstances of the case, the NFAC ought not to have dispose of the appeal by grossly ignoring the submissions and evidence produced before him which has resulted into huge demand being confirmed and giving rise to penalty also.

2.1 The NFAC has grievously erred in law and or on facts in upholding the addition of Rs.9,96,03,575/- in respect of the transactions of sale and purchase of caster seeds as belonging to appellant instead of third parties as profit of the appellant.

2.2 That in the facts and circumstances of the case as well as in law, the NFAC has grievously erred in upholding addition of Rs.9,96,03,575/- in respect of the transactions of sale and purchase in caster seeds as belonging to appellant instead of third parties as profit of the appellant.

2.3 The averments and observations made and conclusion reached by AO to treat the impugned transactions and consequent profit of Rs. 9,96,03,575/- as belonging to the appellant are not admitted and the same are contrary to the evidence produced before him, apart from being presumption, surmise and conjecture so that they are not binding to the appellant.

2.4 Without prejudice to above and in alternative, the impugned addition confirmed by NFAC is highly excessive and calls for reduction.

It is therefore prayed that the addition of Rs.9,96,03,575/- confirmed by NFAC should be deleted.

3. The brief facts of the case are that assessee filed its return of income declaring total income of Rs.36,56,920/-. The assessee is engaged in the business of trading cement, agriculture produce and general merchant and commission agent. During the course of assessment, the assessing officer observed that the assessee had entered into purchase and sale transaction in castor seeds and earned profits from these transactions. Further, the assessing officer observed that such transactions had been entered into by the assessee on behalf of other persons. The assessee had shown purchase of goods of Rs. 97,86,85,195/- on behalf of clients and had sold the goods of Rs.1,07,82,88,770/- to other persons on behalf of clients. Thus the Assessing Officer was of the view that by showing the sale and purchase on behalf of its clients, assessee has transferred the profit of Rs.9,96,03,575/- to other persons and has thereby shown lesser profit than the actual.

4. In response to, notices issued by the Assessing Officer, the assessee submitted that these transactions i.e. sale as well as purchases are made in the name of clients as their agents and the goods so purchased/sold on behalf of clients have been reduced from the respective head of sale or purchase. The assessee submitted that for such sale and purchase which was entered into by the assessee on behalf of its clients, a specific journal entry was passed in the books of accounts at the end of the month in which this type of transaction was performed. However, the assessing officer disregarded the submissions made by the assessee and observed that the assessee has not submitted delivery challans, copy of invoices, storage notes which reflect the name of assessee's

client (i.e. so-called beneficial owner in these transactions) to prove the correctness and genuineness of these transactions. The agreement for sale and purchase on behalf of the client has been prepared on the letter head only and the same is a self-serving document and does not prove the genuineness of the transactions. Further, the A.O. also observed that the assessee has also shown the above sales and purchase in its own VAT Returns. This proves that the assessee has made this arrangement to reduce its profit and thereby reduce its tax liabilities. The assessing officer added a sum of Rs.9,96,03,575/- to the income of the assessee.

5. In appeal, Ld. CIT(A) confirmed the additions made by the assessing officer with the following observations:

6. The assessee is in appeal before us against the order passed by Ld. CIT(A). The Ld. Counsel for the assessee submitted that Ld. CIT(A) has passed an ex-parte order without considering the written submission filed by the assessee and without giving due opportunity of hearing to the assessee. The Ld. Counsel for the assessee submitted that assessee had filed submission on 23.02.2023, whereas the Ld. CIT(A)'s order was passed on 16.08.2023, in which the submission filed by the assessee were not considered. Further, the ld. Counsel for the assessee drew our attention to the purchase register at page 143 of the Paper Book and submitted that from the above register, it is evident that the purchases were made by the assessee on behalf of third parties. Thirdly, the ld. Counsel for the assessee drew our attention to written submission dated 23.02.2023 submitted before Ld. CIT(A)

in which it was submitted that all the three third parties on behalf of whom the assessee had purchased and sold the commodities were assessed to tax and their confirmation with contra ledger account, details of ITR-V had also been submitted which has not been disputed by the assessing officer. Further, the said parties had accepted those transactions as their own and confirmed profit/loss arising out of these transactions belong to the said parties. Further, it was submitted before the Ld. CIT(A) that assessee had charged commission for its services totalling to Rs.11,84,459/- and a said parties had deducted TDS u/s 194H from the commission so paid. Item wise, month wise details of goods purchase and sold on behalf of said three parties were also furnished to the assessing officer. The counsel for the assessee submitted that it is A registered dealer under VAT and he has declared these transactions as commission agent in VAT returns and even assessed accordingly. The copy of VAT order with data was also uploaded before Ld. CIT(A) vide submission dated 23.02.2023. However, the Ld. CIT(A) did not consider any of the contentions which were put forth by the assessee and passed ex-parte order dismissing the appeal of the assessee *in limine*. The Ld. Counsel for the assessee submitted that from the contents of the ledger which had been submitted before the Revenue Authorities, it is clear that the entire purchases and sales had been made by the assessee on behalf of third parties for earning commission income and TDS at the appropriate rate had also been deducted by these parties on such commission income.

7. In response, Ld. D.R. placed reliance on the observations made by the assessing officer and Ld. CIT(A) in their respective orders.

8. We have heard the rival contentions and perused the material on record. We observe that the assessee has filed certain details and submissions which has not been considered by the assessing officer. We further observed that from the assessment order certain arguments of the assessee which were taken before us have not been considered by the assessing officer/Ld. CIT(A) which are to the effect that the assessee has earned commission income on which TDS has been deducted at the appropriate rate by the third parties, that the profits in relation to the aforesaid sales and purchases have been duly reflected by such parties in their respective returns of income that these transactions has been declared as commission earned by the assessee in its VAT Returns (copy of VAT enclosed before Ld. CIT(A) vide submission dated 23.02.2023). Accordingly, looking into the instant facts, in the interest of justice, the matter is being restored to the file of assessing officer for de novo consideration. Assessee would be at liberty to file additional documents/evidences in support of the fact that such purchases and sales and profits thereto have been duly reflected by such third parties in their respective returns of income and any other documents/evidence to support that these transactions have been entered by the assessee on behalf of third party clients and the assessee has only earned commission income with regard to such transactions which has been offered to tax by the assessee in its return of income.

9. In the result, the appeal of the assessee is restored to the file of the assessing officer, with the aforesaid direction.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14-06-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 14/06/2024

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद