

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 397/Mum/2024
Assessment Year 2021-22

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| Shubhchand Dharamchand Minda, Flat No. 121, 6 th Floor, Sushila Apartment, L.T.Road, Borivali West, Mumbai. PAN : AAEPM5841P | vs. | Income Tax Officer, Ward-42(1)(5), KB-945, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Bharat Kumar, CA & Shri Kushal Chand Mehta, CA |
| For Revenue : | Shri Dinesh A. Chourasia |

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| Date of Hearing : | 30-05-2024 |
| Date of Pronouncement : | 27-08-2024 |

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 01-12-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short 'Ld.CIT(A)'] and it relates to AY. 2021-22. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the additions relating to un-explained sales and sundry creditors.

2. The facts relating to the case are stated in brief. The assessee is carrying on the business of trading in diamonds, semi precious

stones, jewellery etc., in his proprietary concern named M/s. Angam Trading Co. The assessee filed his return of income for the year under consideration disclosing an income of Rs.4,81,580/-. A portal named 'Insight Portal' is being maintained by the Income tax department, wherein it captures the transactions relating to the various assesseees from various sources. One of the sources is the GST returns filed by the assesseees and their suppliers. The AO collated details of sales effected and purchases made by the assessee during the year under consideration from the above said portal. The AO compared that sales data available in the "Insight portal" with the sales disclosed by the assessee in respect of four parties. It was noticed that there was difference between the sales shown by the assessee and the corresponding purchases shown by the following parties to the following extent:-

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| i. Rahul Ranganath Alahat | - | Rs. 1,02,33,334/- |
| ii. Osaiji Export | - | Rs. 55,80,000/- |

The AO assessed the above said difference aggregating to Rs.1,58,13,334/- as income of the assessee towards unexplained sales.

3. The AO also noticed that the assessee has shown sundry creditors balance of Rs.3,81,19,393/- as at the year end. Initially, the AO asked the assessee to furnish details of PAN of the Sundry creditors and the assessee also furnished PAN of most of the creditors. Thereafter, the AO issued notices u/s. 133(6) of the Income Tax Act, 1961 ('the Act') to the above said creditors during the fag end of assessment proceedings. None of them responded to the notices till the completion of the assessment. The AO also called for ledger account copies of the creditors from the assessee for the year under consideration and for the succeeding year. The AO noticed that the outstanding balances have been repaid by the assessee by making sales to them. He further noticed that outstanding credit balances of

various sundry creditors were related to certain purchases made by the assessee, but those purchases were not reflected in the “Insight Portal” of the FY. 2020-21. Accordingly, the AO took the view that the assessee has not carried on any business and these sundry creditors have been created by passing book entries. Accordingly, the AO assessed the sundry creditors balances of Rs.3,81,19,393/- as unexplained cash credits u/s. 68 of the Act.

4. The Ld.CIT(A) confirmed both the additions and hence the assessee has filed this appeal.

5. We heard the parties and perused the record. We notice that the AO has made both the disallowances by placing reliance on the data available in the “Insight portal” of the department and it was stated that the same could be accessed by the AO only during that period. On the contrary, the assessee has offered explanations on the basis of the books of accounts maintained by him. It is not clear as to whether the AO has furnished the data available in the Insight Portal to the assessee and called for explanations. Without supplying those details, the assessee cannot be expected to offer explanations for the differences identified by the AO. In the appellate order passed by Ld CIT(A), the first appellate authority has noticed a difference in the GST number recorded in certain invoices and accordingly confirmed the addition.

6. In our view, the assessee should have been given opportunity to explain the difference by supplying the relevant data available in the Insight portal. The differences between the books of assessee and Insight Portal could arise on account of various reasons and hence it is a matter of reconciliation. The AO should have asked the assessee to reconcile the difference and on the basis of the reconciliation statement, the AO should have taken a view. Accordingly, we are of

the view that the addition relating to purchases requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh.

7. The next issue relates to the addition of Sundry creditors, which are in the nature of trade creditors. We noticed that the AO has assessed it as unexplained cash credit only for the reason that the purchases made from the above said creditors is not reflected in the Insight portal. Another reason cited by the AO was that the above said Sundry creditors accounts were settled by making sale of gold to them. In our view, the manner in which the assessee has settled the sundry creditors balances cannot be taken into consideration for disbelieving the sundry creditors balance. With regard to the observation of the AO that the purchases made from these creditors were not reflected in Insight portal is a generalised observation. The AO should have identified the purchases which were not reflected in the Insight portal and called for explanation from the assessee. In any case, the AO has accepted the relevant purchases by not disallowing the same, even though he has observed that those purchases have not been reflected in the Insight portal. If the AO has accepted one leg of transaction of purchases, he could not have believed the Sundry creditors, which is another leg of transaction.

8. We take support for this proposition from the decision rendered by Bangalore bench of Tribunal in the case of Smt. Madhu Solanki in ITA No.974/Bang/2009 dated 09-08-2021, wherein it was held as under:

"14. We have heard rival contentions on this issue and perused the record. The undisputed fact is that the assessing officer has made addition of outstanding trade creditors u/s 68 of the Act. The question whether unpaid trade creditors could be added u/s 68 of the Act has

been examined by various courts. The Five member special bench of ITAT has held in the case of Manoj Agarwal vs. DCIT (113 ITD377) as under on this issue:-

"The argument that section 68 is not applicable where an asset is sold and the sale proceeds are credited in the books of account cannot be accepted having regard to the settled legal position that it is always for the assessee to explain the nature and source of the sums credited in his books of account. The section does not recognize any distinction between amounts credited in the books as gifts or loans or pure receipts, on the one hand, and amounts credited as sale proceeds. In either case, when called upon, the assessee is bound to explain the nature and source of the amounts credited. There may be a few exceptions to this general rule. For example, in the case of credit purchases, the account of the supplier is credited with the amount payable. In such a case, where the purchase is allowed as expenditure, it may not be possible for the Assessing Officer to again call upon the assessee to prove the nature and source of the credit, for the reason that the purchase itself was allowed as expenditure only on being satisfied that it was a genuine purchase on credit. Implicitly, the nature and source of the amount credited has also to be taken as having been explained satisfactorily. Another possible argument can be that in such a case, the amount credited is not a cash credit in the sense that some monies have been received by the assessee, but the credit represents a mere liability payable by the assessee in future. Under accounting principles, a liability can only be brought into account by making a credit entry in the books of account in favour of the person to whom the money is payable. Thus, there is marked difference between a credit representing a liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction, a liability for purchase which has been credited in the account of the supplier cannot be added under section 68 of the Act, more so when the purchase has been accepted as genuine and a deduction there for has been allowed. In all other cases including the case of a credit representing the sale proceeds of an asset, the provisions of section 68 are applicable and it is for the assessee to prove satisfactorily the nature and source of the monies....."

12. Similar view has been expressed by Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Agarwal reported in 2009 (7) TMI 1247 as under:-

"This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of sundry Marulasidappa Gundagathi Dyamavvanahalli, Davangere creditors under Section 68 of the Income Tax Act. As there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed."

Following the above decisions, we hold that the assessing officer could not have disallowed the sundry creditors balance, when he has accepted the corresponding purchases made by the assessee from the Sundry creditors. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the AO to delete the addition of Rs.3,81,19,393/- relating to Sundry creditors.

9. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 27th August, 2024

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 27-08-2024

TNMM

Copy to :

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| 1. | The Appellant |
| 2. | The Respondent |
| 3. | The Pr. CIT, Mumbai concerned |
| 4. | D.R. ITAT, "G" Bench, Mumbai. |
| 5. | Guard File. |

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai