

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C ': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.439/Del/2024
(ASSESSMENT YEAR-2021-22)**

Deputy Commissioner of Income Tax, Circle-13.1, New Delhi I. P. Estate, New Delhi	Vs.	Jaharvir Polymers Private Limited, Vikaspuri New Delhi PAN:AACCJ5452C
(Appellant)		(Respondent)

Appellant by	Ms. Parul Singh, Sr. DR
Respondent by	Sh. Sameer Kapoor, CA

Date of Hearing	10.07.2024
Date of Pronouncement	24.07.2024

ORDER

PER YOGESH KUMAR U.S. JM.:-

The present appeal is filed by the Revenue against the order of National Faceless Appeal Centre ('NFAC')/Ld. Commissioner of Income Tax (Appeals) ('CIT(A)' for short) dated 22/12/2023 for Assessment Year 2021-22.

2. The grounds of Appeal are as under:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of Rs. 4,79,63,308/- on account of bogus purchase

2 Whether on the facts & the circumstances of the case and in laws, the Ld. CIT(A) erred, in deleting the addition even through Assessee's recorded entries indicate transactions of bogus purchases.”

3. Brief facts of the case are that, the assessee filed return declaring income of Rs. 3,00,820/- which was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short). Subsequently, the Assessee's case was selected for scrutiny under CASS on the ground that the assessee had made substantial purchases from such suppliers who are neither 'non filer(s)' or have non-business ITR or reflected substantially lower turnover in ITR as compared to turnover shown in GSTR 1 return. A.O was of the opinion that there is a possibility of assessee booked bogus expenses in order to reduce taxable income. To verify the genuineness/correctness of expense, a show cause notice has been issued to the Assessee. The assessee replied to the show cause notice. Further the A.O. has also issued notice u/s 133(6) of the Act to 12 parties to verify the

genuineness of the transaction entered by the assessee during the Financial Year 2020-21, which were duly served on the assessee, but no response were received from all the parties except M/s Pan Prag India Ltd., who has stated that 'we have checked and found that we have not made any transaction with Jaharvir Polymers, New Delhi and other parties have not given response to the notice issued u/s 133(6) of the Act. Considering the same, the A.O. was of the opinion that the onus is upon the assessee to prove with documentary evidences to support its claim to establish the genuineness of the purchase transaction claimed in the year under consideration as the assessee has not proved the identity of the purchase parties and the genuineness of the purchase transaction, thus held that the claim of purchase of Rs. 23,94,44,254/- are not established, accordingly, made the addition. During the appellate proceedings, the said addition has been deleted by the CIT(A) in following manners:-

“DECISION OF THE APPELLATE AUTHORITY:

8. The undersigned has carefully considered the facts of the case, assessment order and the written submission of the assessee. In the course of appellate proceedings, the

assessee submitted details and documents in respect of purchases made from various suppliers and furnished its explanations on the issue involved which are available on records. The assessee claimed that, all the transactions/purchases made with the suppliers were genuine and paid the consideration through its bank account through banking channel during the year under consideration. To substantiate its claim, the assessee furnished copy of purchase invoices and copy of bank statement highlighting the payments made to the suppliers for such purchases during the year under consideration which is also available on records. In the case of CIT Vs Nikunj Exim Enterprises (372 ITR 619) it has been held by the Hon Bombay High Court that non service of notice does not conclusively prove the non-genuineness of a transaction. Relevant extracts are reproduced as following:

Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in-fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30-04-2010 of the Tribunal.

9. *The above discussed view has been affirmed in various other case judgments. Few of them are cited as follows:*

a) [2021] 125 taxmann.com 163 (Karnataka) [04-01-2021] [04-01-2021] Commissioner of Income Tax, Bangalore vs. Anantha Refinery (P.) Ltd.

b) [2019] 110 taxmann.com 310 (Mumbai) [28-08-2019] [28-08-2019] Deputy Commissioner of Income-tax, CC-8(4) vs. Pali Fabrics P. Ltd.

c) [2019] 111 taxmann.com 51 (Mumbai) [28-08-2019] [28-08-2019] Deputy Commissioner of Income-tax, Mumbai vs. Acro Exports Trade (P.) Ltd.

d) [2018] 97 taxmann.com 682 (Mumbai) [29-08-2018] [29-08-2018] Skylark Build vs ACIT, Central Circle-4(2), Mumbai

e) [2018] 93 taxmann.com 486 (Mumbai) [23-03-2018] [23-03-2018] ACG Arts & Properties (P.) Ltd. vs. Deputy Commissioner of Income-tax, Cen. Cir. 42, Mumbai

f) [2017] 88 taxmann.com 756 (Mumbai) [05-05-2017] [05-05-2017] Geolife Organics vs. Assistant Commissioner of Income-tax-23(2), Mumbai

g) [2017] 88 taxmann.com 615 (Mumbai) [31-01-2017] [31-01-2017] Assistant Commissioner of Income Tax-25(2), Mumbai vs. Mahesh K. Shah Officer, Ward-19 (2) (2), Mumbai vs. Karsan Nandu

h) [2017] 77 taxmann.com 275 (Mumbai) [30-11-2016] [30-11-2016] Income-tax Income Tax Officer-Ward 3(1), Kalyan

i) [2017] 88 taxmann.com 651 (Mumbai) [09-11-2016] [09-11-2016] Arun Shimpi vs.

j) [2014] 51 taxmann.com 514 (Mumbai)[20-08-2014] [20-08-2014] Deputy Commissioner of Income-tax, C-11 vs. Rajeev G. Kalathil

Hence, after considering the above said case judgments, stock records and documents submitted before this authority, weightage is found in the contentions of the Appellant assessee company w.r.t the issue of transactions amounting to Rs. 23,93,51,183/- made from various suppliers. As no adverse inference has been drawn on this issue for the year under consideration, hence the addition made by the AO of Rs. 4,79,63,308/- being 20% of purchases of Rs. 23,93,51,183/-, is hereby deleted.

In result, the appeal of the appellant is ALLOWED.”

4. The Ld. CIT(A) while deleting the addition relied on the Judgment of Bombay High Court in the case of CIT Vs. Nikunj Exim Enterprises (372 ITR 619) wherein it is observed that *‘there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in-fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the Ld. CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee.’* The said ratio of the Hon’ble Bombay High Court is not applicable for the present case as none of the suppliers have issued confirmation letter on the other hand, one of the supplier i.e. Pan Prag India Ltd. has replied stating that it has

not entered into sales transaction of Rs. 93,071/- with the assessee. Considering the above facts, we are of the opinion that the Judgment of the Bombay High Court in the case of Nikunj Exim Enterprises (supra) relied by the Ld. CIT(A) is not applicable to the case in hand. In the present case, none of the parties have provided the confirmation to prove the genuineness of the purchase and none of the suppliers have replied to the notice issued u/s 133(6) of the Act. The assessee cannot claim the expenditure by casting the burden on the A.O. without bringing any cogent evidence on record.

5. Considering the facts and circumstances, we deem it fit to restore the matter to the file of the A.O. with a direction to the assessee to produce the parties or file confirmation from the suppliers to substantiate the claim of the assessee in order to prove the genuineness of the transaction entered by the Assessee during the year under consideration. Accordingly, we partly allow the Grounds of the Appeal of the Revenue.

6. In the result, Appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the open Court on 24th July, 2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 24/07/2024

R.N Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI