

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

ITA Nos.608/Del/2023
Assessment Year: 2015-16

Vayam Technologies Ltd., Thapar House, 124 Janpath, New Delhi PIN: 1100 01	Vs.	DCIT, Circle-25(1), New Delhi
PAN :AAACI8050R		
(Appellant)		(Respondent)

Assessee by	Shri Praveen K.Katiyal, CA
Department by	Ms. Sapna Bhatia, CIT(DR)

Date of hearing	02.05.2024
Date of pronouncement	02.08.2024

ORDER

PER SUDHIR PAREEK: JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order dated 10.01.2023 passed by the National Faceless Appeal Centre (NFAC)/CIT(Appeals), New Delhi arising out of the order

under Section 143(3) of the Income-Tax Act, 1961 for assessment year 2015-16, with following grounds of appeal:

“1. That the order of the Ld. Assessing Officer is bad at law and on facts of the case.

2. That the addition made by the Ld. Assessing Officer and partly confirmed by CIT(Appeal) is based on presumption, suspicion, conjecture and surmises with no specific evidence to support the findings and making the assessments on the basis of reason to suspect.

3. That even otherwise the impugned order is contrary to the facts of the case as there is always a correlation between purchase and sales when sales are not doubted the purchases can-not be rejected summarily as is the well settled principle of law and as such, the disallowance is liable to be set aside.

4. That the Ld. CIT (Appeal) has erred in ignoring that the transactions occurred long back and that the purchase of goods were in furtherance of business, payments made thru proper banking transactions and accepted by VAT and Service tax authorities.

5. That the Ld. CIT (Appeal) has erred in confirming an amount of Rs.36, 21, 10,868/-being profit @ 12.50% on unconfirmed purchases (12.50% of Rs.2,89,68,86,946/-) as no specific evidence has been provided nor put for cross examination by the Ld. Assessing officer to prove the in-genuineness of the transactions.

6. That the Ld. Assessing officer has erred in holding guilty the assessee in income tax proceedings instead of findings the fault of the other party well knowing that the transaction took place long back.

7. That the Ld. Assessing Officer has erred in taxing the genuine transaction on the basis of presumptions and surmises and has not provided any evidence to show that the purchases did not exist when the sales have been made out of these purchases. When sales are not doubted purchases can-not be doubted and added back.

8. That appellant craves to reserve the right to add, alter, delete and modify all or any of the grounds of appeal at any time either before or during the course of the appellate proceedings and further an opportunity of being heard before the orders are passed in this appeal.”

2. Heard rival submissions and carefully scanned the material available on record.

3. During the course of hearing and in written argument it was vehemently pleaded as per underlying written argument that Vyam Technologies Ltd. opposes the disallowance of purchases by the Ld. AO, asserting the compliance with regulatory requirements. The purchases and sales transactions were reported to the VAT & Service Tax Department. The Income Tax Department has accepted sales but disallowed purchases, without recognizing the correlation of no sales without purchases. Payments for purchases were made through banking channels, and acceptance of 31 out of 51 parties in consideration itself proves the genuineness of the transactions. Disallowing unverified parties and restricting the amount of purchases to 12.50 is arbitrary without assigning any basis for the same, and adding it under section 69C. The basis of arriving at 12.50% has not been provided. Every assessee has a different profit margin model, and it cannot be generalized by considering other assessee of the same or different business.

4. It is further submitted by the Ld. Counsel for the assessee that the AO did not issue a show cause notice for finalizing the assessment based on inquiries conducted by him. The principle of natural justice was never complied with during the course of assessment. He has submitted that, served only one notice, providing the required documents, and then communicated the final order without intimation. The AO is duty-bound to intimate the assessee regarding the draft assessment which he intends to make as well as provide an opportunity to the assessee to cross-examine the evidence. The AO has neither rejected the books nor doubted the sales, but disallowed the corresponding purchases without any cogent reason. The two remand reports confirm the AO's arbitrary and taken this harsh decision of disallowing nearly all purchases, despite the fact that we were already registered with the VAT Department and Service Tax Department, where all the sales, purchase and services have been provided in the returns. The AO ignored the fact that purchases were supported by proper bills and payments made through proper banking channels. The Ld. Counsel further submitted that the CIT(A) failed to consider the cumulative impact of the disallowance on his business operation,

which adversely affects his financial position and harm ability to conduct future business activities. The actions of the Assessing Officer and upheld by the CIT (Appeal) represent a grave miscarriage of justice and a departure from established legal principles. The disallowance of purchases without substantial evidence, reliance on presumptions and conjectures, and failure to consider the temporal context of the transactions demonstrate a fundamental misunderstanding of our business operations and a disregard for due process. Furthermore, the assessing officer's failure to properly examine the documentary evidence provided, and not providing any opportunities to explain any adverse decisions, while relying on statements from others without allowing us to verify the evidence in his possession, further compounds the injustice.

5. On the other hand, Ld. Departmental Representative (Ld. DR) relied upon the orders passed by both lower authorities.

6. By hearing both side and perusing material placed before us, we are of the humble opinion that justice should not only be done but it appears to be done and in order to achieve the noble goal of

justice and before reaching any conclusion it is expedient to consider, all the material/ documents in existence and produced and whatever it is, if one more opportunity provided to assessee /appellant, object of justice will be served to some extent. Thus, for this purpose, we are inclined to remit back the matter to Ld. AO with the direction to decide afresh.

7. Consequently, matter is remitting back to the Ld. AO with the direction to decide the matter afresh by verifying the all relevant materials after affording more effective, meaningful and sufficient opportunity of being heard to the assessee. At the same time, assessee / appellant shall co-operate in proceedings and will not seek unnecessary adjournments for ensuring expeditious disposal of the matter. Assessee / appellant is at liberty to file / submit any documents / evidence etc. in support of his claim.

8. In the result, this appeal is allowed as indicated above for statistical purpose.

Order pronounced in the open court on 02/08/2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 02.08. 2024.

Mohan Lal / Pooja

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	30.07.2024
2.	Date on which the draft of order is placed before the Dictating Member:	30.07.2024
3.	Date on which the draft of order is placed before the other Member:	.07.2024
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	.07.2024
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	.07.2024
6.	Date on which the final order received after having been signed/pronounced by the Members:	.07.2024
7.	Date on which the final order is uploaded on the website of ITAT:	.07.2024
8.	Date on which the file goes to the Bench Clerk	.07.2024
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	