

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2205/MUM/2024

(Assessment Year :2011-12)

Income Tax Officer,

Room No.4, 6th Floor,
Ashar IT Park, Wagle Estate,
Thane (W)
Maharashtra - 400604

..... Appellant

v/s

Sachin Laxman Jangid,

1,Mandellia House,
Ramesh Pradhan Road,
Naupada, Thane
Maharashtra - 400602
PAN: ADBPJ0867C

..... Respondent

Assessee by :Shri Sanjiv Brahme a/w Shri Jayant Bhatt

Revenue by : Shri BhangepatilPushkaraj Ramesh, Sr.DR

Date of Hearing – 16/10/2024

Date of Order - 21/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 22/01/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2011-12.

2. In this appeal, the Revenue has raised the following grounds: –

"1. On the facts and in circumstances of the case, the CIT(A) erred in deleting the disallowance of purchases of Rs. 4,68,796/- from non-existent vendors by not following the decision of the Hon'ble Gujarat High Court in Tax Appeal No.242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. Vs DCIT wherein it has been held that once the purchases are bogus, additions should be made on the entire purchases and not only the profit embedded in such purchases against which the SLP filed by the assessee was dismissed by the Hon ble Apex Court vide (2017] 292 CTR 354 (SC).

b.It is humbly requested that present appeal may be filed in accordance with the CBDT's Circular No.5/2024 dated 15.03.2024 as per para 3.1(c) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored."

3. The brief facts of the case are that the assessee is a contractor running the business in the name and style of M/s Sachin Construction. For the year under consideration, the assessee filed its return of income on 29/09/2011 declaring a total income of Rs. 71,16,370. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, information was received from the Sales Tax Department, Maharashtra that the assessee availed accommodation entries by way of bogus purchase bills from four traders, namely M/s Nikhil Enterprises, M/s Deep Enterprises, M/s Real Traders, and M/s Aryan Sales Corporation. Accordingly, on the basis of the information mentioned above, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 04/07/2013. The Assessing Officer ("AO") vide order dated 19/03/2015 passed under section 143(3) read with section 147 of the Act assessed the total income of the assessee at Rs.1,13,27,703 thereby making an addition of Rs.42,11,333 on account of unsubstantiated/bogus/hawala purchases from the parties which the Sales Tax Department, Maharashtra, has

blacklisted. In further appeal, the learned CIT(A) not only confirmed the addition of Rs.42,11,333 made by the AO but also enhanced it by Rs.2,06,28,499 on the basis that the addition made by the AO on account of bogus purchases were based on the quantity of purchases communicated by the Sales Tax Department, Maharashtra. In contrast, as per the books of account of the assessee, the total purchases made from these parties were to the tune of Rs.2,48,49,832. Being aggrieved, the assessee filed the appeal before the Tribunal. Vide order dated 23/08/2019 in ITA No. 4311/Mum./2017 the coordinate bench of the Tribunal allowed the appeal filed by the assessee for statistical purposes by restoring the issue to the file of the AO for *de novo* adjudication after affording the assessee opportunity of being heard.

4. Accordingly, in view of the order passed by the coordinate bench of the Tribunal, notice under section 142(1) of the Act was issued to the assessee to substantiate the claim of purchases at Rs.2,48,49,832 from the afore-noted four parties. In response, the assessee uploaded its reply and furnished the audit report, work order, bank extracts, purchase account, and cash book. Upon perusal of the documents uploaded by the assessee, the AO noted that the assessee did not upload the simultaneous quantitative month-wise purchase and immediate consumption of the material in the construction activity depicting the opening stock plus purchase minus the use of material leaving behind the closing stock at the end of each month. Accordingly, vide order dated 30/09/2021 passed under section 143(3) read with section 254 of the Act, the AO held that the assessee has

not submitted the requisite information required through the notices from time to time in support of its submission. The AO further held that despite the grant of sufficient opportunities, the assessee is not able to substantiate the purchases and their consumption in the completion of construction activity. The AO accordingly held that the assessee has failed to reconcile the quantity-wise details of purchases from the hawala parties vis-à-vis the exemption thereof and the assessee has also failed to show that these were actually consumed in the construction activity by the assessee. The AO further held that the assessee has not submitted the copy of challans, octroi receipts which would have supported the movement of goods from one place to another. Accordingly, the AO concluded that the purchases made by the assessee from the dealers, namely M/s Nikhil Enterprises, M/s Deep Enterprises, M/s Real Traders, and M/s Aryan Sales Corporation to the extent of Rs.2,48,49,832 are non-genuine, which was disallowed and added the total income of the assessee.

5. The learned CIT(A), vide impugned order, after taking into consideration the fact that the purchases from the aforesaid dealers remained payable as on 31/03/2011 and reflected as "*sundry creditors*" for the next assessment year, i.e. 2012-13 and the said sundry creditors amounting to Rs.2,43,81,036 remained outstanding as on 31/03/2012 were added to the returned income for the assessment year 2012-13 vide assessment order dated 30/03/2015 passed under section 143(3) read with section 147 of the Act, directed the AO to delete the addition to an extent of 2,43,81,036 as the same would otherwise result in making an addition of

the same amount twice, once in the year under consideration and again in the subsequent assessment year, i.e. 2012-13. As regards the balance amount of Rs.4,68,796 in respect of purchases from the aforementioned dealers, the learned CIT(A) held that the addition of this amount cannot be sustained in view of the fact that the assessee submitted the details in response to the notice issued by the AO, which has been confirmed in the assessment order and the information called for in a specific format, devised by the AO, was not in line with the directions of the Tribunal. Therefore, after considering the information submitted by the assessee as noted in para-7.5 of the impugned order, the learned CIT(A) directed the AO to delete the balance addition of Rs.4,68,796. Thus, the learned CIT(A) directed the deletion of the entire addition of Rs.2,48,49,832. Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. The only grievance of the Revenue is against deletion of disallowance of Rs.4,68,796 made on account of alleged bogus purchases. It is evident from the record that initially on the basis of the information received from the Sales Tax Department, Maharashtra, the AO initiated the reassessment proceedings and made an addition of an amount of Rs.42,11,333. However, in further appeal, the learned CIT(A) taking into consideration the fact that the assessee in its books of accounts had disclosed purchases amounting to Rs.2,48,49,832 from the alleged hawala dealers made an enhancement and disallowed the entire amount of Rs.2,48,49,832 as bogus purchases. It is evident from the record that the

coordinate bench of the Tribunal vide order dated 23/08/2019 granted another opportunity to the assessee to furnish quantitative details to show purchases and consumption of material in the construction activity and accordingly restored the issue to the file of the AO for *de novo* adjudication after the due opportunity of being heard to the assessee. The relevant findings of the coordinate bench, vide aforesaid decision, are reproduced as follows: –

*"We have considered the rival submissions and perused the material on record. Undisputedly, in assessee's case there was no scrutiny assessment earlier and the return of income filed by the assessee was only processed under section 143(1) of the Act. Subsequently, material came to the possession of the Assessing Officer indicating that the assessee has availed accommodation entries by way of bogus purchase bills. Therefore, in our considered opinion, the Assessing Officer had sufficient tangible material available before him to form the belief that income chargeable to tax has escaped assessment. That being the case, the reopening of assessment under section 147 of the Act, in our view, is valid. As regards, the merits of the addition made by the Assessing Officer and enhanced by learned Commissioner (Appeals), undisputedly, before the Assessing Officer the assessee had not furnished any evidence to prove the genuineness of purchases allegedly made from hawala operators. Therefore, he added such purchases to the income of the assessee. The learned Commissioner (Appeals) has even added back the rest of the purchases to the income of the assessee. To a query from the bench as to whether the assessee can furnish quantitative details to show purchases and consumption of material in construction activity, the learned Authorised Representative submitted, given an opportunity, the assessee would furnish the details before the Assessing Officer. In view of the aforesaid submission of the learned Authorised Representative, we are inclined to restore the issue to the Assessing Officer for *de novo* adjudication after due opportunity of being heard to the assessee. Accordingly, the grounds raised in the memorandum of appeal are allowed for statistical purpose, whereas, the additional grounds raised are dismissed."*

7. In the 2nd round of assessment proceedings, pursuant to the directions of the Tribunal, the AO issued various notices to the assessee directing to substantiate the claim of purchases of Rs.2,48,49,832 made from the alleged hawala dealers. From the perusal of the record, it is evident that the

assessee filed the following details in response to the show cause notice issued by the AO: –

- (a) Covering Letter
- (b) Audited Accounts, i.e. balance sheet, profit and loss account, etc. for the financial year 2010-11
- (c) Purchase Ledger, which includes material purchases, input tax on raw material purchases, labour contractor bills, octroi expenses and transfer charges
- (d) Payment in cash for purchases/to suppliers
- (e) The Bank statements for all accounts including the saving accounts
- (f) Sale statement of civil work orders executed during the financial year 2010-11 relevant to the assessment year 2011-12 at DAV School, Ahmedabad, Navi Mumbai SEZ Private Limited at Uran, Navi Mumbai and Reliance Industries, Navi Mumbai.
- (g) Work orders of DAV School and Navi Mumbai SEZ.

8. From the perusal of the assessment order, it is also evident that the AO agreed to the fact that the assessee uploaded his reply on 04/09/2021 wherein the assessee submitted the audit report, work order, bank extracts, purchase account and cash book. We further find that in response to the show cause notice dated 17/09/2021, the assessee submitted that he has already made appropriate submissions (total 5 in no.) and given all the details called for. We find that the aforesaid details were in line with its submission made in the first round of proceedings before the Tribunal, wherein the assessee agreed to furnish the quantitative details to show purchases and consumption of material in construction activity. However, the

AO did not agree with the submissions of the assessee and held that the assessee has not furnished the date-wise quantity details of purchase/sales on a month-to-month basis as per the format mentioned in the assessment order. In this regard, we agree with the findings of the learned CIT(A) that the format as suggested by the AO in the assessment order was not suitable for soliciting the required information from the assessee being a construction contractor and these formats at best could be used to get the information from a trader who will have the opening stock and closing stock of material purchased and finished goods. In the present case, there is no dispute regarding the deletion of addition to the tune of Rs.2,43,81,036 on the basis that the same has already been disallowed in the subsequent assessment year and the addition of the same amount in the year under consideration will tantamount to taxing the same amount twice, once in the impugned assessment year again in the assessment year, i.e. 2012-13. However, the Revenue is only aggrieved against the deletion of balance addition amounting to Rs.4,68,796.

9. Vide its written submission, the learned Departmental Representative ("*learned DR*") submitted that the said deletion is due to factual misapprehension and this amount was not included as a liability in the assessment year 2012-13 under section 41(1) of the Act. Consequently, it is the submission of the learned DR that the deletion on the ground of preventing double taxation is untenable with respect to the deletion of the addition of Rs.4,68,796. In view of the facts and circumstances as noted above, it is clearly evident that the deletion of the addition of the balance

amount of Rs.4,68,796 was not on account of the fact that the same will result in double taxation, however, the learned CIT(A) agreed with the submissions made by the assessee regarding the quantitative details to show purchases and consumption of material in the construction activity. Therefore, we find no merits in the aforesaid submissions of the learned DR. As regards the submission of the learned DR that the amount of Rs.4,68,796 continues to represent unsubstantiated and non-genuine purchases which remain unexplained and unverifiable, it is pertinent to note that the assessee furnished detailed documents, as noted in the foregoing paragraph and also taken note of by the learned CIT(A) in paragraph 7.5 of its order, which as evident from the record were neither been controverted by the AO nor stated to be false and bogus. The fact that the assessee failed to furnish the information in the format required by the AO cannot be the sole basis for treating the purchases amounting to Rs.4,68,796 as bogus. Accordingly, we agree with the findings of the learned CIT(A) in deleting the addition of the balance amount of Rs.4,68,796. As a result, the impugned order on the issue under consideration in the present appeal before us is upheld and the ground raised by the Revenue is dismissed.

10. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 21/10/2024

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

MUMBAI, DATED: 21/10/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai