

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.370/RPR/2024
निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Gurunanak Rice Industries
Arang Road, Budera Kharora,
Raipur (C.G.)-493 225
PAN: AAJFG5160A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.08.2023
घोषणा की तारीख / Date of Pronouncement : 02.09.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 10.06.2024, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 11.12.2017 for the assessment year 2015-16. The assessee firm has assailed the impugned order on the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, assessment made u/s143(3) is invalid; after specifying various defects in the books of account examined by the AO, books of account has been rejected by applying sec145(3); only course was available with the AO to make assessment u/s144 i.e., best judgment assessment, which has not been done by AO; assessment made u/s143(3) is liable to be quashed; relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC).

2. On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.70,37,500, i.e., 25% estimation of alleged bogus purchase of Rs.2,81,50,000 treating it as unexplained expenses; books of account rejected by applying sec145(3); after rejecting the books, profit ought to have been estimated by applying flat rate of profit on turnover of Rs. 11,97,23,319; AO cannot rely on rejected books of account for making addition on selective item of purchase of Rs.2,81,50,000; addition is liable to be deleted; relied on KY Pilliah & Sons (1967) (SC); ISMT Ltd (2022) (Pune-Trib); Malpani House of Stones (2017) (Raj); Indwell Constructions (1998) (AP); Gian Chand Labour Contractors (2008) (P&H).

3. On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.70,37,500; when books of

account has been rejected by applying sec145(3); assessee declared better results than the preceding year, i.e., GP of 4.86% on turnover of Rs.11,97,23,319 as compared to GP of 3.93% on turnover of Rs.16,61,43,605 (AY14-15); even if sec145(3) is invoked, no addition can be made on such count; addition is liable to be deleted; relied on Gotan Lime Khaniz Udhyog (2001) (Raj HC); Inani Marbles (P) Ltd (2008) (Raj HC); Jaimal Ram Kasturi (2013) (Raj HC); Gupta KN Construction Co (2015) (Raj HC); Mohan Sukumaran (2020) (Raipur-Trib); Vishnu Prasad Maharwal (2014) (Jai-Trib); Pooranchand Agarwal (2021) (Raipur-Trib).

4. On the facts & circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.70,37,500 i.e., 25% estimation of alleged bogus purchase of broken rice & Bran of Rs.2,81,50,000 from 7 parties; assessee is only a `trader'; there cannot be 'bogus purchase' for a `trader' wherein 'corresponding sales' of trading item i.e., broken rice & bran is not disputed by AO; without giving any valid basis for such arbitrary estimation; addition of Rs.70,37,500 is unjustified; is liable to be deleted; relied on Tejua Rohitkumar Kapadia (2018) (SC); Tejua Rohitkumar Kapadia (2018) (Guj).

5. On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.3,87,500 on the count of 'highest peak purchase' from M/s. Pushkar Paddy Process' treating it as unexplained investment; merely on presumption & surmises; without there being any material/ evidence brought on record for such unexplained investment; is not permissible in the eyes of law; addition is liable to be deleted.

6. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."

2. Succinctly stated, the assessee firm which is engaged in the business of rice milling and trading of paddy, rice and broken rice etc., had e-filed its return of income for A.Y. 2015-16 on 14.10.2015, declaring an income of Rs.2,47,690/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have purchased paddy/broken rice aggregating to an amount of Rs.2,81,50,000/- from the following seven parties, as under:

S. No.	Name of the party	Total purchase
1.	M/s. Agrawal Agro, Dunda, Raipur	40,50,000/-
2.	M/s. Jai Shree Traders, Raipur	29,50,000/-
3.	M/s. Maa Sharda Processor, Raipur	18,25,000/-
4.	M/s. Shri Hanuman Food Products, Raipur	70,90,000/-
5.	M/s. Shri Krishna Process, Raipur	45,35,000/-
6.	M/s. Pushkar Paddy Process, Raipur	42,00,000/-
7.	M/s. Tulshi Agro, Abhanpur, Raipur	35,00,000/-
	Total	2,81,50,000/-

4. Survey operations u/s.133A of the Act were conducted at the business premises of Shri Sanjay Sharma, Hanuman market, Raipur and Shri Kamlesh Kesharwani, commission Agent, Ramsagarpara, Raipur on 15.03.2016, which revealed that certain rice millers would procure bogus bills from brokers/entry operators without any actual purchase of goods. It was observed by the A.O that substantial incriminating material evidencing the aforesaid facts were found in the course of the aforesaid proceedings. The A.O also noticed that survey action was carried out in the

case of Nagarik Sahakari Bank, Raipur where some of the brokers/entry operators maintained their bank accounts. It was further observed by the A.O that brokers/entry operators had in their respective statements that were recorded on oath u/s.131 of the Act had admitted of having provided bogus bills to rice traders and millers without any actual supply of goods. Also, it was noticed by the A.O that certain rice millers had in their statements that were recorded on oath admitted of being involved in the nefarious activities of providing bogus bills without any corresponding sales of goods. After deliberating at length on the modus-operandi that was adopted by the brokers/entry operators and certain rice millers who had admitted of their involvement in providing/facilitating bogus bills in lieu of commission, and referring to their statements which were recorded u/s.131 of the Act a/w. those recorded in the course of their cross-examination by rice millers who were alleged by them as beneficiary, it was observed by the A.O that brokers namely, Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamelsh Kesharwani, Shri Ghanshuam Rijwani and Shri Narad Sahu had stated on oath that they had provided bogus entries or bogus bills to various rice millers. It was also observed by the A.O that the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties on the basis of supporting documentary evidences, viz. delivery challans.

5. The A.O considering the fact that the 7 parties from whom the assessee firm had claimed to have made purchases of Rs.2,81,50,000/- were in the course of investigation found to be bogus concerns, called upon the assessee to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. In reply, the assessee firm in its attempt to substantiate the authenticity of purchase transactions produced before the A.O copy of ledger accounts of the parties, bills and copy of the bank account evidencing the payment of purchase consideration to the aforesaid parties. However, the A.O was of the view that as the assessee firm as in a case where bogus purchase bills were procured, had failed to support its claim of having made genuine purchases from the aforementioned 7 parties by producing delivery challans and also the mode of inward transport, Mandi passage and Anugya etc., therefore, its claim of having made genuine purchases did not merit acceptance. As the assessee had failed to substantiate the authenticity of the purchases claimed to have been made from the aforementioned 7 parties, therefore, the A.O held the same as bogus purchases. The A.O in the totality of the facts involved in the case held the entire purchase of Rs.2,81,50,000/- as bogus.

6. After treating the impugned purchases in question as bogus the A.O rejected the books of accounts of the assessee firm u/s.145(3) of the Act. The A.O by relying on the order of the ITAT, Ahmedabad in the case of

Vijay Proteins Vs. ACIT, (1996) 58 ITD 428 (Ahd.), and impliedly being of the view that the assessee had purchased the goods in question not from the aforementioned tainted parties from whom only bills were procured for routing the same through its books of account, but had procured such goods at a discounted value from the open/grey market, thus, disallowed 25% of the value of bogus purchases and made a consequential addition of Rs.70,37,500/-, (i.e. 25% of Rs.2,81,50,000/-) to its returned income.

7. Also, the A.O observing that assessee must have invested its unaccounted income which was being rolled into its business activities and the element of unaccounted investment had to be determined as per the highest peak purchase, thus worked out the same at Rs.3,87,500/- (as per purchase ledger dated 10.10.2024 of M/s. Shri Pushkar Paddy Process) and made a consequential addition of the same u/s. 68 of the Act. On the basis of his aforesaid deliberations the A.O vide his order passed u/s.143(3), dated 11.12.2017 determined the income of the assessee firm at Rs.76,72,690/-.

8. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals) sustained the addition of Rs.70,37,500/- as was made by the A.O @25% of the value of the impugned purchases of Rs.2,81,50,000/- by observing as under:

"5.3. During the appellate proceedings, the appellant claimed that all the purchases were genuine and the AO erred in treating them as unexplained expenditure. It is to be noted that the invoices issued by the suspicious dealers were not found to be supported by delivery challans. The mode of inward transport and Mandi passage Anugya etc. for the goods was not available in the possession of the assessee. The assessee also failed to furnish the bank account statement to prove the payment made to these firms against purchases made. Thus the goods were not purchased from the above mentioned firms. This fact was also supported by the statement of bogus suppliers who had categorically admitted that they did not own any stock or godown.

In view of the facts discussed above, it is clear that the assessee failed to prove the genuineness of the purchases and hence there is no need to take a divergent view from the findings of the AO. Therefore the contention of the appellant is rejected and the addition of Rs.70,37,500/- on account of unexplained expenditure is confirmed. Accordingly, Ground No. 2 is dismissed.

9. As regards the addition of Rs.3,87,500/- made by the A.O u/s. 68 of the Act, the CIT(Appeals) was of the view that as the assessee firm had failed to prove the genuineness of the purchase expenses, therefore, the A.O had rightly made addition of the same. Accordingly, the CIT(Appeals) upheld the addition by observing as under:

"5.6. During the appellate proceedings, the appellant claimed that all the purchases were genuine and hence there was no need to make addition for bills of genuine purchases. However as mentioned in the above paragraphs, the assessee failed to prove the genuineness of the purchases. Therefore the AO correctly concluded that the assessee made expenses to receive bogus purchase bills from the impugned firms.

In view of the facts discussed above, it is clear that the assessee failed to prove the genuineness of the expenses made and hence there is no need to take a divergent view from the findings of the AO. Therefore the contention of the appellant is rejected and the addition of Rs.3,87,500/- on account of unexplained investment is confirmed. Accordingly, Ground No. 3 is dismissed."

10. The assessee firm being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

11. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee firm at the very outset had assailed the treating of the aforesaid purchases made by the assessee from aforementioned 7 parties as bogus by the lower authorities. It was the claim of the Ld. AR that as the assessee firm had supported its claim of having made genuine purchases from the aforementioned parties on the basis of documentary evidences, therefore, there was no justification on the part of the A.O in drawing any adverse inferences as regards the same. Apart from that, it was the claim of the Ld. AR that as the purchases made by the assessee firm during the year under consideration were in no way inflated as in comparison to the preceding year, therefore, the genuineness of such purchases on the said count itself was proved to the hilt. It was submitted by the Ld. AR that similar issue had been dealt with by the ITAT, Raipur in assessee's own case for A.Y.2014-15 in ITA No.12/RPR/2024, dated 14.03.2024, wherein the matter was restored to the file of the A.O with a direction to restrict the addition in the hands of the assessee qua the impugned bogus/unverified purchase by bringing the GP rate of such bogus purchases at the same rate as that of other genuine purchases.

12. As regards the addition of Rs.3,87,500/- made by the A.O u/s. 68 of the Act, it was submitted by the Ld. AR that there was no justification for the A.O to have made addition of the same in the hands of the assessee firm during the year under consideration. The Ld. AR in support of his contention relied on the order of ITAT, Raipur in assessee's own case for A.Y.2014-15 in ITA No.12/RPR/2024, dated 14.03.2024.

13. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

14. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by Ld. AR to drive home his contentions.

15. Apropos the addition of Rs.70,37,500/- i.e. 25% of the impugned bogus purchases of Rs.2,81,50,000/-, we find that similar issue had been adjudicated by us in the assessee's own case for A.Y.2014-15 in ITA No.12/RPR/2024, dated 14.03.2024, wherein the matter was restored 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. For the sake of clarity, the observations of the Tribunal are culled out as under:

"15. We have given a thoughtful consideration to the issue in hand, i.e., dubbing of the impugned purchases as bogus by the lower authorities, as well as quantification of the profit which the assessee would have made by procuring the same at a discounted value from the open/grey market. As the assessee firm had failed to place on record copies of delivery challans pertaining to the impugned purchase transactions in question, therefore, it can safely be held that no infirmity emerges from the orders of the lower authorities that no genuine purchases were made by the assessee firm from the aforementioned 10 parties. Apart from that, we may also observe that the mode of inward transport, Mandi passage and Anugya etc. qua the purchases in question were not produced by the assessee in the course of proceedings before the lower authorities. On a careful perusal of the assessment order, we are of the considered view that as observed by the A.O and, rightly so, the assessee firm had failed to substantiate the veracity of its claim of having made genuine purchases from the aforementioned parties in question.

16. As the assessee firm had failed to discharge the onus that was cast upon it as regards proving the authenticity of its claim of having made genuine purchases from the aforementioned 10 parties in question, therefore, it can safely be concluded that it had procured goods in question not from the said parties but from the open/grey market. Considering the aforesaid facts, we are principally in agreement with the lower authorities that the assessee would have procured the goods from the open/grey market at a discounted value as against that booked on the basis of bogus bills in its books of accounts.

17. As we have upheld the view taken by the lower authorities that the assessee firm had not made any genuine purchases from the aforementioned 10 parties in question, therefore, we shall now deal with the quantification of the profit which it would have made by procuring the goods under consideration at a discounted value from the open/grey market i.e. as against the inflated value at which the same had been booked on the basis of bogus bills in its books of account.

18. On a careful perusal of the order of the A.O, we find that he has not given any cogent reason for working out the disallowance @25% of the value of the impugned bogus/unsubstantiated purchases. In fact, the only reason which can be gathered from a perusal of the assessment order is the reliance placed by the A.O on the order of the

ITAT, Ahmedabad in the case of Vijay Proteins Ltd. (1996) 58 ITD 428 (Ahd.). Also, we are not impressed with the manner in which the CIT(Appeals) had upheld the same. As the very basis adopted by the lower authorities in making/sustaining the addition in the hands of the assessee firm is neither supported by any material or basis, therefore, we are unable to persuade ourselves to concur with the same.

19. Ostensibly the assessee firm had purchased the goods in question not from the aforementioned ten parties but at a discounted value from the parties operating in open/grey market. Our indulgence in the present appeal in the backdrop of our aforesaid observations wherein we have upheld the dubbing of the impugned purchases as bogus, thus, boils down to the quantification of the profit which the assessee would have made by procuring the goods in question at a discounted value from the open/grey market.

20. Admittedly the addition in the hands of the assessee firm is liable to be restricted only to the extent of the profit which it would have made by procuring the goods at a discounted value from the open/grey market as against the inflated value at which the same was booked on the basis of bogus bills in its books of account. In so far the issue of quantification of profit which the assessee would have made by procuring the goods in question from the open/grey market is concerned, we find that the **Hon'ble High Court of Bombay** in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Haji Adam & Company, ITA No1004 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. The Hon'ble High Court while concluding as hereinabove had observed as under:

"8. In the present case, as noted above, the assessee was a trader of brics. The A.O found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the

extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,62 1.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs."

It was, thus, observed by the Hon'ble High Court that the addition in respect of the purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of other genuine purchases. On the basis of the aforesaid observations of the Hon'ble High Court, we are of the considered view that on the same lines the profit made by the assessee firm in the case before us by procuring the goods at a discounted value from the open/grey market can safely be determined by bringing the G.P rate of such bogus purchases at the same rate as that of the other genuine purchases.

21. 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. Thus, **Grounds of appeal No.2 & 3** raised by the assessee are allowed for statistical purposes in terms of our aforesaid observations."

We, thus, respectfully follow the aforesaid order, and restore the matter to the file of the A.O with similar directions as were given by us in the aforesaid order passed in assessee's own case (supra). Thus, **Ground of appeal Nos. 2 to 4** raised by the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

16. Apropos the addition of Rs.3,87,500/- that was made by the A.O on account of peak purchase credit of the seven parties from whom bogus purchases were claimed to have been made by the assessee firm, we find that this issue had also been dealt with by us in assessee's own case for A.Y.2014-15 in ITA No.12/RPR/2024, dated 14.03.2024. For the sake of clarity, the observation of the Tribunal are culled out as under:

"23. After hearing the Ld. Authorized Representatives of both the parties, we find substance in the claim of the Ld. AR that as it is not a case that the assessee firm had made any purchases from his unaccounted money, therefore, the very basis for making the impugned addition of peak purchases cannot be sustained and had rightly been struck down. As observed by us hereinabove, the aforesaid addition has no legs to stand upon in the backdrop of the facts involved in the present case before us. Admittedly, the payments towards the impugned purchases have been made by the assessee firm from its bank accounts which were duly disclosed in its books of accounts. In our considered view the concept of peak addition would come into play in a case where the assessee had made certain undisclosed purchases out of his unaccounted money lying in a bank account, wherein, after considering the withdrawals made from the said account the addition in all fairness has to be restricted to the extent of peak credit appearing in the said account.

24. Be that as it may, in our considered view, now when the assessee had admittedly made the payments for making the impugned purchases from his duly disclosed sources i.e. bank accounts, therefore, there could be no justification for the A.O to have made an addition of the amount of peak purchase of Rs.4,00,000/- (supra). We, thus, set-aside the view

taken by the lower authorities and vacate the addition of Rs.4,00,000/- made by the A.O. Thus, the **Ground of appeal No.4** is allowed in terms of our aforesaid observations."

We, thus, respectfully follow the aforesaid order, and set aside the view taken by the lower authorities and vacate the addition of Rs.3,87,500/- made by the A.O u/s. 68 of the Act. Thus, the **Ground of appeal No.5** raised by the assessee firm is allowed in terms of our aforesaid observations.

17. Apropos the claim of the assessee firm that the A.O had grossly erred in law and facts of the case in rejecting its books of account u/s. 145(3) of the Act, we find no substance in the same. As the assessee firm had failed to substantiate the authenticity of its claim of having made genuine purchases from the aforementioned 7 parties, therefore, as observed by the A.O and rightly so, its books of account did not reveal correct state of affairs. We, thus, in terms of our aforesaid observation are of a firm conviction that no infirmity emerges from the view taken by the A.O who had in the totality of the facts involved in the case before him rightly rejected the books of account of the assessee firm u/s. 145(3) of the Act. Thus, **Ground of appeal No.1** raised by the assessee firm is dismissed in terms of our aforesaid observations.

18. In the result, appeal of the assessee firm is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 02nd day of September, 2024.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 02nd September, 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, Raipur-1 (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.