

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 4298/Mum2023
(Assessment Year: 2017-18)

ACIT, Circle-6(1)(2) Room No. 506, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Kamani Foods Pvt. Ltd. 810, 8 th Floor, C Wing One BKC, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AAECN 9686 L		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Mahesh O. Rajora
Respondent by	:	Shri P. D. Chougule
Date of Hearing	:	08.05.2024
Date of Pronouncement	:	05.07.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The Revenue has challenged this appeal on the following grounds:

1	<i>Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is erred in directing the A.O. to delete the addition of Rs.4,80,20,603/- made u/s. 69C without appreciating the facts that except one party the other four parties has not filed any confirmations in respect of transactions entered into by the assessee company ?</i>	Rs.3,70,95,914/-
2	<i>The appellant prays that the order of the Id. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.</i>	
3	<i>The appellant craves leave to amend, or alter any grounds or add a new grounds, which may be necessary</i>	Rs.3,70,95,914/-

3. The brief facts are that the assessee is engaged in the business activity of specializing in premium cooking oils and reseller of edible oils and also into sale of

scrap oil after it becomes inedible over the passage of time. The assessee had e-filed its return of income on 25.10.2017, declaring total loss of Rs.16,86,51,724/-. The assessee's case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) were duly issued and served upon the assessee.

4. The Id. Assessing Officer ('A.O.' for short) observed in the profit and loss account of the assessee that the assessee had made purchase of Rs.88,11,70,904/- and in order to ensure that it was genuine purchases, the A.O. issued notices u/s 133(6) of the IT Act, 1961 to the parties from whom the assessee had made the impugned purchases and out of which only some of them replied. After duly considering the assessee's submission, the Id. A.O. passed the assessment order u/s. 143(3) of the Act dated 19.12.2019 where the Id. A.O. determined the total income at Rs.4,80,20,603/- after making an addition of Rs.4,80,20,603/- on 'bogus purchase' u/s. 69C of the Act on the ground that the assessee had failed to substantiate the identity and creditworthiness of the parties and the genuineness of the transaction.

5. The assessee was in appeal before the first appellate authority who vide order dated 17.10.2023 deleted the impugned addition made by the Id. A.O. on the ground that the assessee had furnished all the documentary evidences which includes copy of ITR-V, copy of bills, bank statements, ledger account, lorry receipt, challan, etc.

6. The Revenue is in appeal before us, challenging the impugned order on the ground that the Id. CIT(A) had deleted the impugned addition without getting into the merits of the submission of the assessee.

7. Heard the rival submissions and perused the material available on record. It is observed that the assessee has filed the documentary evidences pertaining to the five

parties from whom it is alleged that the assessee has entered into the bogus purchase transactions. From the assessment order and the Id. CIT(A)'s order, it is noticed that the said suppliers could not be verified for the purpose of paucity of time and it is also evident that the said suppliers have not responded to section 133(6) notice. The first appellate authority, on the other hand, has also not considered the fact that the said parties have not been verified as to their genuineness and also whether or not confirmation has been received from these parties subsequently are all not discussed in the findings of the Id. CIT(A). No doubt, the assessee has filed the relevant documentary evidences in support of its claim, the Id. CIT(A) having co-terminus power as that of the Id. A.O. ought to have verified those and given a finding. As this exercise is not carried out by the Id. CIT(A), the Revenue has challenged the impugned order and had contended that the Id. CIT(A) has also not sought for a remand report in this case from the Id. A.O.

8. On the above factual matrix, we are of the considered view that this issue has to be remanded back to the file of the Id. CIT(A) for *de novo* adjudication on the merits of the case after duly considering the submission of the assessee and the veracity of the documents filed by the assessee. The Id. CIT(A) is directed to hear both the sides and decide this issue in accordance with the law.

9. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 05.07.2024.

Sd/-

Sd/-

(B R Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated :05.07.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai