

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.512/PUN/2024
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Gordhansingh S Rajpurohit, A/603 Shree Shivsankar, Plot No. 32,33,34,35 Sector 34 Kamothe, Navi Mumbai-410209 PAN : AHZPR5946C	Vs.	The Income Tax Officer, Ward – 5, Panvel
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	N O N E
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	01-07-2024
Date of Pronouncement :	01-07-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 15.01.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["CIT(A)"] pertaining to Assessment Year ("AY") 2009-10.

2. The assessee has raised the following grounds of appeal:-

"GOA No.1 :- Opportunity of Hearing not Granted:

- ❖ *All the notices has been served on the Income Tax Portal.*
- ❖ *No physical notices has been served by the Ld CIT(A).*
- ❖ *The assessee is not tech savy plus as mentioned above since there is no business, the assessee does neither had any staff nor any tax consultant.*

GOA No.2:- 15% Addition on Account of bogus purchases of Rs.3,08,99,339/-

- ❖ *The Ld.CIT(A) not justified in confirming the adhoc 15% disallowances on account of purchases affected from suspicious hawala dealer, which is unwarranted / unjustified.*

- ❖ *The Ld.CIT(A) not considered the facts that assessee is purely reseller in Iron & Steel and without purchases how can sales be affected in trading concern?*
- ❖ *The Learned CIT (A), confirmed the sales figure as per books of accounts but restricted the addition made by the Learned AO in assessment order u/s 143(3) for GP addition from 100% to 15%.*
- ❖ *The Learned CIT(A), neither considered the fact that without purchase how sales can be affected? Nor considered the facts that books of accounts were never rejected u/s 145 by the department nor proved the cash trail by the department nor done any independent enquiry except issuance of notice u/s 133(6).*
- ❖ *The Ld. CIT(A) not considered the facts that the Hon'ble ITAT deleted the adhoc additions fully in similar cases. We relied on the following judgments of the higher forum :-*
 - *Income Tax Appeal No 1004 of 2016 in the High Court of Judicature at Bombay in case of The Principal Commissioner of Income Tax V.s Mohammad Haji Adam & Co.*
 - *M/s Fancy Wear V/s ITO Ward 24(3)(1), ITA No. 1596/1597/Mum/2016 dt. 20/09/2017.*
 - *Shri Hiralal Chunilal Jain V/s ITO Ward 14(1)(4), ITA No. 4547/1275/Mum/2014 dt. 01/01/2016.*
 - *M/s Ramesh Kumar & Co. v/s ACIT Ward 21(1), ITA No. 2959/Mum/2014 dt. 28/11/2014.*
 - *Shri Pranhat Gupta v/s ITO, ITAT Mumbai dt. 09/03/2018.*
 - *M/s Paras Organic Pvt Ltd v/s DCIT 10(2), ITA no. 2369/Mum/2014 dt 26/02/2016.*
 - *M/s Talco Marketing v/s ITO 14(2)(3) ITA No. 3394/Mum/2014 dt 7/07/2016.*
 - *Shree Ganpatraj A Sanghavi vis ACIT 15(3), ITA No 2826/Mum/2013 dt 05/11/2014.*
 - *ACIT 8(3) v/s Tristar Jewellery, ITA No 7593/2011 & 6435/Mum/2013 dt 31/04/2015.*
 - *ACIT 25(2) v/s Tarla R Shah ITA No 5295/Mum/2013 dt 02/02/2016.*

GOA No.3 :- Addition u/s 68 of Unsecured Loan of Rs5,60,000/-

- ❖ *The Ld. AO erred in disallowing loan of Rs5,60,000/- and the same is confirmed by Ld CIT(A). It is a brought forward loan and no new loan has been taken during the year.*

GOA No 4 :- Addition u/s 68 of Sundry Creditors of Rs92,81,370/-

- ❖ *The Ld AO erred in disallowing the entire Sundry Creditors u/s 68 and the same is confirmed by the Ld. CIT(A) .*

- ❖ *Most of the sundry creditors are paid during the ordinary course of business*
- ❖ *Few of the sundry creditor are parties whose purchases have already been added at an adhoc rate of 15%. Hence one more time addition on account of credit balance as on Balance Sheet date is double addition on the same transaction.*

GOA No 5 :- Adhoc disallowance @ 25% of expenditure worth Rs90,242/-

- ❖ *The Ld. AO erred in disallowing the expenditure at an adhoc rate of 25% and the same is confirmed by the Ld. CIT(A).*

GOA No 6 : *We reserve our rights to add, amend, alter anything stated herein above or may be stated herein after.*

Prayer / relief claim in the appeal

1. *The Appellant hereby prays that 15% addition on account of purchases of Rs.3,08,99,339/- to be deleted in full.*
2. *The Appellant hereby prays that addition of unsecured loan u/s 68 worth Rs5,60,000/- may be deleted in full.*
3. *The Appellant hereby prays that addition of sundry creditors u/s 68 worth Rs92,81,370/- may be deleted in full.*
4. *The Appellant hereby prays that disallowance of expenses at adhoc 25% of Rs90,242/- may be deleted in full.”*

3. Briefly stated, the assessee is an individual engaged in the business of trading in ferrous and non-ferrous metals under the name and style “M/s. Shripal Steel & Alloys”. For AY 2009-10, he filed his return on 30.09.2009 declaring income of Rs.2,32,530/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (**the “Act”**). Later on, the case was reopened by issuing a notice u/s 148 of the Act on 24.03.2014. The assessment was completed on 20.03.2015 u/s 143(3) r.w.s. 147 of the Act on total income of Rs.4,09,95,800/- including therein addition of Rs.3,08,99,339/- on account of unexplained expenses, additions of Rs.5,60,000/- and Rs.92,81,370/- u/s 68 of the Act and disallowance of Rs.22,561/- out of expenses.

4. The assessee carried the matter in appeal before the Ld. CIT(A) challenging the reopening of the assessment u/s 147 of the Act as also the said additions/disallowance.

4.1 The Ld. CIT(A) upheld the validity of reopening proceedings initiated by the Ld. AO.

4.2 As regards, the addition of Rs.3,08,99,339/- of unexplained expenses, the Ld. CIT(A) restricted it to Rs.46,34,900/- (15% of Rs.3,08,99,339/-) and gave relief of Rs.2,62,64,439/- to the assessee observing at pages 17-18 of the appellate order in para 5.2 thereof as under :

“5.2However the action of the AO to disallow 100% of the unverifiable purchases cannot be upheld as there are corresponding direct sales of material so purchased from hawala dealers. The appellant is a trader of ferrous & non ferrous metals. The fact of sale being recorded in the books of account, has not been repudiated by the AO also. It would therefore imply that the appellant would have actually purchased the material in cash from the open market and only bills were taken from Sagar Enterprises, Krish Corporation, Ahead Mercantile Pvt. Ltd., Blue Moon Trading Pvt. Ltd., Deep Enterprises, UY. Distributors Pvt. Ltd., Jasmine Enterprises, Sunrise Enterprises, Sangura Trading Pvt. Ltd., Skand Industries, K. Kundan Cargo Trading Pvt. Ltd., Rishab Metal (India), Prakash Steel & Allies, Shankeshwar Sales Corporation, Prakash Trading Corporation, Navkar Impex, Accure Impex Pvt. Ltd. and Kwality Metals & Tube. The appellant is not the end user of material so purchased but a trader. In view of these facts, this is not a case where the entire cash has been siphoned off by debiting the bogus purchases. This is a case, where at the most, the purchase amount would have been inflated. Moreover the impugned addition of Rs.3,08,99,339/- would result in net profit of 68% which is not possible in any trading business. Therefore, following the principle laid down in the decision of Hon'ble Gujarat High Court, in the case of Simit P Seth (356 ITR 451), I accordingly direct the AO to restrict the addition to Rs.46,34,900/- (15% of Rs.3,08,99,339/-) instead of Rs.3,08,99,339/- made by him. The appellant gets relief of Rs.2,62,64,439/-.”

4.3 The Ld. CIT(A) however confirmed the addition of Rs.92,81,370/- on account of unexplained sundry creditors vide para 6 of his order for want of confirmations from the creditors and explanation as to why these liabilities had persisted for such a long time.

4.4 The Ld. CIT(A) also confirmed the addition of Rs.5,60,000/- on account of unexplained unsecured loans u/s 68 of the Act for want of basic details in the form of confirmations from the creditors vide para 7 of his order.

4.5 The disallowance of Rs.22,561/- out of various expenses was also sustained by the Ld. CIT(A) for want of bills/vouchers without which genuineness and incurring of expenses for business expediency could not be established. Para 8 of his order refers.

5. Aggrieved, the assessee filed appeal before the Tribunal. The Mumbai Bench of the Tribunal vide its order dated 15.07.2019 set aside the Ld. CIT(A)'s order and restored it back to the file of the Ld. CIT(A).

6. Before the Ld. CIT(A)/NFAC, Delhi there was non-compliance of notice(s) of hearing and the Ld. CIT(A)/NFAC dismissed the appeal of the assessee for non-prosecution and endorsing the findings of the Ld. Assessing Officer (**"AO"**).

7. Dissatisfied, the assessee is in appeal before the Tribunal in second round reiterating the same grounds taken earlier.

8. The appeal was fixed for hearing on 06.06.2024. There was no representation from the side of the assessee. Hearing was adjourned to 01.07.2024 but none appeared for and /or on behalf of the assessee. We heard the Ld. DR.

9. We have perused the case records. The appellate order reveals that the Ld. CIT(A) has applied the decision in CIT Vs. Multiplan India (P.) Ltd. 38 ITD 320 (Del.). No doubt, the Ld. CIT(A) may decide the appeal ex-parte where the assessee does not prosecute his appeal inspite of several opportunities. None-the-less, he has to adhere to the legislative mandate enshrined in sub-section (6) of section 250 of the Act which requires him to state the points for determination, the decision thereon and the reason for the decision. We observe that the Ld. CIT(A) has passed the order in concurrence of the order of Ld. AO without himself going into the merits of the case. Thus, in our view, his order is in violation of the provisions of section 250(6) of the Act.

10. On the facts and in the circumstances of the case, we deem it fit, in the interest of justice and fair play, to set aside the order of the Ld. CIT(A)/NFAC, Delhi and restore the matter back to his file for adjudication afresh and pass speaking order on merits after allowing reasonable opportunity of being heard to the assessee who shall provide the requisite support in terms of submitting the relevant documents / evidence as may be required/called upon. We order accordingly.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 01st July, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st July, 2024.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune