

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

(Through Hybrid Hearing)

आयकरअपीलसं./ I.T.A. No.97/Viz/2024
(निर्धारणवर्ष/ Assessment Year : 2014-15)

Omprakash Maghraj,
Vijayawada.

PAN: ACAPM1683R

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. Income Tax Officer,
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri Suresh Kumar Jain, AR

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing : 03/09/2024

घोषणाकीतारीख/Date of : 25/09/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1059933694(1), dated 19/01/2024 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2014-15.

2. Briefly stated the facts of the case are that the assessee is the proprietor of M/s. Ashish Electronic Corporation and engaged in the business of wholesale and retail trade in electronic spare parts in Vijayawada. The assessee filed his return of income for the AY 2014-15 on 11/12/2014 declaring a total income of Rs. 2,31,900/-. A search and seizure operation was conducted in the case of M/s. Laxmi Remote Group (LRIPL), Delhi from whom the assessee purchased the goods on credit. Consequent to the search and seizure operation and based on the information available on record, the Ld. AO observed that the assessee's firm purchased the goods to the tune of Rs. 24,09,126/- in cash during the FY 2013-14 relevant to the AY 2014-15 which was not accounted for and therefore the Ld. AO construed that the same has escaped assessment. Accordingly, the Ld AO framed the reasons for reopening of the assessment and after obtaining the statutory approvals from the competent authority, the Ld.AO issued a notice U/s. 148 of the Act on 25/03/2021 and the same was served on the assessee through e-mail. In response to the notice U/s. 148, the assessee filed his return of income on 14/04/2021. Thereafter, the Ld. AO issued statutory notices U/s. 143(2) and 142(1) of the Act on 29/06/2021 and 08/12/2021

respectively along with the questionnaire. In response, the assessee filed his reply on 06/01/2022. Further, in response to the another notice issued on 22/02/2022, the assessee made his submissions on 24/02/2022 and uploaded various documents as called for in order to justify the assessee's submissions. On verification of the submissions made by the assessee as well as the return of income filed in response to the notice U/s. 148, the Ld. AO observed that the assessee has shown the same sales figures of Rs.24,09,126/- as well as the income of Rs. 2,31,900/- in both the original return of income and the return of income filed in response to the notice U/s. 148 of the Act. The Ld. AO also observed that the assessee has not factored in the amount of cash purchases made to the extent of Rs. 24,09,126/-. However, the Ld. AO observed that the assessee has uploaded the computation sheet along with his reply wherein the assessee has shown the income to the extent of Rs. 3,52,400/- and thus enhanced the income to the income of Rs. 1,20,500/- [Rs. 3,52,400 - Rs. 1,20,500 = Rs. 2,31,900] by approximately estimating the profit. Thereafter, the Ld. AO issued a show cause notice to the assessee on 22/03/2022 and in response to the said notice, the assessee filed his reply on 23/03/2022 and submitted

that the purchases which were made by the assessee are only credit purchases and all of them were duly accounted for. The assessee also reiterated that he did not make any cash purchases. However, the Ld. AO observed that as per the assessee, by adopting a percentage of 5%, the assessee has computed the income on the cash purchases and paid the applicable taxes on it and therefore the Ld.AO did not consider the assessee's submission that there was no cash purchases as both the statements given by the assessee are contradictory. After considering the submissions and on perusal of the documents available before him, the Ld. AO came to a conclusion that the assessee has not produced any documentary evidence to justify the cash sales made in line with the cash purchases which the assessee made with M/s. Laxmi Remote India Private Limited. The Ld. AO also opined that the assessee has not satisfactorily established the method of arriving the profit to the extent of Rs. 3,52,400/-. Further, the assessee has booked all the expenses in relation to the assessee's business in the original return of income filed on 11/12/2014 and justification has not been provided for adopting certain percentage as profit and therefore the Ld. AO considered it as an afterthought to the notice U/s.

148 the assessee has enhanced the income to certain extent. Thus, the Ld. AO brought to tax the amount of Rs. 24,09,126/- and made addition as unexplained expenditure U/s. 69C of the Act. Thus, the Ld. AO determined the total income of the assessee at Rs. 26,41,026/- and passed the assessment order U/s. 147 r.w.s 144B of the Act, dated 30/03/2022. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC

3. On appeal, the Ld. CIT(A)-NFAC considered the submissions made by the assessee and observed that the assessee prepared a revised return of income for the AY 2014-15 by admitting the profit of Rs. 4,19,000/- being 5% of the unrecorded sales of Rs. 82,71,095/-. The Ld. CIT(A)-NFAC also observed that the assessee itself has admitted that the purchases of Rs. 83,71,095/- were made outside the books of accounts which has not been reflected in the actual purchases made by the assessee during the year. Thus, after discussing the issues at length the Ld. CIT(A)-NFAC enhanced the addition to the extent of unaccounted purchases made by the assessee amounting to Rs. 83,71,095/- and dismissed the assessee's appeal by observing as under:

“5.10. Since the appellant has not proved the initial source of purchase itself arriving the net profit on the percentage of turnover sale is not tenable. It is further admitted by the Director of M/s. Lakshmi Remote India Private Limited that these were actual cash sales made out of the books by M/s. Lakshmi Remote India Private Limited which is otherwise means that the appellant has paid and made cash payment upfront at the time of purchase. In view of the above facts, the decision of the AO by treating the unaccounted purchases made by the appellant in cash amounting to Rs. 83,71,095/- is sustained and accordingly, the appeal filed by the appellant on this issue is dismissed.”

Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following revised grounds of appeal:

- “1. The Ld. CIT(A) has erred in law and facts by confirming the order of AO passed U/s. 147/148 which is bad in law and not as per the provisions of the IT Act, 1961 and treated the entire unrecorded purchases as undisclosed income and not treated only profit from unrecorded purchases as business income of the assessee without considering the Extract of IVMS/E2 Software and Judicial Pronouncements.*
- 2. The Ld. CIT(A) has erred in law by enhancing the unrecorded purchases to Rs. 83,71,095/- from 24,09,126/- without giving opportunity of being heard to the assessee and without considering the facts and details of sources of such expenditure required to incur for earning income. Section 69 was not applicable to the assessee as the assessee has clearly explained the payments for unrecorded purchases.*
- 3. The Ld. CIT(A) assumption and presumption does not holds good for the current year ie., AY 2014-15 when the unrecorded purchases by the assessee from the company M/s. Lakshmi Remote (India) Private Limited, Delhi for the subsequent AY 2015-16, 2016-17, 2017-18 and 2018-19 was less and not more.*
- 4. The Ld. CIT(A) relied on the case of ITAT Chennai, ITO vs. Sundrai Chemicals which was not tenable to the assessee and the assessee relied on the case of ITAT, Visakhapatnam, M/s. Ajay Electronics, Vijayawada which*

was applicable to the assessee as the facts and circumstances of both the cases are similar and identical.

5. *The assessee prays your honour therefore to modify the order of the Ld. CIT(A)-NFAC, Delhi by treating the profit on unrecorded purchases as business income of the assessee which was embedded in sales because it is the true / real income of the assessee.*

4. At the outset, the Learned Authorized Representative [“Ld. AR”] submitted that the Ld. CIT(A)-NFAC did not consider the submissions made by the assessee and arbitrarily treated the entire unrecorded purchases as undisclosed income and erred in not treating only profit from unrecorded purchases as business income of the assessee. The Ld. AR further submitted that the above fact was also not considered by the Ld. AO during the assessment proceedings. Further, the Ld. AR submitted that the Ld. Revenue Authorities have not considered the Extract of survey IVMS software M/s. Laxmi Remote Company ie., Party Activity Report which was impounded by the Department. The Ld. AR also submitted that only the unrecorded income was to be treated as income of the assessee and not the whole turnover. The Ld. AR also submitted that the company, M/s. Laxmi Remote Company Pvt Ltd, has sold the goods on credit basis and afterwards the assessee has paid for credit purchases after selling the goods to its customers. There were no upfront

payments for credits purchases. All these facts put forth before the Ld. Revenue Authorities however, the Ld. AO did not consider the submissions made by the Ld.AR. The Ld. AR further submitted that on appeal the Ld. CIT(A)-NFAC has also arbitrarily made an enhancement in the unrecorded turnover as Rs. 83,71,095/- against addition of Rs. 24,09,126/- made by the Ld. AO without providing an opportunity to the assessee of being heard.The Ld. AR relied on the decision of this Bench in the case of ITO vs. Ajay Electronics in ITA No. 272/Viz/2023 (AY 2017-18), dated 22/12/2023 in support of his claim that the entire unaccounted purchases cannot be treated as income of the assessee and only the profit element should be considered as income for the purpose of computing the tax on sales.Therefore, the Ld. AR pleaded to remit the matter back to the file of the Ld. AO and prayed for one more opportunity to the assessee of being heard in order to substantiate its claim.

5. On the other hand, the Ld. Departmental Representative ["Ld. DR"] vehemently opposed to the submission of the Ld. AR and strongly supported the orders of the Ld. Revenue Authorities. The Ld. DR further submitted that since the assessee has not proved the initial source of purchase itself, arriving at the net

profit on the percentage of turnover sale is not tenable. The Ld. DR also submitted that only after thorough examination of the records of M/s. Lakshmi Remote India Private Limited as well as the records of the assessee, the Ld. Revenue Authorities passed the orders and therefore the decision taken by them need not be disturbed.

6. We have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material placed on record. In the instant case the grievance of the assessee is that the Ld. AO erred in treating the credit purchases made by the assessee as undisclosed income also erred in adding the unrecorded sales of Rs. 24,09,126/- U/s. 69C of the Act as unexplained expenditure. Further the contention the assessee is that the Ld. CIT(A)-NFAC has also arbitrarily made an enhancement in the unrecorded turnover as Rs. 83,71,095/- against addition of Rs. 24,09,126/- made by the Ld. AO without providing an opportunity to the assessee of being heard. The assessee has also contended that the entire unaccounted purchases cannot be treated as income of the assessee and only the profit element should be considered as income for the purpose of computing the tax on sales. On careful perusal of the orders of the Ld. Revenue

Authorities, we are of the considered view that the Ld. Revenue Authorities have not properly appreciated the submissions of the assessee and case laws relied on by the assessee while deciding the issue on hand. It is also pertinent to mention that the Ld. CIT(A)-NFAC ought to have provided one more opportunity to the assessee while making enhancement to the addition made by the Ld. AO. Furthermore, on similar set of facts and circumstances, this Bench of the Tribunal in the case of vs. Ajay Electronics in ITA No. 272/Viz/2023 (supra) has observed that the entire unaccounted purchases cannot be treated as income of the assessee and only the profit element should be considered as income for the purpose of computing the tax on sales. While coming to such conclusion this Bench also followed the ratio laid down by various Hon'ble High Courts and decisions of various Coordinate Benches of this Tribunal. In this situation, we are of the considered view that this is a fit case to remit the matter back to the file of the Ld. AO to decide the issue afresh in order to provide one more opportunity to the assessee to substantiate its claim. Accordingly, we hereby remit the matter back to the file of the Ld. AO with a direction to work out the income of the assessee and tax the same in accordance with law after

considering the submissions and on verification of the documents relied on by the assessee. The Ld. AO is also directed to provide one more opportunity of being heard to the assessee in accordance with the principles of the natural justice. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 25th September, 2024.

Sd/- (दुव्वूरुआर.एलरेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एसबालाकृष्णन) (S.BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
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Dated :25.09.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee –OmprakashMaghraj, 33/46, AMC Complex, Prakasam Road, Governorpet, Andhra Pradesh-520002.
2. राजस्व/The Revenue – Income Tax Officer, R.No. 107, Ground Floor, Central Revenue Building, Near PWD Grounds, MG Road, Vijayawada, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam