

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 464/Mum/2024
Assessment Year : 2014-15

AGT Foods India Pvt. Ltd., 401-B, Filix Bldg., LBS Road, Bandup West, Mumbai PAN : AAJCA7987L	vs.	Additional, Joint, Deputy, Asst. Commissioner of Income Tax, Income Tax Officer, National e-Assessment Centre, Delhi
(Appellant)		(Respondent)

Assessee by : Shri Nitesh Joshi
Revenue by : Shri Sunil Shinde, Sr.DR

Date of Hearing : 13/11/2024
Date of Pronouncement : 26/11/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 07-12-2023 passed by the Ld.CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2014-15. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the disallowance of alleged bogus purchases of Rs.1,17,53,488/- made by the AO. The assessee has also raised a ground challenging the validity of reopening of assessment.

2. The assessee is engaged in the business of import and sale of chick peas, masoor dal, rice, sugar etc. The original assessment of the year

under consideration was completed by the AO.u/s 143(3) of the Income Tax Act, 1961 ('the Act') accepting the income declared by the assessee. Subsequently, the AO reopened the assessment of the year under consideration by issuing notice u/s.148 of the Act. The reasons for reopening of assessment are discussed in brief. The assessee had purchased goods from a concern named M/s Shikar Agro, a proprietary concern of Shri Shishir Pada. It was noticed by the Income Tax Department that the bank account of above said concern revealed about receipt of huge funds through NEFT/RTGS, which were later transferred to other concerns. When enquired about the same, Shri Shishir Pada did not provide any information. His office could not be located and further he did not respond to the notice issued u/s.131 of the Act. Accordingly, it was inferred by the Income tax Department that Shri Shishir Pada is providing only accommodation entries through his other concerns for commission. Since the assessee had also purchased goods from the above said concern, the AO took the view that the purchases so made are bogus in nature and accordingly he reopened the assessment.

3. During the course of assessment proceedings, the assessee submitted all the documents relating to purchase of goods from M/s. Shishir Agro and also the details of corresponding sale of those goods. The assessee also furnished stock statement showing the receipt and sale of goods. The AO noticed that the stock statement disclosed a negative stock balance of 11.30 quintals, which was valued at Rs.49,037/-. He also noticed that the purchase bill did not show the specific vehicle details, but only mentioned as Lorry No.1. The quantity was mentioned as 483.63 MT, which could not have been transported in a single vehicle. The assessee explained that the above said supplier was keeping stock in a ware house owned by M/s.Shree Sidhivinayak Logistics and the said stock was assigned to the assessee. However, the AO noticed that the warehouse

receipt was dated 25-05-2013, but the purchase invoice was dated 25-06-2013. Accordingly, the AO disbelieved the warehouse receipt. Accordingly, the AO held that the purchases made by the assessee from M/s.Shishir Agro were bogus in nature. It was noticed that the assessee has purchased goods having value of Rs.2,11,26,078/- from the above said concern and returned goods having value of Rs.93,72,593/- to the above said concern by way of resale. Accordingly, the AO disallowed net purchase amount of Rs.1,17,53,488/-. The AO also took the view that the assessee would have incurred commission expenses in procuring accommodation bills and accordingly made an addition of Rs.15,24,933/- as estimated commission expenses u/s.69C of the Act.

4. In the appellate proceedings, the Ld.CIT(A) confirmed both the additions and also confirmed the validity of reopening of assessment.

5. The Ld.AR submitted that the goods belonging to M/s.Shishir Agro were lying in the warehouse of M/s.Sidhdhivinayak Logistics and they were purchased by the assessee through a broker named M/s.Manoj & Co. The goods already lying in the warehouse were assigned to the assessee. Hence, there was no physical movement of goods from the location of the supplier to the location of the assessee. He submitted that a part of goods were returned to the supplier by way of resale and the same has been accepted by the AO by way of making addition of net purchases only. He submitted that the assessee has furnished all the documents to prove the factum of purchases and sale of goods. The stock register of the entire year was also submitted. The payments have been made/received through banking channels. Hence there is no reason to suspect the genuineness of purchases.

6. He submitted that the date mentioned in the warehouse receipt (May, 2013) was prior to the date of invoice (June, 2013). Hence, the

receipt of goods was doubted by the tax authorities. He submitted the date was wrongly mentioned in the warehouse receipt. He submitted that the warehouse has charged the warehouse charges only from June, 2013, which proves the fact that the goods were assigned to the assessee only from June, 2013. He submitted that the error committed by the warehouse owner cannot be used against the assessee. He submitted that the AO did not make any enquiry with the warehouse owner to prove that the goods were assigned to the assessee in May, 2013 itself. With regard to negative stock, the Ld.AR submitted that the agricultural products are susceptible to weather conditions and further there will be marginal difference between one weighing machine and another one. He submitted that the assessee has purchased and sold 8687.600 quintals and the negative stock of 11.300 quintal constitutes 0.13% of the total stock handled by the assessee. In any case, the assessee had already offered the value of negative stock to tax by way of sales. He further submitted that the goods were purchased through a broker named M/s.Manoj & Co and the said concern has already confirmed the transaction by way of an affidavit, which has not been doubted with. Accordingly, he prayed that the impugned additions may be deleted.

7. The Ld.DR, on the contrary, supported the orders passed by the tax authorities.

8. We heard the parties and perused the record. First of all, we notice that the Income tax department has drawn inference that the concern M/s.Shishir Agro is engaged in the business of providing accommodation bills without actually supplying the goods on the reasoning that the proprietor of the above said concern did not respond to the notices issued by the Income Tax Department. Accordingly, it has been presumed that the purchases made by the assessee from the above said concern are also

bogus in nature. On the contrary, it is accepted by the AO that the assessee has sold those goods. There should not be any doubt that a person could sell goods only if had received it by way of purchases, i.e., without the receipt of goods, the assessee could not have sold the goods.

9. The tax authorities have taken note of certain adverse features, viz., absence of lorry details for transportation of goods, variation in the date of warehouse receipt, negative stock. With regard to these defects, we notice that the assessee has offered credible explanations. Before us, the revenue could not contradict any of the submissions made by Ld.AR. We further notice that the assessee has furnished -

- (a) evidences in the form of invoices for purchase of goods;
- (b) evidences for sale of goods;
- (c) quantity details in the form of stock register;
- (d) the confirmation from the broker through whom the goods were purchased;
- (e) warehouse receipts to prove the storage of goods.

We notice that the AO could not find fault with any of the documents furnished by the assessee. Further, the payments have been made/received through banking channels. We also notice that the AO did not carry out any independent enquiry to prove that the above said documents are not genuine. Under these set of facts, we are of the view that the impugned additions have been made by the AO only on surmises and conjectures, which are not permitted under the law. We derive support for the above said proposition from the following decisions:-

- (a) CIT vs. Odeon Builders P Ltd (2019)(110 taxmann.com 64)(SC)
- (b) PCIT vs Shapoorji Pallonji & Co Ltd (2020)(117 taxmann.com 625) (Bom)

Accordingly, we hold that the addition made on account of alleged bogus purchases is not sustainable in the facts and circumstances of the case. In view of the above, the estimated commission expenses added by the AO is also liable to be deleted.

10. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete both the impugned additions.

11. The assessee has also raised a legal issue challenging the validity of reopening of assessment. Since we have deleted the additions on merits, the above said legal issue is rendered academic in nature and we leave the same open.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26-11-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 26-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai