

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3248/M/2024
Assessment Year: 2021-22**

ITO 17(3)(1), Room No.235, 2 nd Floor, Kautilya Bhavan, BKC, Mumbai - 400051	Vs.	Shri Hakimuddin Saleh Porbunderwala, 283-A, Abdul Rehman Street, AR Street, Mumbai-400 003 PAN: AAJPP6474G
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri P.D. Chougule, (Addl. CIT) Sr. DR.

Date of Hearing : 07 . 08 .2024
Date of Pronouncement : 13 . 08 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 29.04.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

2. Notice for the date of hearing on 07.08.2024 sent to the Assessee, has been returned back by the Postal Department with the

remarks "insufficient address" whereas it is a fact that the notice was correctly sent by the Registry at the address mentioned by the Assessee in Form-36, hence in the constrained circumstances, we are inclined to decide this appeal by this ex-parte order.

3. In this case, the issue relates to the deletion of addition of Rs.39,85,177/- by the Ld. Commissioner. Relevant facts for adjudication of the issue are that the Assessing Officer (AO) vide assessment order dated 28.12.2022 u/s 143(3) r.w.s. 144B of the Act also made the addition of Rs.45,03,453/- on account of disallowance @ 25% of the alleged purchases of Rs.1,80,13,813/-, by observing as under:

"Mere submission of purchase invoice, supplier ledger account and bank statement by the assessee cannot be the bench mark for finalizing the assessment. The genuineness of the ' transactions also needs to be verified. Hence the proposed addition under section 69C of the I T Act in the cases where no confirmation/reply of the parties have been received is disallowed as under: -

In the name of SURENDRA ROODMAL CHHAWCHHARIA, the amount was mentioned as Rs. 86,62,095/- in the SCN(Due to typographical mistake) but its actual value is Rs. 65,52,945/- which has been taken in ILDP. For further proceeding, Rs. 65,52,945/-will be considered.

S No.	Name of the Seller	PAN	Amount in Rs.
1	SURENDRA ROODMAL CHHAWCHHARIA	AGOPC8437F	6552945
2	N SANJAY Y TEXTILE AGENCY	AIFN7204M	94065
3	ARVIND JAYANTILAL MEHTA	AAAHA4800L	33706
4	Binod Kumar Gupta	AMGPG4858 C	2073105
5	Ram Manohar Singh	KUTPS2227C	9259992
		Total	Rs.1,80,13,813/-

By relying on the decision of the Hon'ble Supreme Court passed in the case of N. K. Proteins Ltd. Vs. Deputy Commissioner of Income

Tax, 25% of Rs1,80,13,813/- which comes to Rs. 45,03,453/- is disallowed and added back to the returned income of the assessee u/s 69C of the IT Act by treating this as unexplained expenditure. Penalty proceedings u/s 271AAC (1) is also initiated.”

4. The assessee, being aggrieved, challenged the aforesaid addition of Rs.45,03,453/- by filing first appeal before the Ld. Commissioner, who out of total addition of Rs.5,18,276/-, partly deleted the addition to the extent of Rs.39,85,177/- which relates to the aforesaid 04 parties mentioned at sr. no. 1 to 3 and 5, by observing and concluding as under:

“8.2 I have perused the assessment order, grounds of appeal and written submission filed by the appellant. I find from the assessment order that the case was selected for scrutiny complete scrutiny under E-assessment scheme for checking the genuineness of the purchases from the high-risk billers. During the course of assessment proceedings the appellant had submitted the details of 22 parties from whom purchases were made. The AO had issued notices u/s 133(6) to the said parties to cross the genuineness of the purchase transactions. After examination of the replies received from some of the parties, the AO noted that appellant had paid excess price of Rs.7,39,610/- to 4 parties whereas one party namely Shri. Rajkumar denied to have made sales of Rs.57.39,833/- to the appellant. Further the AO noted that out of total purchases of Rs.13,25,22,077/- made by the appellant, the confirmations were received only for Rs.1,50,19,261/- and no confirmations were received for purchases of Rs.11,75,02,816/-. Therefore the AO had issued show cause notice proposing to make addition of Rs.7,39,610/-, Rs.57,39,833/- and Rs.2,93,75,704/-(25% of Rs.11,75,02,816/- based on the decision of Hon'ble Supreme Court of India in the case N. K. Proteins Ltd vs. DCIT). The reply filed by the appellant to the show cause notice was partly accepted by the

AO and made addition of Rs. Rs.57,39,833/- and Rs.45,03,453/- (25% of Rs.1,80,13,813/- i.e. unproved purchases based on the decision of Hon'ble Supreme Court of India in the case N. K. Proteins Ltd vs. DCIT). I find from the assessment order that the appellant could not file confirmation/reply of 5 parties from whom purchases of Rs.1,80,13,813/- were made, hence 25% expenses were disallowed.

*During appellant proceedings, the appellant has furnished confirmation letters in respect of 4 parties but did file the confirmation for 5th party namely Shri. Binod Kumar Gupta prop. Of M/s The Meridian. The appellant contended that he is in the process of collecting the confirmation. I find that the assessment proceedings were started on 28/06/2022 and completed on 08/12/2022 after giving 6 opportunities. Thus I find that even after lapse of more 20 months time, the appellant is not able to obtain and produce the confirmation letter of the relevant party from whom purchases of Rs.20,73,105/- were made. Therefore the contention of the appellant is not found acceptable. However since the appellant has produced confirmation of 4 parties, the addition is restricted to Rs. 518276/- i.e. 25% of Rs.20,73,105/-. Balance addition of Rs. 39,85,177/- is deleted. Thus the ground of appeal raised by the appellant is **partly allowed.**”*

5. The Revenue Department, being aggrieved, is in appeal before us.

6. Heard the Ld. D.R. and perused the material available on record. We observe that aforesaid addition @ 25% of the alleged bogus purchases was made by the AO on failure to produce the confirmation of the aforesaid 5 parties, out of which the confirmations of four parties were produced before the Ld. Commissioner, however the Assessee did not file any confirmation qua Shri Vinod Kumar Gupta

proprietor of M/s. The Meridian and therefore the Ld. Commissioner restricted the addition to the tune of Rs.5,18,276/- i.e. 25% of Rs.20,73,105/- qua Mr. Vinod Kumar Gupta and deleted the rest of the addition to the tune of Rs.39,85,177/-. The main grievance of the Revenue Department is that as the Assessee has failed to prove the genuineness of the transactions before the Assessing Officer (AO) during the assessment proceeding and therefore consideration of the additional evidence by the Ld. Commissioner without giving an opportunity to the AO, is in contravention to the provisions of rule 46A(2) of the Income Tax Rules, 1962 (in short "the Rules"), hence, the addition deleted to the extent of Rs.39,85,177/- as made by the AO, is liable to be restored.

We have given thoughtful considerations to the peculiar facts and circumstances of the case. It is not in denial that before the AO the Assessee has produced the purchase invoices, supplier's ledger account and bank statements, however only failed to file the confirmation which were filed before the Ld. Commissioner. The power of the Ld. Commissioner is co-terminus with the power of the AO. The Ld. Commissioner is also empowered to direct the production of any document or examination of any witness for proper and just disposal of the appeal or for any other substantial cause, as per the provisions of section 46A (4) of the Rules. Therefore, in our considered view, in this case, the Ld. Commissioner rightly considered the confirmations filed by the Assessee qua 4 parties as well as other relevant documents for proper and just decision of the issue involved and in deleting the addition under consideration. Even otherwise, we do not find any material or reason to contradict the findings of Ld. Commissioner qua issue in hand and therefore the appeal filed by the Revenue is liable to be dismissed.

7. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 13.08.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.