

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1511/PUN/2024
Assessment Year : 2018-19**

Maharani Wines Shop No.17A, Old SBI Chowk, CIDCO, Nashik - 422009	Vs.	ACIT, Circle 1, Nashik
PAN: AAHFM7083L		
(Appellant)		(Respondent)

Assessee by : Shri Sanket M Joshi
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 29-10-2024
Date of pronouncement : 05-11-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 20.05.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2018-19.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of buying, selling and otherwise dealings in retail liquor trade i.e. Indian made foreign liquor, country liquor, beer, etc. permitted by the government. It filed its return of income on 05.10.2018 declaring total income of Rs.9,62,170/-. The case of the assessee was selected for complete scrutiny under the E-assessment Scheme, 2019 on the following issue:

“The assessee has disclosed low income from receipts (liquor) on which TCS has been deducted.”

3. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') along with questionnaire were issued and served on the assessee, in response to which the assessee filed the requisite details from time to time.

4. During the course of assessment proceedings the Assessing Officer observed from 26AS for the financial year 2017-18 and computation of income submitted by the assessee that the assessee has made purchases of Rs.44,27,85,656/- from the following parties:

<i>Tax collected at source Collector & TAN</i>	<i>TCS collected</i>	<i>TCS claimed in current year</i>	<i>Expenditure as per 26AS</i>
<i>Asnani Kishan Trilokchand, TAN- PNEK120138</i>	2,27,582	2,27,582	2,27,43,460
<i>Girish Ashokkumar Gurnani, TAN- PNEG10481C</i>	607	607	60,357
<i>Golden Agencies. TAN- MUMG04380F</i>	1,15,250	1,15,250	1,15,24,956
<i>HH Traders Pvt Ltd, TAN- MUMH04730F</i>	98,337	98,337	98,34,334
<i>Hi Spiritz & Liquorz Lip. TAN-MUMH15069F</i>	96	96	9,713
<i>Honest Marketing Pvt Ltd. TAN-NSKH00907E</i>	3,99,772	3,99,772	3,99,41,280
<i>Kapil Spirits Pvt Ltd, TAN- PNEK08535C</i>	8,029	3,315	3,31,500
<i>Kapil Traders, TAN- PNEK07254C</i>	3,315	3,315	8,02,900
<i>Pratham Heera Sales Private Limited. TAN- NSKP04820E</i>	5,01,797	5,01,797	5,01,56,246
<i>Ravindra Vasudeo Jethwani, TAN-NSKR06428C</i>	88,750	88,750	88,68,982
<i>Rayoman Wines, TAN- MUMR29954B</i>	10,66,479	10,66,479	10,66,48,045
<i>Sanjay Vasantrao Satbhai, TAN-PNES15152E</i>	45,350	45,350	45,35,000
<i>Seema Narayandas Rajanii, TAN-NSKS04668G</i>	37,365	37,365	37,31,358
<i>Sunder Wines, TAN-NSKS03455E</i>	7,12,768	7,12,768	7,12,39,053
<i>United Distributors. TAN- NSKU01069F</i>	9,60,834	9,60,834	9,60,44,750
<i>Virat Spirits Limited Liability Partnership. TAN- NSKV04884F</i>	1,666	1,666	1,66,602
<i>Yash Wines Private Limited, TAN- NSKY00516F</i>	1,61,751	1,61,751	1,61,47,120
<i>Total</i>	<u>44,29,748</u>	<u>44,29,748</u>	<u>44,27,85,656</u>

5. However, as per the Profit and Loss Account, the assessee has shown total purchases of Rs.4,13,20,150/- only. Since there was difference of Rs.40,14,65,505/- in the value of purchases claimed by the assessee in the ITR and that reported in 26AS, therefore, the Assessing Officer, in order to verify the genuineness of transactions, issued notice u/s 133(6) of the Act to one M/s. Rayoman Wines, one of the major suppliers of the assessee. However, there was no response from the said party. The Assessing Officer thereafter asked the assessee to reconcile the difference in purchases claimed in the ITR and that submitted in its computation and reported in 26AS. The Assessing Officer also asked the assessee to explain as to why the provisions of section 69C of the Act should not be attracted to the difference in value of purchases to the tune of Rs.40,14,65,505/-.

6. In response to the above, the assessee submitted a chart containing the purchase amount booked in the name of the sister concerns. However, there were no complete details filed by the assessee before the Assessing Officer such as purchase ledger of each of the sister concerns and confirmations from the suppliers regarding the mistake that occurred in punching wrong PAN while booking the sales in the names of sister concerns. In absence of any proper reply to his satisfaction, the Assessing Officer invoked the provisions of section 69C of the Act and made addition of Rs.40,14,65,505/- to be taxed u/s 115BBE of the Act.

7. Before the CIT(A) / NFAC it was submitted that the assessee is having various sister concern firms doing similar business. The distributors wrongly punched the PAN of the assessee in the bills raised by them instead of the names of sister concerns. It was submitted that the payments were made by the sister concerns, such purchases have been reflected in their Profit and Loss Account and they have filed their returns of income. Merely because the suppliers have done some error on their part, the assessee should not be penalized. The assessee also filed certain sample bills before the CIT(A) / NFAC to substantiate its case that the purchases are in the names of the sister concerns, the payments have been made by them, such purchases are reflected in their Profit and Loss Account and the PAN number of the assessee was wrongly punched in the invoices so raised, thereby causing the difference in 26AS on account of TCS.

8. However, the Ld. CIT(A) / NFAC was also not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer by observing as under:

“6. Decision:

The appellant in its ground of appeal assailed the AO in assessing the income by making the addition of Rs.40,14,65,505/-. The appellant in its submission submitted that the TCS of sister concerns is reflecting in Form 26AS of the assessee due to mix up in quoting PAN by the suppliers. The appellant further submitted that it is a retail trader of liquor. And the TCS has been deducted on the purchase by the distributor, further the assessee is also having various sister concern firms engaged in same kind of business dealing with the same distributors/suppliers as that of the assessee. As the distributors of the purchase material product are same, the distributors have sometimes wrongly credited the TCS on purchases of sister concern firms to the assessee's account and vice versa during the year under assessment. i.e. for example, Purchase was made by Sister concern firms, purchase bill is raised in the name of Sister concern firms however, PAN mentioned on the respective bill pertains to Maharani Wines. Therefore, even

though TCS reflects in the 26AS of Maharani Wines but purchase in fact has been made by and booked in the books of accounts of sister concern firms, it is a mere case of typographical mistake from the end of suppliers while mentioning the PAN on their invoice.

6.1 The submission of the appellant is examined. And is not found to be acceptable for the simple reasons that the purchases were made by the assessee on which the TCS had been collected as per the applicable rate. The argument that the purchases were made by the assessee and TCS collected in its name but the actual purchases were made by different sister concern is devoid of facts. The appellant had failed to establish this theory before the AO and has also not provided any cogent reason with supporting documents to consider the proposition of the appellant. Accordingly, the action of the AO is upheld. The grounds of appeal are dismissed.”

9. Aggrieved with such order of the CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

- 1] *The learned CIT(A) erred in confirming the addition of Rs.40,14,65,505 made by the A.O. u/s 69C towards alleged unexplained purchases merely on the basis of wrong reporting of TCS on PAN No. of appellant firm done by suppliers without appreciating that the said addition was not justified on facts and in law.*
- 2] *The learned CIT(A) failed to appreciate that the suppliers who had sold goods to sister concerns of the appellant, had wrongly quoted PAN of appellant firm while depositing TCS on such sales made to sister concerns and thus, the TCS collected on purchases made by sister concerns was wrongly reflected in Form 26AS of the appellant firm as against that of the sister concerns and therefore, the addition u/s 69C made by the A.O. merely on the basis of incorrect TCS details reported by third parties in Form 26AS was not justified on facts and in law.*
- 3] *The learned CIT(A) ought to have appreciated that the A.O. had not brought any material on record to prove that the appellant had actually made unaccounted purchases to the tune of Rs.40,14,65,505 apart from the incorrect reporting of TCS made by third parties in Form 26AS, the reason for which was duly explained by the appellant and therefore, the huge addition u/s 69C towards unexplained purchases made by the A.O. was apparently unjustified in law.*
- 4] *The appellant craves leave to add/ alter/ amend any of the grounds of appeal.*

10. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) / NFAC in confirming the action of the Assessing Officer in making the addition of Rs.40,14,65,505/- to the total income of the assessee u/s 69C r.w.s. 115BBE of the Act. Referring to page 13 of the paper book, he drew the attention of the Bench to the chart giving party-wise reconciliation of TCS as per books and TCS reflected as per Form 26AS. Referring to pages 14 to 35 of the paper book, he drew the attention of the Bench to the copies of the sample bills issued by the suppliers in the names of sister concerns wherein the PAN of the assessee firm has been wrongly quoted in the bills instead of quoting the PAN of the respective sister concerns who have purchased the goods. Referring to the income tax returns, Profit and Loss Account and Form 26AS of the sister concerns for assessment year 2018-19, copies of which are placed at pages 36 to 130 of the paper book, he submitted that the quantum of TCS reflected in Form 26AS is much lower than the quantum of purchases declared by the sister concerns in their Profit and Loss Accounts. Referring to the orders passed u/s 143(3) of the Act in assessee's own case for the preceding two years, copies of which are placed at pages 131 to 133 and 139 to 140 of the paper book, he submitted that the identical claim of the assessee was accepted by the department and no addition has been made. Referring to the copies of assessment orders passed u/s 143(3) of the Act in the case of M/s. Pratik Wines for assessment year 2016-17 and 2017-18, copies of which are placed at pages 143 to 148 of the paper book, he submitted that the Assessing Officer in the orders passed u/s 143(3) of the Act in the case of sister concerns has accepted the contention of the assessee regarding the difference in the

purchases declared in the Profit and Loss Account and the TCS as per Form 26AS and no addition was made. He further submitted that the payments for such purchases have been made by the respective sister concerns of the assessee, therefore, no addition is called for u/s 69C of the Act.

11. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the CIT(A) / NFAC. He submitted that despite ample opportunities granted by the Assessing Officer as well as the CIT(A) / NFAC, the assessee failed to reconcile the difference by producing cogent evidence to the satisfaction of the Assessing Officer. Therefore, the CIT(A) / NFAC was fully justified in sustaining the addition made by the Assessing Officer u/s 69C r.w.s. 115BBE of the Act. In his alternate contention, he submitted that the matter may be restored to the file of the Assessing Officer for verification of the issue afresh.

12. The Ld. Counsel for the assessee in his rejoinder submitted that he has no objection for the matter being set aside to the file of the Assessing Officer. However, a direction may be given to the Assessing Officer to call for a report from the verification unit since there are voluminous bills, ledgers and bank statements to be examined to ascertain that the purchases are in fact made by the sister concerns of the assessee and the payments have been made by them and that such purchases have been reflected in their Profit and Loss Account and inadvertently the PAN number of the assessee has been punched by the suppliers.

13. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.40,14,65,505/- u/s 69C r.w.s. 115BBE of the Act on the ground that the assessee failed to substantiate with evidence to his satisfaction regarding the difference between purchases shown in its Profit and Loss Account and the TCS reflected in Form 26AS. We find the Ld. CIT(A) / NFAC sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the TCS of sister concerns are reflected in Form 26AS of the assessee due to mix up in quoting PAN by the suppliers. It is also his submission that the purchases from the suppliers in which the PAN number of the assessee has been wrongly quoted has in fact been reflected in the purchases of the sister concerns and the payments have been made by them through proper banking channel. It is the submission of the Ld. Counsel for the assessee that it is only a typographical error on the part of the suppliers by quoting PAN number of the assessee in the purchase invoices of the sister concerns of the assessee firm. It is also his submission that given an opportunity, the assessee is in a position to substantiate its case with evidence to the satisfaction of the Assessing Officer that the assessee has in fact, not made any such purchases, the purchases are made by the sister concerns of the assessee which have been reflected in their Profit and Loss Account and the payments have been made by them from their respective bank

accounts and that the assessee is in no way concerned with such purchases made from the suppliers who have wrongly quoted the PAN of the assessee firm.

14. We find some merit in the above arguments of the Ld. Counsel for the assessee. A perusal of the sample bills placed at pages 14 to 35 of the paper book shows that the invoices were raised in the names of the sister concerns of the assessee whereas the PAN of the assessee has been quoted instead of the PAN of the purchasers. The payments for such invoices are also reflected in some of the invoices which are the bank accounts of the sister concerns. However, these vital documents were completely ignored by the lower authorities although these were produced before them. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity of being heard to the assessee to substantiate that the purchases are in fact made by the sister concerns of the assessee for which they have made the payments from their bank accounts and that such purchases are reflected in their Trading and Profit and Loss Accounts. The Assessing Officer, if so considers fit, may, ask the assessee to furnish the required details, which according to the Ld. Counsel for the assessee are voluminous, before the verification unit and call for a report from the verification unit. Needless to say, the Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the Assessing Officer on the appointed date and file the requisite details without seeking any adjournment under any pretext, failing which

the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 5th November, 2024.

Sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 5th November, 2024
GCVSR

Sd/-

(R. K. PANDA)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	29.10.2024		Sr. PS/PS
2	Draft placed before author	30.10.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			