

आयकर अपीलीय अधिकरण
दिल्ली पीठ "ए", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं.1362/दिल्ली/2024 (नि.व. 2018-19)
ITA No.1362/DEL/2024 (A.Y.2018-19)

Bhawani Castings P. Ltd.,
KN/F-1, Gali No. 10, Anand Parbat,
Industrial Area, Delhi 110005
PAN: AAACB-4622-Q

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Circle 4(2), C.R Building, New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Ashwani Kumar &
Ankur Agarwal, Chartered Accountants

प्रतिवादीद्वारा/ Respondent by : Ms. Kirti Sankratyayan, Sr. DR

सुनवाई की तिथि/ Date of hearing : 06/11/2024

घोषणा की तिथि/ Date of pronouncement: : 19/11/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 21.02.2024, for assessment year 2018-19.

2. The assessee has challenged the order of CIT(A) on following grounds:

“1. That order passed u/s. 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi is against law and facts on the file in as much as he was not justified to arbitrarily uphold the action u/s. 147 taken by the Learned Assessing Officer.

2. That the Learned CIT(A) gravely erred in upholding the addition of Rs.1,35,40,359/- made on account of alleged inflation of the purchase from M/s. G.S Industries.

3. That the Learned CIT(A) gravely erred in upholding the assessment order despite the facts that the same had been passed by ignoring the principles of natural justice.”

3. Shri Ashwani Kumar, appearing on behalf of the assessee narrating facts of the case submitted that the assessee filed its return of income for AY 2018-19 on 28.09.2018 declaring total loss of Rs. 12,52,594/-. The notice u/s. 148A(b) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') was issued to the assessee, along with the notice reasons recorded for reopening assessment were also supplied to the assessee. A copy of the notice and reasons recorded for reopening are at pages 21 and 22 of the paper book. The assessee vide letter dated 22.03.2022 gave reply to the notice stating that the assessee has not made any purchases from the parties mentioned in the reasons for reopening during the year under consideration. The AO vide order dated 30.03.2022 passed u/s. 148A(d) of the Act rejected the objections raised by the assessee against reopening. The AO proceeded with the reassessment proceedings and vide assessment order dated 30.03.2023 passed u/s. 147 r.w.s 144B of the Act made addition of Rs.1,35,40,359/- on account of alleged bogus purchases made from M/s. G.S Industries. The AO has made addition, based on the statement of one Shri Deepak Sharma alleged to have been recorded by the Investigation Wing. The said statement is at page 35 of the

paper book. The Id. AR of the assessee pointed that the said statement was recorded on 14.07.2022 whereas, the reasons for reopening were recorded on 17.03.2022 i.e. much prior to recording of the statement of Shri Deepak Sharma which is the basis for making addition. He further pointed that, the statement provided to the assessee was not signed by the officer before whom, the said statement was recorded under oath. Such a statement is not admissible and hence, no addition can be made on the basis of such statement. The Id. AR of the assessee further asserted that the addition made by the AO in assessment proceedings is in respect of alleged bogus purchases from M/s. G.S Industries, whereas in the reasons recorded for reopening the AO has alleged that the assessee has obtained accommodation entries of bogus purchase from the concerns of Shri Deepak Sharma namely M/s. Mahinderpal & Sons and M/s. Jai Bhole Traders in the name of Gurdeep Singh and Parminder Singh, respectively. The additions made by the AO do not coincide with the reasons recorded for reopening, hence, the addition is not sustainable.

4. On merits of the addition he submitted that, the assessee during the relevant period has *inter alia* made purchases from M/s. G.S Industries. The said purchases have been made against invoices placed on record at pages 41 to 62 of the paper book. The payments have been made against said invoices through banking channels and bank statement of the assessee is at pages 63 to 75 of the paper book. The sales made by the assessee have been accepted by the AO, the AO has also accepted books of accounts of assessee. The assessee had furnished all these documents before the AO. However, without examining the documents furnished by the assessee, the AO has passed the assessment order. The Id. AR pointed that

the CIT(A) in the impugned order has raised doubt over the transaction of purchases on the ground that the assessee failed to provide the address and whereabouts of G.S Industries and no details evidencing transportation of scrap to the assessee was available. The said observations of the CIT(A) are contrary to the documents on record. The invoices from G.S Industries placed on records clearly indicate the address and contact number of G. S Industries. The invoices also mention vehicle numbers used for transportation of consignment. Thus, the assessee has discharged its onus in proving genuineness of transaction of purchases from G.S Industries.

5. Per contra, Ms. Kirti Sankratyayan representing the department vehemently supported the impugned order and prayed for dismissing appeal of the assessee.

6. We have heard the submissions made by rival sides and have examined the orders of the authorities below. The assessee in ground number one of appeal has assailed validity of reopening of assessment. A perusal of reasons for reopening conveyed to the assessee alongwith notice u/s 148A(b) of the Act dated 17/3/2022 show that a search action u/s.132 of the Act was carried out on Deepak Sharma group of Mandi Gobindgarh. During the course of search statement of Deepak Sharma was recorded. In his statement he allegedly admitted to have engaged in providing bogus purchase entries through 2 bogus concerns i.e. M/s. Mahinderpal & Sons and JaiBhole Traders. These concerns were allegedly managed by Gurdeep Singh and Parminder Singh, respectively. The Assessing Officer alleged that the assessee is one of the beneficiary of bogus purchase entries from the aforesaid concerns. The assessee vide letter dated 22/3/2022 denied to have made any

purchases from the aforementioned concerns during the period relevant to the assessment year under appeal. After reply of assessee, a fresh statement of Deepak Sharma was recorded on 14/7/2022, wherein he stated that M/s. G.S. Industries is a paper concern. The Assessing Officer on the basis of subsequent statement of Deepak Sharma made addition of Rs.1,35,40,359/- in the hands of assessee on account of bogus purchases from G.S. Industries.

7. Before proceeding further, it would be imperative to refer to some dates in the sequence of events:

Date	Event
17/3/2022	Notice under section 148 & reasons recorded for reopening.
22/3/2022	Reply of the assessee to the Notice U/s. 148& the reasons for reopening
14/7/2022	Statement of Deepak Sharma recorded U/s.131(1A) where he referred to M/s G.S. Industries as paper concern.

It is apparent from records that the Assessing Officer made addition based on statement of Deepak Sharma, recorded on 14/7/2022, that is after the notice u/s 148A of the Act and reasons for reopening conveyed to the assessee. In the reasons recorded for reopening there is no mention of M/s. G.S. Industries. In the reasons for reopening the Assessing Officer has alleged that Deepak Sharma provided accommodation entries through two bogus concerns M/s. Mahinderpal & Sons & M/s. Jai Bhola Traders and the assessee is beneficiary of accommodation entries from such bogus concerns. For the sake of completeness, the relevant extract of the reasons of reopening are reproduced herein below:

“On perusal of the information, it is found that your company has taken bogus purchase entries amounting to Rs.1,07,92,679/- from entry operator Mr. Deepak Sharma during FY 2017-18.

Search u/s 132 of the Income-tax Act, 1961 has been conducted against the Deepak Sharma Group of MandiGobindgarh, in which information emanated from interception of cash, after announcement of election to Legislative Assembly of Punjab. During investigation it is found that Mr. Deepak Sharma is managing two bogus concerns M/s Mahinderpal & Sons & M/s Jai Bhole Traders in the name of Gurdeep Singh & Parminder Singh respectively, and these bogus concerns were being used by him to provide accommodation entries of bogus purchase to entities mainly engaged in iron scrap/steel industry. Accordingly, such non genuine bogus credit entries in the books of beneficiary remain unexplained.

No plausible explanation is available on records, which explains reason of credit entries taken by your company from dummy/ bogus company. Hence, what appears prima facie is the re-routing of unaccounted income.”

In assessment order there is no allegation that the assessee has taken any bogus accommodation entries from the bogus concerns of Deepak Sharma named in the reasons for reopening the assessment. It is a well settled law that if no addition is made on the basis of reasons recorded for reopening, no other addition can be made. The reasons for reopening should coincide with the addition made in the reassessment proceedings.

8. Further, third party statement recorded subsequent to the reasons recorded, cannot form basis of Assessing Officer’s “reasons to believe” to reopen the assessment. In the instant case, there is no coherence in the reasons recorded for reopening and the addition made in the assessment order. There is utter non-application of mind by the Assessing Officer while recording reasons for reopening. In facts of the case, we have no hesitation in holding that reopening of assessment lacks Assessing Officer’s, “reasons to believe” for reopening of assessment.

For the aforesaid reasons, reassessment proceedings are held invalid, hence, quashed. The assessee succeeds on ground no.1 of appeal.

9. Since, we have allowed ground no.1 of appeal on jurisdiction issue, the ground no. 2 of appeal raised on merits has become academic, hence, not deliberated upon.

10. In the result, appeal of assessee is allowed.

Order pronounced in the open court on Tuesday the 19th day of November, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 19/11/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI