

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 300/RPR/2024

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Jayshree Paddy Processor Pvt. Ltd.
32/32 Bungalow,
Bhilai (C.G.)- 490 006
PAN : AABCJ4594N

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prayas Jain, CA
Revenue by : Smt. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 28.08.2024

घोषणा की तारीख / Date of Pronouncement : 30.08.2024

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the ADDL/JCIT(A), Mumbai, dated 29.04.2024, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s.147 of the Income-tax Act, 1961 (in short 'the Act') dated 03.12.2019 for the assessment year 2012-13. The revenue has assailed the impugned order on the following grounds of appeal:

- "1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A)/NFAC was justified in restricting the addition made by the A.O on account of bogus purchase made by the assessee to Rs.2,00,000/- only as against addition of Rs.13,91,500/-.
2. Any other ground which may be adduced at the time of hearing."

2. Succinctly stated, the assessee company which is engaged in the business of running a rice mill had e-filed its return of income for A.Y.2012-13 on 24.09.2012, declaring an income of Rs.27,65,670/-. Thereafter, the case of the assessee company was reopened by the A.O u/s. 147 of the Act. Notice u/s. 148 of the Act, dated 31.03.2019 was issued by the A.O. In compliance, the assessee company filed its return of income on 10.04.2019 declaring the same income as was originally returned, i.e. Rs.27,65,670/-.

3. During the course of the assessment proceedings, the A.O observed that the assessee company had procured bogus purchase bills of Rs.13,91,500/- from a tainted party, viz. M/s. Syndicate Corporation. As the assessee company had failed to substantiate the authenticity of the impugned purchase transaction to the satisfaction of the A.O, therefore, the latter held the entire purchases made from the aforementioned party as bogus. Accordingly, the A.O vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 03.12.2019 after making a disallowance of the entire amount of purchases determined the income of the assessee company at Rs.41,57,170/-.

4. Aggrieved the assessee company carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) that there was a credit balance/amounts payable of Rs.2 lacs reflected against the name of the aforesaid party, viz. M/s. Syndicate Corporation in the "balance sheet" of the assessee company as on 31.03.2012. Although the CIT(Appeals) principally concurred with the view taken by the A.O that the assessee had failed to substantiate the authenticity of the purchases claimed to have made by the assessee company from the aforementioned tainted party, but did not subscribe to the quantification of the addition/disallowance made by him. Apropos the credit balance of Rs.2 lacs in the account of the aforementioned party, viz. M/s. Syndicate Corporation, Raipur, the CIT(Appeals) was of the view that now when the purchases made by the

assessee from the said party were found to be bogus, therefore, the credit balance/amounts reflected as payable in the latter's account would not stand on any better footing. The CIT(Appeals) after necessary deliberations and relying upon the order of the ITAT, Raipur in the case of Jayshree Solvex India Private Limited Vs. ACIT-1(1), Bhilai, ITA No.44/RPR/2023, dated 04.08.2023 scaled down the addition made by the A.O to Rs.2 lacs. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

"OBSERVATION AND DECISION:

The only ground is against the addition of Rs.13,91,500/- treating the purchase from M/S Syndicate Corporation, Raipur as bogus purchase.

5.2 The appellant had filed appeal copy of the appellate order before the CIT(A) and the order of the ITAT on further appeal in the case of another concern operated from the same address Jayshree Solvex India private limited. In these orders the CIT(A) has confirmed similar addition but the ITAT has set aside the order to the files of AO

We, thus, in terms of our aforesaid observations, find no infirmity in the view taken by the lower authorities that the assessee company had not made any genuine purchases from M/s. Chhattisgarh Enterprises (supra) but only procured bogus accommodation purchase bills in order to route the purchase transactions through its regular books of account. At the same time, we cannot remain oblivion of the fact that now when the sales corresponding to the aforementioned purchases were accounted by the assessee in its books of account, therefore, there was no justification for the A.O to have made addition of the entire amount of impugned purchases in the hands of the assessee company.

9. Ostensibly, the assessee company had only procured accommodation bills and has not made any genuine purchases from the aforementioned party, viz. M/s. Chhattisgarh Enterprises (supra), and had procured goods in question at a discounted value from the open/grey market. Considering the fact that the A.O while framing assessment

had not rejected the books of accounts of the assessee company, therefore, in our considered view addition its case was only liable to be restricted to the extent of profit which the assessee company would have made by procuring the goods at a discounted value from the open/grey market.

10. Apropos the quantification of profit which the assessee would have made by procuring the goods in question from the open/grey market, we find that the Hon'ble High Court of Bombay in the case of Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Hap Adam & Company, ITA No 1004 of 2016, dated 11.02.2019 while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate of other genuine purchases.

We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O, with a direction to him to restrict the addition in the hands of the assessee qua the impugned bogus/unverified purchases by bringing the GP rate of such bogus purchases at the same rate as that of the other genuine purchases. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee company.

5.3 The Tribunal has given a categorical finding that "no infirmity in the view taken by the lower authorities that the assessee company had not made any genuine purchases from M/s. Chhattisgarh Enterprises (supra) but only procured bogus accommodation purchase bills in order to route the purchase transactions through its regular books of account." In this case also the supplier has not appeared in response to summons, the GST authorities has declared the supplier as a bogus concern and the appellant has also not produced any other than its own book entries/Photostat copy of bills. Thus, it is proved beyond doubt that the purchase from M/S Syndicate Corporation, Raipur is a bogus purchase. But the AO has not given a clear finding that there is enough quantity in the appellant's stock register and the quantity wise the purchase is bogus. As the AO has not given any finding that this quantity of bogus purchase is not required to tally the stock register it has to be assumed that the appellant has made purchase from some other party at lower rates and has purchased bogus accommodation bills to account purchases and to inflate purchases. The finding of the ITAT that the GP in relation to the inflation in purchase cost has to be only added as income is accepted. But the records before the

appellate authority is not enough to work out this correctly. The appellant has filed account copy with M/S Syndicate Corporation, Raipur.

JAY SHREE PADDY PROCESSORS PVT. LTD.
CHIKHALI DURG (C.G.)

SYNDICATE CORPORATION RAIPUR

Ledger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No.	Debit	Page 1	
					Debit	Credit
5-3-2012	By PADDY PURCHASE STATE	Purchase	210		2,41,500.00	
	By PADDY PURCHASE STATE	Purchase	211		2,41,500.00	
	By PADDY PURCHASE STATE	Purchase	212		1,84,000.00	
6-3-2012	By PADDY PURCHASE STATE	Purchase	213		2,41,500.00	
	By PADDY PURCHASE STATE	Purchase	217		2,41,500.00	
	By PADDY PURCHASE STATE	Purchase	218		2,41,500.00	
16-3-2012	To S.B.I. BHILAI C/C	Payment		7,00,000.00		
26-3-2012	To S.B.I. BHILAI C/C	Payment		8,91,500.00		
				15,91,500.00	13,91,500.00	
	By Closing Balance					2,00,000.00
				15,91,500.00	15,91,500.00	

5.4 according to the account copy there is a credit balance/amounts payable of Rs. 2 lakhs as on 31-03-2012. The purchase being bogus the creditors must be also bogus. The addition made for unaccounted GP on the inflated bogus purchased is limited to Rs. 2 lakhs which works out to 12.56 % on bogus purchases and this additional profit is telescoped to the bogus credit balance in the books of accounts of Rs 2 lakhs. The addition is to be limited to Rs. 2 lakhs as additional GP on bogus purchases. The grounds raised by the appellant are partly allowed.

6. The appeal is partly allowed."

5. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

6. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record.

7. Admittedly, it is a matter of fact borne from record that the assessee company had failed to substantiate the authenticity of its claim of having made any genuine purchases from the aforementioned tainted party, viz. M/s. Syndicate Corporation, Raipur. As observed by me hereinabove, the A.O had disallowed the entire amount of the impugned purchases of Rs.13,91,500/-, which, however, was scaled down by the CIT(Appeals) to Rs.2 lacs (after telescoping the addition made towards "credit balance" disclosed in the account of the supplier party).

8. Controversy involved in the present appeal lies in a narrow compass, i.e. the quantification of the profit which the assessee would have made by procuring the goods in question not from the aforementioned tainted party but at a discounted value from the open/grey market.

9. I have thoughtfully perused the assessment order and am unable to persuade myself to subscribe to the quantification of the addition/disallowance made by the A.O. Ostensibly, having not rejected the books of accounts of the assessee company u/s. 145(3) of the Act, the A.O had impliedly accepted the same. Be that as it may, in my view, the CIT(Appeals) had rightly dislodged the addition /disallowance of the entire

amount of purchases as was made by the A.O. As the CIT(Appeals), in my view, had rightly scaled down the addition to the extent of profit which the assessee company would have made from procuring the goods from the open/grey market as against the purchase value accounted for in its books of account based on the bogus purchase bills of the aforementioned tainted party, viz. M/s. Syndicate Corporation (supra), therefore, I find no infirmity in scaling down of the addition/disallowance by him to Rs.2 lacs, i.e. after considering the credit balance/amounts reflected as payable in the account of the supplier party, and thus, uphold the same. Thus, the **Ground of appeal No.1** raised by the revenue is dismissed in terms of the aforesaid observations.

10. **Ground of appeal No.2** being general in nature is dismissed as not pressed.

11. In the result, appeal of the revenue is dismissed in terms of the aforesaid observations.

Order pronounced in open court on 30th day of August, 2024.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 30th August, 2024.

****SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur