

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 877/JPR/2024
निर्धारण वर्ष/Assessment Year : 2018-19

Shri Prem Industries 41, Old Industrial Area, Bharatpur , Rajasthan.	बनाम v.	Income Tax Officer, Ward-01, Bharatpur Rajasthan.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABYFS 7744J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajendra Agarwal, CA
राजस्व की ओरसे / Revenue by: Shri Anup Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 27/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/11/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Present appeal pertains to assessment order dated 21.02.2023 relating to Assessment Year 2018-19 passed u/s 147 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as "I.T Act") and upheld by Learned Commissioner of Income Tax (Appeals).

2. Vide abovesaid assessment order, the Assessing Officer (in short "AO") computed the total taxable income of the assessee at Rs.

2,16,58,432/- and at the same time also directed initiation of proceedings u/s 271AC(1) of I.T.Act.

3. Final computation of taxable income, as per assessment order has been tabulated as under:-

5. Final computation of taxable income:

Sl No	Description	Amount (in INR)
1	Income as per Return of Income filed	1,31,030
2	Income as computed u/s143(1)(a)	1,31,030
3	Variation in respect of issue of bogus purchase u/s 69C	2,16,58,432
4	Total Income/Loss determined as per the above proposal	2,17,89,462
5.	Income to be tax @ 60% as per provision of section 115BBE	2,16,58,432
6	Income to be Tax at normal rate	1,31,030

4. The assessee is a partnership firm engaged in the business of manufacturing and trading of oil and oil cake. On 24.09.2018, the assessee filed return of income declaring total income at Rs. 1,31,030/-.

5. Vide impugned assessment order, the Assessing Officer held that the assessee had failed to establish genuineness of the transactions of certain purchases alleged to have been done through following two entities;

- M/s Sweekar Udyog (GSTIN 08ASJPD3992M1Z6)

- M/s Shiv Agro Sales (GSTIN 08BBHPK0251N1Z6)

As found by Id. Assessing Officer, source of payments for purchases worth Rs. 54,23,539/- through the first mentioned entity and purchases and source of payments for purchases worth Rs. 1,62,34,893/- said to have been made through 2nd mentioned entity remained unexplained.

Learned Assessing Officer further observed that said purchases were found to have been found out of books. Accordingly, the Assessing Officer made 2 additions regarding said unexplained expenditure, while resorting to the provisions of section 69C of I.T. Act.

Assessment order is challenged before Id. CIT(A)

6. Due to the above said assessment order, the assessee felt aggrieved and as such, it filed appeal before Learned CIT(A) thereby challenging the additions made u/s 69C of the Act on the grounds of appeal mentioned in Form 35.

After providing opportunities of being heard to the assessee and going through its submissions, Learned CIT(A) dismissed the appeal filed by the assessee by observing in para 4.3 as under:-

“4.3 I have gone through the grounds of appeal, assessment order and statement of facts submitted by the appellant. It is seen from the investigation report of Directorate General of the Goods & Services tax Intelligence, Jaipur

Zonal unit that a case of issuance of fake invoices without supply of goods was booked against persons namely Shri Sandeep Goyal, Shri Rajesh Arora and Ms. Himani Munjal, who had created firms with fake / stolen Ids, for purpose of passing the Input Tax credit to their clients on commission basis. The investigation conclusively proved that M/s. Shri Prem Industries, the appellant, had availed fraudulent Input tax credit of Rs. 10,31,354/- during F.Y. 2017-18 on the basis of fake invoices issued by M/s. Shiva Agro Sales and M/s. Sweekar Udhog which are the fake firms created and operated by Shri Sandeep Goyal and others. Shri Rakesh Bansal, partner of M/s. Shri Prem Industries, in his statement dated 17.1.2020 recorded under section 70 and 174 of the CGST Act, 2017 admitted that they have availed wrong ITC on the basis of invoices issued by the fake above firms and therefore they have made payment of Rs. 10,31,354/- towards the ineligible Input tax credit availed on the basis of invoices issued by the fake firms created and operated by Shri Sandeep Goyal and others. In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. Hence, the addition is upheld and grounds raised is dismissed.”

Assessee knocks at the door of Appellate Tribunal

7. Feeling dissatisfied with the impugned order passed by Id. CIT(A), the assessee is before this Appellate Tribunal.

As per grounds of appeal, appellant claims that Id. CIT(A) has erred in dismissing the appeal and confirming the additions, while treating the purchases made from the above said two entities, as unexplained, and in resorting to the provisions of section 69C of the Act.

8. Arguments heard. File perused.

9. As is available from the assessment order, specific information was flagged as per Risk Management Strategy formulated by CBDT to the

effect that a case of fake invoices, without supply of goods was booked vide incident report No. 12/GST/2018-19, dated 20.09.2018 against Sh. Sandeep Goyal, Shri Rajesh Arora & MS. Himani Munjal, who had created firms with fake stolen IDs, for the purpose of passing Input Tax Credit (in short "ITC") to their clients, on commission basis.

The above named three persons, in their statements recorded on 20.08.2018 are stated to have accepted the role played by them and the modus operandi adopted for fake invoices under GST laws, to pass illegitimate ITC to different buyers, against commission, and without actual supply of goods.

Incident Report received from GST authorities

10. As per incident report No. 21/GST/2021-22, from Directorate General of GST Intelligences, Jaipur Zonal Unit, during examination of GSTR-I of fake firms and created and operated by above said three persons, certain business consumers were found in the first layer who had availed of fraudulently ITC on the basis of invoices issued by the said three persons/fake firms.

One of said business consumers was found to be the assessee-Ms Shri Prem Industries(GSTIN: 08ABYFS7744J1Z4).

11. Assessee was found to have fraudulently availed of ITC to the tune of Rs. 10,31,354/-, during the Financial Year 2017-18 on the basis of invoices issued by the above named two entities, namely, M/s Sweekar Udyog (GSTIN 08ASJPD3992M1Z6) and M/s Shiv Agro Sales (GSTIN 08BBHPK0251N1Z6) of Shri Ganganagar.

12. Incident report No. 21 further revealed that on 17.01.2020 Sh. Rakesh Bansal, partner of the assessee firm, in his statement recorded by the Assessing Officer u/s 70 & 174 of GST Act, 2017 admitted to have availed of ITC wrongly on the based of invoices issued by the above said fake firms created and operated by Sandeep Goyal, Shri Rajesh Arora & MS. Himani Munjal.

13. Incident report further revealed that Sh. Rakesh Bansal made payment/deposited Rs. 10,31,354/- towards ineligible ITC availed of by the said firm-assessee, on the basis of invoices issued by the above said fake firms created and operated by the above named three persons.

Assessing Officer issues notices to the assessee u/s 148

14. On the of above said specific information received vide incident report 21/GST/2021-22, on 29.03.2022, the Assessing Officer (AO), issued notice

u/s 148 of the Act to the assessee, as regards the Assessment Year 2018-19, after passing an order u/s 148A(D) of the Act.

Said notice was followed by other notices, as per details available in para 2 of the assessment order.

In response, the assessee put forth its submissions on 02.10.2022 and 01.11.2022.

15. It may be mentioned here that the Assessing Officer issued notices u/s 133(6) of the Act to the above said named two entities to have their responses. Said notices were not responded to by the said two entities. Thereupon, the Assessing Officer called upon the assessee to establish genuineness of the purchases in question.

16. In response to the directions issued by the Assessing Officer, assessee put forth its submissions on 07.01.2023, 10.01.2023 & 12.01.2023.

17. For ready reference, synopsis of the reply/submissions dated 12.01.2023 submitted by the assessee, in response to the show cause notice needs to be reproduced, and same reads as under;

“Vide our e-response dt. 04.01.2023 we have requested you to please provide the sanction of competent authority for re-opening of the assessment u/s 147 and to share us all the relevant details and documents related to escapement of income and validity of section 148 notice, and to share all the outcomes of the third parties enquirers made by you, information, details, documents and

evidences available with you and statements of third parties recorded by you so that we can submit our complete reply and submission at one go, but you have not provided us the same so far. Again Vide our e-response dt. 07.01.2023 we have requested you to please provide us the copy of sanction of Ld.PCIT, Jaipur-1 dt. 29/03/2022 for re-opening of the assessment, the exact specific information (which was flagged as per Risk Management Strategy) which has been used for re-opening of the assessment, Copies of the statements of Shri Rakesh Bansal, partner of the assessee firm M/s Prem Industries recorded u/s 70 & 174 of the CGST Act, 2017, which has been used for re-opening of the assessment and Copies of All other relevant material, details, information, documents which has been collected by you for re-opening of the assessment and thereafter till date for the purpose of re[1] assessment which is going on, but you have not provided us the same so far. Again Vide our e-response dt. 10.01.2023 we have requested you to please provide us The copy of sanction of Ld.PCIT, Jaipur-1 dt. 29/03/2022 for re-opening of the assessment, The exact specific information (which was flagged as per Risk Management Strategy) which has been used for re-opening of the assessment, Copies of the statements of Shn Rakesh Bansal, partner of the assessee firm M/s Prem Industries recorded u/s 70 & 174 of the CGST Act, 2017, which has been used for re-opening of the assessment, Copies of All other relevant material, details, information, documents which has been collected by you for re-opening of the assessment and thereafter till date for the purpose of re[1]assessment which is going on, but you have not provided us the same so far. And you have choosen for not to provide the above required information and statements till date due to god known reasons, which is denying opportunity of cross examination to the assessee, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & GST Registration of the sellers & their GST Returns.”

18. With reasons recorded by Assessing Officer, assessment order was framed making 2 additions u/s 69C of I.T.Act, as noticed above.

19. For ready reference, observations/reasons recorded by the Assessing Officer while making additions u/s 69C of the Act and final computation of the taxable income, are reproduced as under:

“4.2 Point-wise rebuttal of reply of the assessed including analysis of any case law relied upon.

4.2.1 As per the copy of ledger account submitted by the assessee M/s.Sweekar Udyog (GSTIN 08ASJPD3992M1Z6) and M/s Shiv Agro Sales (GSTIN 08BBHPK0251N126), these parties had made sale of Rs. 54,23,539/- & Rs.1,62,34,893/-respectively during the A.Y.2018-2019 to the assessee.

The assessee vides submission uploaded on 07.01.2023 & 10.01.2023 sought the certain details. Most of the details were already provided in the form of the order u/s 148A(d) dated 29.03.2023 before issue of notice u/s 148 and during the current proceeding in the form of attachment vide notice dated 142(1).

The assessee sought copy of an approval given by the Ld.PCIT, Jaipur-1 to order u/s 148A(d) of the I. T. Act 1961. It is seen that the approval by the Pr CIT is an online approval vide Reference No. 100000028819969 dated 29/03/2022 mentioned in the order passed u/s 148A(d) of the I. T. Act 1961. Copy of the order u/s 148A(d) of the I T Act 1961 was again provided to the assessee during the course of re-assessment proceedings.

The assessee asked for copy of the statement of Shri Rakesh Bansal recorded by the GST authorities. Since this particular statement is not being used against the assessee for the purpose of drawing final conclusion in the re- assessment proceedings, the question of providing the same does not arise.

The explanation given by the assessee during proceeding of order u/s 148A(d) is duly considered and the contentions of the assessee were dealt with therein.

4.2.2 The assessee vide para 5 of the submission dated 10.01.2022 itself submitted that...*our firm M/s Shri Prem Industries Bharatpur has deposited this amount through credit ledger of excess ITC on 17th January 2020 vide Reference No. Dt801200100653 and debited this amount to M/s Shiva Agro sales sriganganagar. Our firm has debited this amount in M/s. Shiva Agro Sales Sriganganagar.*

Thus the assessee itself admitted that the GST amount is deposited by them as seller has not deposited the same. This fact corroborates the finding of the report of the Directorate General of Goods & Service Tax dated 30.04.2021 F. No. DGGI/INV/GST/1251/2021-Gr/781 that the assessee has availed wrong ITC on the basis of the invoices issued by the fake firm of Shri Sandeep Goyal, Rajesh Arora and Ms. Himani Munjal.

4.2.3 Further, during the course of assessment proceedings, notices u/s 133(5) was issued to both parties to verify the purchase transactions. However, both the parties did not respond to the mail sent. The fact of the non replies of notices issued to the parties was already brought to the notice of the assessee in the show cause. However the assessee chooses to remain silence on this issue.

4.2.4. The assessee relied upon the decision in the case of Odeon Builders P Ltd 418 ITR 315 wherein it was held that the assessee discharged its initial burden by producing various documentation including purchase bills, transport bill, confirmed copy of accounts, details of payment by cheque, VAT registration and ITR of seller and therefore additions cannot be made without providing a copy of the statements and opportunity of cross examination

However, the facts of the present case are entirely different. In this case, the parties from whom goods were claimed to have been purchased were bogus parties and the assessee when confronted by the GST authorities, paid the corresponding GST. Therefore the facts of the present case are entirely different than the case relied upon by the assessee. Moreover, the assessee did not provide either confirmed copy of accounts or ITR of the other parties from whom goods were purported to have been purchased. Moreover, the question of cross examination of the other parties does not arise in this case as the additions are being made not on the basis of statement of either of purported seller parties but on the basis of independent inquires conducted during the course of re-assessment proceedings,

4.2.5 The assessee further relied upon the decision in the case of VAMAN INTERNATIONAL PVT. LTD. (BOM- HC) 422 ITR 520. The facts of this case is entirely different than that of present case as discussed in para 4.2.4.

4.2.6 The assessee further relied upon the decision in the case of Pr. CIT v. Agson Global (P) Ltd. (Del-HC) 441 ITR 550. The facts of this case is also entirely different than that of present case as discussed in para 4.2.4.

4.2.7. Similar is the case with the other decisions relied upon by the assessec.

4.3 Conclusion drawn-

From the above discussion, it is ample clear that the assessee failed to establish genuineness of the transaction of impugned purchases dorije through M/s Sweekar Udyog (GSTIN 08ASJPD3992M176) and M/s Shiv Agro Sales (GSTIN 088BHPK0251N126) Rs.54,23,539/- & Rs.1,62,34,893/-respectively totaling amount to Rs.2,16,58,432/- for the following reasons:-

- When the assessee was confronted by the GST authorities, the assessee paid the corresponding GST.
- Needless to mention, the GST authorities are only concerned with the GST and not with the genuineness of the purchases.
- When notice u/s 133(6) of the IT Act 1961 was issued, both the parties did not respond.
- The documents like invoice copies etc submitted by the assessee cannot be accepted as evidences as the parties issuing such documents did not confirm its genuineness.
- Mere payment by cheque to these parties does not ipso facto prove that these payments were for the purpose of purchases only.
- Copies of GST return provided by the assessee do not establish the genuineness of the purchases especially in view of the fact that the assessee paid the corresponding GST when confronted by the GST authorities.

The assessee submitted that there was a corresponding sale and therefore purchases had to be there. The assessee's contention is acceptable but the fact remains that the genuineness of purchases from the impugned parties could not be established. It only proves that the assessee made the purchases out of books which were regularized by obtaining bills from the impugned parties, Therefore the sources of the payments for purchases which was done out of books, remained unexplained within the meaning of section 69C of the I. T. Act 1961. Hence, the same is added as unexplained expenditure u/s 69C of the 1. T. Act 1961.

Penalty proceeding u/s. 271AAC(1) of the I. T. Act 1961 is initiated.”

Dismissal of appeal by Id. CIT(A)

20. As noticed above, the appeal filed by the assessee challenging the impugned assessment came to be dismissed vide order dated 10.06.2024 and due to the reasons given in para 4.3 of the impugned order. Said reasons have been reproduced in the earlier part of the judgment.

Recording of statement of partner of the assessee firm before GST authorities-non supply of copy thereof & its impact

21. The first contention raised by Learned AR for the appellant is that when the AO reopened the matter on the basis of some information received from the Directorate General of GST, Intelligence, Jaipur Zonal Unit, on receipt of notice, the assessee requested the AO to provide some documents, including copy of statement said to have been made by Shri Rakesh Bansal, partner of the assessee firm- M/s. Shri Prem Industries, recorded u/s 70 & 174 of CGST Act, 2017, but, the AO never supplied the copy of said statement of Shri Rakesh Bansal, and as such the assessment order deserves to be set aside for want of reasonable opportunity to the assessee of being heard.

22. On the other hand, learned DR for the revenue has submitted that GST authorities communicated the information about availing of ITC by the assessee on invoices reportedly issued by fake parties, and thereupon the assessee deposited, by way of reversal, the ITC so wrongly availed of, but the Assessing Officer took into consideration that the assessee had failed to discharge its onus to prove genuineness of the documents relied on by it, and also the genuineness of the purchase transactions. Therefore, the contention is that non supply of copy of statement of the partner of the firm does not adversely affect the case of the Revenue.

Discussion

23. A perusal of the assessment order would reveal that as per Incident Report (No. 12/GST/2018-19 dated 20-09-2018), on 17-01-2022, Shri Rakesh Bansal is stated to made statement u/s 70 & 174 of the GST Act in the capacity of partner of M/s.Prem Industries.

- In para 5 of the Incident Report, (as reproduced at page 3 of the assessment order), it was specifically mentioned that Shri Rakesh Bansal has admitted that they had availed of wrong ITC on the basis of invoices issued by 03 fake firms created and operated by Shri Sandeep Goyal and others, and further that said that firm -the assessee made payment of Rs.10,31,354/- towards ITC availed of by

said firm, even though the assessee was not eligible to claim the said ITC, on the basis of Invoices issued by the above named fake firms,

- In para 4.2.1 of the impugned assessment, the Assessing Officer specified that most of the details, sought for by the assessee in the submission uploaded on 7-10-2023 and 10-01-2023, had already been provided to the assessee in the form of order u/s 148A(b) dated 29-03-2023 and also during the assessment proceedings, by way of annexure to the notice u/s 142(1) of the Act.
- As regards the supply of copy of statement of Shri Rakesh Bansal, recorded by GST Authority, the AO specifically mentioned in para 4.2.1 of the assessment order that said particular statement of Shri Rakesh Bansal was not being used against the assessee for the purpose of drawing final conclusion in the reassessment proceedings.

It is significant to note that at no stage the assessee has come up with the plea that any such statement attributed to its partner was ever retracted by any communication to the GST authorities. Rather, the assessee immediately reversed the ITC availed of.

24. In view of the observations made by the AO, and the above discussion, Learned DR for the Revenue has rightly submitted that non-supply of statement of Shri Rakesh Bansal made before the GST

Authorities, does not come to the aid of the assessee, and it cannot be said that no reasonable opportunity was granted by the Assessing Officer to the assessee before passing the impugned assessment order.

Deposit by way of reversal of ITC availed of by the assessee –Its impact

25. Learned DR for the Revenue submitted that the AO has taken into consideration deposit of a sum of Rs.10,31,354/- by the assessee of ITC availed of by the said assessee on the basis of invoices issued by fake firms created and operated by Shri Sandeep Goyal and others.

The contention raised by Learned DR is that in view of said deposit of excess ITC by the assessee, by way of reversal of the ITC availed of, the AO was justified in concluding that the assessee had availed of wrong ITC on the basis of Invoices issued by fake firms of the above said 03 persons.

26. On the other hand, Learned AR for the appellant has submitted that the assessee in its wisdom deemed it appropriate to deposit the excess ITC claimed by it finding that the suppliers had not deposited tax due, and as such, no adverse inference be drawn against the appellant from the said reversal.

Discussion

27. We have gone through Incident Report No. 21/GST/2021-22 received from Directorate General of GST. Para 5 thereof would reveal that the assessee made payment of Rs.10,31,354/- towards ITC availed of by it- the assessee to which said firm was actually not entitled , the invoices have been issued by the fake firms.

- As is available from the assessment order, the AO relied on para 5 of the submission dated 10-01-2023 put forth by the assessee itself that said firm Ms/s. Prem Industries, Bharatpur had deposited this amount through credit ledger of excess ITC on 17-01-2020 and debited the said amount of M/s. Shiv Agro Sales, Sri Ganganagar.

In view of all this, the AO was justified in observing in para 4.2.2. of the order of assessment that said admission regarding deposit of ITC by the assessee earlier availed of by it, supported the information received against the assessee that it had availed of wrong ITC.

28. In the course of hearing, we put a specific question to Id.CA for the assessee to point out as to what plea, if any, was put forth in writing by the assessee while depositing the said amount of excess ITC on 17-01-2020, to justify the reversal of ITC availed of.

29. Ld. CA has not been able to reply our query.

30. In the absence of any reply to this query, we do not find any merit in the oral submission put forth on behalf of the assessee appellant that the assessee in its wisdom deemed it appropriate to deposit the amount by way of reversal of ITC claimed by it, and that no adverse inference be drawn against the assessee from the said deposit.

No response from two entities namely M/s. Shiv Agro Sales and M/s.Sweekar Udyog-Its impact

31. It is available from the assessment order that after submissions were received from the assessee during the assessment proceedings, notices u/s 133(6) of the I.T. Act were issued by the AO to the above named two entities for the purpose of verification of transactions of purchases from them.

In para 4.2.3 of the assessment order, AO has mentioned that two entities did not respond to the mails sent to them.

Confronted with this observation by us during hearing, Learned AR for the assessee has submitted that since both the said entities were registered under GST Act, their presence could be easily secured to have their response.

The Revenue does not dispute registration of the above said two entities under GST Act.

In the assessment order, Assessing Officer specifically observed that when there was no response from the said two entities as regards notices u/s 133(6) of the Act, this fact was brought to the notice of the assessee in the show cause notice, but the assessee remained silent on this issue.

We have drawn attention of Learned AR for the appellant to the observations made by the AO and questioned as to why the assessee did not take any step to secure presence of officers of said two entities. Learned AR for the appellant has candidly admitted that in the given situation, the assessee should have taken steps to secure presence of officers of said two entities to prove genuineness of the documents relied on by the assessee.

From the said observation made by the AO, it can be gathered that the AO had brought to the notice of the assessee that there was no response to the notices u/s 133(6) of the Act issued to the 2 entities and as such, the assessee could secure presence of concerned officers or the representatives of the said two entities, for the purpose of verification of transaction of purchases, but the assessee opted not to take any step in this direction.

32. We enquired from Learned AR for the appellant as to whether any prayer to take any such step was made before Learned CIT(Appeal) to as

to prove genuineness of the documents relied on by the assessee in proof of purchase transactions in question.

In the course of arguments, Ld.AR for the assessee candidly admits that no prayer was made by the assessee even before Learned CIT(A).

33. Before the AO, on behalf of the assessee, reliance was placed on the decision in the case of **Odeon Builders Pvt Ltd.**, reported in 418ITR 315 to submit that the assessee had discharged its initial burden by producing various documents including the purchase bills, transport bill, confirmed copy of accounts details of payment by cheque, factum of registration of said two entities under VAT, ITR of the sellers. The AO distinguished the said decision cited on behalf of the assessee on the ground that facts of the instant case were distinguishable from the facts of the decided cases. Notably, before this Appellate Tribunal, in the course of hearing Learned AR has not relied on said decision in support of the case of the appellant or to assail the findings recorded by Assessing Officer and Learned CIT(A).

Assessing Officer then reiterated in the assessment order that when the assessee was confronted by the GST Authorities, the assessee deposited the ITC claimed and availed of by it, and that the two entities from whom goods were claimed to have been purchases, were bogus parties.

Assessing Officer observed that the assessee did not provide him confirmed copy of accounts or ITRs of above named two sellers. When the assessee did not lead cogent and convincing evidence to prove the documents relied on by it, the Assessing Officer was justified in observing so.

The AO also did not find any merit in the request for cross examination of the parties by observing that no such question arose as no statement of any of the said sellers was being made basis or being considered for the purposes of framing of the assessment. The AO clarified that reassessment proceedings were being conducted on the basis of independent enquiries.

34. From the material available on record, we find that the Assessing Officer framed assessment mainly on the ground that the assessee had failed to discharge its onus to establish its case as regards the genuineness of the purchase transactions, in having not got proved the documents relied on in support of its claim.

Documents relied on behalf of the appellant to prove purchase transactions

35. On behalf of the appellant, it has been argued that the documents submitted by the assessee before the authorities below established that the subject purchase transactions were actually made, against payments made

through banking channel, and as such the assessee firm was able to discharge its onus.

In this regard, reference has been made to extract of books of accounts (page 6 to 34 of the Paper Book); and copies of ledger accounts signed by the suppliers (page 36, 55 to 57 of PB); copies of receipts (page 58 to 112) issued by Krishi Upaj Mandi delivered by suppliers; copy of bank statement (page 113 to 121) indicating payment of cheque; copies of relevant pages from the stock register and production register (page 122 to 175 of PB); copies of GSTR-2A (page 176 to 182) furnished by the assessee-appellant said purchases were reflected; and copies of GSTR-1 (page 183 to 192 of PB) filed by the suppliers.

In support of his contention, learned AR for the appellant has relied on decision in **PCIT v. Tejua Rohitkumar Kapadia**, (2018) 256 Taxmann 213 whereby Hon'ble Apex Court upheld the decision in PCIT v. Tejua RohitKumar Kapadia, Tax Appeal No.691 of 2017, decided on 18.9.2017 by Hon'ble High Court of Gujarat at Ahmedabad.

Reliance has also been placed on decision in **CIT v. Nangalia Fabrics (P) Ltd.**, (2014) 220 Taxmann 17 (Guj)(HC)

Reliance has also been placed on decision in **CIT v. Century Plyboards India Ltd.**, (2019) 262 Taxmann 13(SC) . But, it is significant to note that Full Text of the judgment has not been provided. In the written submissions, only extract of the judgment has been made available. Therefore, no reliance can be placed on said decision.

36. Learned AR has also contended that mustard seed purchased from the entities was used for production of finished goods i.e. mustard oil/cake and sale of finished goods, and further that the department having accepted the sales, there is no question of doubting the purchases.

37. Learned DR for the Revenue has referred to the provisions of section 69C of IT Act and submitted that this is a case where it has not been established by the assessee in the assessment proceedings that the goods said to have been sold by the two entities were actually in their stock, and further that when the assessee failed to establish before the authorities below genuineness of the documents produced there, it has been rightly concluded that it was a case of fake invoices and fake purchase transactions by the two entities shown to have been made to the assessee. The contention is that in the given circumstances, when the alleged sellers did not participate in the proceedings before the Assessing Officer and none of them was produced there by the assessee, the documents relied

on behalf of the assessee have been rightly rejected by the authorities below.

Discussion

38. In **Tejua Rohitkumar Kapadia's case** (supra), the Assessing Officer had disallowed purchase expenditure making the additions treating the purchases as bogus.

Learned CIT(A) allowed the appeal inter-alia on the ground that all payments were made by the assessee by Account Payee Cheque; that the assessee was in fact a trader; that all purchases made from M/s Raj Impex were found to have been sold and sales were also accepted by the Assessing Officer.

When the Revenue carried the matter in appeal, Tribunal dismissed the same by observing that there was no dispute that the purchases made from M/s Raj Impex were duly supported by bills and all the payments were made by account payee cheques; that there was also no dispute that M/s Raj Impex had confirmed all the transactions; that there was no evidence to draw the conclusion that the entire purchase consideration, which the assessee had paid to M/s Raj Impex had come back to the assessee in cash; that no adverse inference had been drawn as the sales made by the assessee; that the entire purchases made by the assessee from M/s Raj

Impex had been accounted by Raj Impex and they had paid the taxes accordingly.

With the above observations, the Tribunal did not find any error or infirmity in the findings of the First Appellate Authority.

However, the case at hand is distinguishable on facts. Here,

- (i) there is no confirmation of the subject transactions by the two sellers-entities.
- (ii) On issuance of notices under section 133(6) of IT Act, none of the two entities-sellers respond thereto.
- (iii) When the two entities did not respond to the notices, and this fact was brought to the notice of the assessee, it did not take any step to secure presence of officers or concerned officials of the said two entities, before the Assessing Officer with the requisite record.
- (iv) When officers or concerned officials of said two entities were not produced before the Assessing Officer, the documents relied on by the assessee in the Paper Book, as detailed above, were not established, and the Assessing Officer rightly opined that same could not be accepted as evidences when their genuineness was not confirmed by the two entities.
- (v) Admittedly, no tax was paid by the two sellers- entities.

(vi) No cogent and convincing material evidence was produced in proof of the stock of the 2 entities, to support the claim of the assessee regarding purchase transactions.

(vii) No transporter or any officer from their office was produced or examined by the assessee before the Assessing Officer to prove claim regarding actual transportation of the goods.

(viii) The assessee firstly availed of ITC on the basis of invoices issued by the two entities, but, during investigation conducted by the Officers of GST Intelligence Jaipur Zonal Unit, Shri Rakesh Bansal, partner of the assessee, made payment of Rs.10,31,354/-by way of reversal of the ITC availed of.

There is no explanation from the side of the assessee as to why, on being confronted by GST authorities, the assessee deposited the abovesaid amount by way of reversal of the ITC availed of. Rather, deposit of the said amount by way of reversal of ITC speaks volumes against the assessee.

In the given situation, mere payments by cheques towards the subject transactions of purchase and the copies of GST return provided by the assessee did not establish genuineness of the subject transactions of purchases and as such do not come to the aid of the assessee.

In the other decision titled as **PCIT v. Nanglia Fabrics** (supra), the Appellate Tribunal had satisfied itself about the genuineness of purchases. Therein, the assessee had not deposited with GST authorities any amount by way of reversal of ITC availed of on account of subject purchase transactions. Therefore, said case is also distinguishable on facts and does not come to the aid of the assessee.

Is it a case where gross profit rate be applied and disallowance be made accordingly?

39. Last of all, in the alternative, learned AR has submitted that GP rate of the assessee for the year under consideration is better than the GP of the previous 2 years. The contention is that as per settled law, where purchases are treated as non-verifiable, the gross profit rate is to be applied and disallowance is to be made to the extent of shortfall in the gross profit rate, and further that the addition can be made as regards the profit element embedded in the purchase transactions .

In support of this contention, reliance has been placed on decisions in **JMD Corporation of India Ltd. V. ITO**, (2023) 69 CCH 0202 (Mum)(Tribunal); and **CIT v. Simit P. Sheth**, (2013) 84 CCH 0339 (Guj)(HC); and **Motiwala Jewellers Pvt. Ltd., v. ITO-12, Mumbai**, 2023 ITL 5817.

On this contention, in the written submissions, extract of certain portions of other decisions have been reproduced, but Full text of the decisions has not been provided. Therefore, no reliance can be placed on such portions extracted in the written submissions.

40. On the other hand, learned DR for the Revenue submitted that GST authorities have unearthed various suchlike cases of massive tax evasion where ITC was availed of on fake GST invoices, and that this being one of the cases investigated by GST authorities, the impugned assessment and impugned order deserve to be upheld. For the same reason, learned DR has opposed the contention raised on behalf of the appellant in the alternative that gross profit rate be applied and disallowance be made to the extent of shortfall in the gross profit rate.

Discussion

41. In **JMD Corporation of India Ltd.'s** case (supra), Co-ordinate Bench of ITAT, at Mumbai observed that the Assessing Officer had not doubted the corresponding sales made by the assessee. It was further observed that if such purchases are treated as non-genuine then the corresponding sales should also be considered as non-genuine and that therefore, we consider that in such types of transaction only the profit margin embedded in such transaction could be taxed.

It was further observed that in such type of cases, the assessee procures the material from the grey market by paying costs and as the bills are not available for such transaction, obtains bills from third party, who after receipt of cheque from the assessee making him available the cash after deducting its commission.

Ultimately, it was held that sales having not been doubted, it was proved that assessee was actually in possession of goods and that the assessee had been benefitted by receiving margin of grey market.

Having regard to the gross profit for the FY 2009-10 and 2011-12, Learned Tribunal considered that the addition to the extent of profit element embedded in the amount of purchases made from said party was to be added, and accordingly, restricted the disallowance in the case of the assessee therein to the extent of 4% of the subject purchases made by the assessee from the said party, and partly allowed the appeal.

42. In **Motiwala Jewellers Pvt. Ltd., v. ITO-12**, Mumbai, while dealing with case of bogus purchases, profit embedded in the transaction only needed to be brought to tax particularly when the tax authorities had itself offered gross profit of 3.95% for the year under consideration and 17.59% in the Assessment Year 2014-15. Accordingly, it was observed that only

profit element of gross profit @ 2% of the purchases from the seller was just and reasonable.

43. In **Simit P. Sheth's case** (supra), Hon'ble High Court of Gujarat, while dealing with the allegation of bogus sales, observed that the Commissioner had adopted ratio of 30% of total sales, but the Tribunal had scaled down to 12.5%. The possible profit out of purchases made through non-genuine parties, as per estimation of the Tribunal, was upheld by observing that no question of law in said estimation arose.

44. In the written submissions handed over to us at the time of final hearing, comparative chart of profitability results of the assessee firm and two other firms has been furnished. Learned AR for the Appellant has also provided copies of audited financial results- Forms No.3CD of each of the abovesaid two comparables.

45. The contention is that in the given situation comparing the profitability results of the two comparables which are identical industries, the profitability results of the appellant firm be accepted.

46. Significant to note that no such contention was raised on behalf of the assessee before the Assessing Officer or before Learned CIT(A).

47. As per case of the appellant, said firm is engaged in business of manufacturing and trading of oil and oil cake.

As regards comparability, admittedly, these documents were not made available to the Assessing Officer or before CIT(A). Same have been submitted before this Appellate Tribunal for the first time. No permission has been sought by the appellant to place on record said documents on the point of determination of liability of the assessee having regard to the Gross Profit aspect. In this situation, we are not inclined to rely on said documents for being considered on this aspect.

48. This very issue came up for discussion in the case of **Vijay Proteins Ltd. v. Commissioner of Income-tax [2015] 58 taxmann.com 44 (Gujarat)**(09-12-2014] IT REFERENCE NO. 139 OF 1996, TAX APPEAL NO. 243 OF 2002, wherein assessee was found to have inflated expenditure by showing higher purchase price through fictitious invoices in the names of 33 fictitious parties.

Therein, Hon'ble High Court upheld that Tribunal was justified in disallowing 25 per cent of purchase price. Relevant portion of the decision reads as under:-

"9. Mr. SN Soparkar learned Senior Counsel appearing for the assessee submitted that the Tribunal has seriously erred in passing the impugned judgment. He submitted that in a similar case in CIT v. Gujarat Ambuja Export Ltd. [2014] 43 taxmann.com 244/224 Taxman 34 (Guj.), this Court reduced the addition to 5% of the amount in question. In that case, the purchases were found to be genuine, however, the CIT(A) taxed 25% of the amount relying on another decision of Madras Court in the case of Sanjay Oilcake Industries v. CIT [2009] 316 ITR 274, which was reduced by the Tribunal to 5% of the amount. He, therefore, submitted that the Tribunal has committed serious error in confirming the addition at 25% of the amount

9.1 Mr. Soparkar has placed reliance upon a decision of this Court passed in Tax Appeal No.616/2005 & allied matter disposed of on 05.11.2014. Paras-4 & 5 of the said decision read as under;

"4. Heard the learned advocates appearing for the respective parties and considered the submissions. Mr. Patel learned advocate appearing for appellant Revenue in Tax Appeal No. 627/2005 has tried to distinguish the judgment on facts and argued for enhancement of disallowance on account of bogus purchase. In our view, in fact, the Tribunal has rightly assessed the disallowance at the rate of 15%. The Tribunal has observed as under in paragraph-5: The Id. AR submitted that 25% disallowance taken in the said decision of the Tribunal is excessive looking to the nature and business activities of the assessee. The assessee is dealing in iran and steel wherein sales tax rate is 4 paise in one rupee. He further submitted that the other taxes including excise duty etc. are also less than the commodities of the said decision. After considering the totality of the case, we find that it is an admitted fact that the purchase were bogus and for this purpose, we confirm the order of AO but for the purpose of calculating amount of disallowance, we follow the decision of the Tribunal in the case of Vijay Proteins (supra) and after considering the submissions of the Id. AR and after considering the submission of the Id. AR and after considering the nature of business of the assessee and other circumstances, we find it reasonable and fair to both the parties if 15% disallowance of bogus purchases of Rs. 16,04,032/- is made. Accordingly, an addition of Rs. 2,40,605/- is confirmed out of the addition of Rs. 13,63,427/-15 deleted in the light of above discussion, we modify the orders of authorities below accordingly. The first common ground of both the appeals is disposed of accordingly.

5. The decision of this Court in the case of Sanjay Oil Cake Industries v. Commissioner of Income Tax, reported in (2009) 316 ITR 274 will govern the issue involved in the present appeals."

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11. Mr. Pranav Desai learned Standing Counsel appearing for the Revenue supported the impugned judgment of the Tribunal and submitted that the Tribunal has passed the judgment by relying upon its own judgment rendered in the case of Hynoup Food and Oil India (P.) Ltd. v. CIT. However, the said judgment of the Tribunal was challenged in appeal before this Court and vide judgment **CIT v. Hynoup food & Oil India (P.) Ltd.** [2007] 290 ITR 702/[2006] 150 Taxman 194, it was held that once the business was not reflected in the regular books, payment by crossed cheque or draft would not have been practicable considering the nature of that transaction to be fallacious, when one considered the object with which the provision had been brought on the statute book. He

has taken us through the reasonings of all the authorities and submitted that the Tribunal has not committed any error while passing the impugned judgment.

12. We have heard learned counsel for both the sides. Having appreciated the material on record, **the Tribunal recorded a finding that the transactions in respect of oil cakes shown as purchases by the assessee from 33 parties were not genuine transactions and that all those 33 parties were bogus parties. The Sale Invoices claimed to have been issued by them were also found to be fictitious and the bank account in the name of M / s Pooja Traders was found to have been opened and operated mainly with a view to accommodate these fictitious transactions carried out by the assessee in respect of oil cakes shown as purchases from such bogus suppliers. The above findings were recorded on the basis of the material on record of the Tribunal.**

13. The question which then arises for consideration is as to whether the entire amount of the said bogus purchases and freight payments made in relation thereto should have been disallowed or the assessee should have been held to be eligible for grant of deduction of a reasonable amount of purchase price of the oil cakes in question in view of the fact that receipts of the materials in question by the assessee were supported by various registers and books of account maintained by the assessee, which the Revenue has not disputed. The Revenue has also not disputed the genuineness of said documents.

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16. **It is a matter of fact that the goods were not received from the parties from whom it is shown to have been purchased but, such material was received from a different source which is exclusively within the knowledge of the assessee and none else. Therefore, it is evident that the assessee had inflated the expenditure in question by showing higher amount of purchase price through the fictitious invoices in the names of 33 bogus suppliers. Considering the overall factual scenario, the Tribunal was justified in disallowing 25% of the purchase price".**

49. Herein, as discussed above, the appellant failed to discharge its onus to prove genuineness of the subject purchase transactions, and rather the goods were received from the parties from whom same are shown to have been purchased. Furthermore, the assessee, on being confronted by GST authorities with the allegations levelled on the basis of information received,

deposited by way of reversal, the ITC availed of on the basis of the invoices portrayed to have been issued by the abovesaid 2 entities. This goes to show that as a matter of fact, the goods were not received from the said 2 entities, but, were received from different source, exclusively to the knowledge of the assessee. Ld. CIT(A) upheld the reasons recorded by the Assessing Officer.

50. In the given facts and circumstances, having regard to the sale of the goods, which was not doubted by the authorities below, it is evident that the assessee inflated the expenditure in question by showing higher amount of purchase price through fictitious invoices in the names of the 2 entities-bogus suppliers. As per settled law no sale of goods can take place without purchase, and in a case an assessee is found to have indulged into bogus purchases, a percentage of the bogus purchases can be added to arrive at the net income of the assessee-appellant.

In view of the above discussion and also taking into consideration aspect of inflation of purchases and saving of taxes, duties, compliance costs etc. by both buyer and seller etc., when we have not taken on record the documents sought to be produced for the first time in the course of hearing, for being considered on the aspect of percentage of bogus purchases of goods and/or

Gross profit, in the interest of justice, we find it to be a fit case where matter needs to be remanded to the Assessing Officer for the purposes of recalculations in view of the findings recorded above and having regard to the well settled law on the point of percentage of bogus purchases and/or Gross Profits of course, after providing opportunity to the assessee-appellant to produce there all the relevant and admissible material, in accordance with law.

Result

51. As a result, the appeal is disposed of, and the matter is remanded to the Assessing Officer for the purposes of recalculations in view of the findings recorded above and having regard to the well settled law on the point percentage of bogus purchases and/or Gross Profit of course, after providing opportunity to the assessee-appellant to produce there all the relevant and admissible material, in accordance with law, so as to enable the Assessing Officer to give effect to the decision.

Order pronounced in the open court on 29/11/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated: -29/11/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Prem Industries, Bharatpur
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Bharatpur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 877/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar