

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 4758/Mum/2024  
Assessment Year : 2021-22

Dinesh M. Semrani, A/501, Harsh Kushal Co-Op. Hsg, Ashokvan, Dahisar East, Mumbai. PAN : AMWPS3986R	vs.	Income Tax Officer, Ward-42(1)(2), Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri M.S. Mathuria
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing :	12-12-2024
Date of Pronouncement :	12-12-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dated 01-08-2024 passed by the Ld.CIT(A)-NFAC, Delhi, confirming the disallowance of purchases of Rs.32.19 crores u/s 69C of the Income Tax Act, 1961 (‘the Act’) and it relates to the Assessment Year (AY.) 2021-22.

2. The assessee is a proprietor of M/s Jainam Bullion trading in gold and silver bullion/bar on wholesale and retail basis. During the course of scrutiny proceedings, the AO noticed that the assessee has purchased bullion from the following parties:-

Yoro Bullion P Ltd	-	30,08,59,425
Abhay Ravindra Yadav	-	66,24,300
		-----
Total	-	30,74,83,725
		=====

According to the AO, the above said two parties were identified as non-filers under the GST Act. Hence, he issued notices u/s 133(6) of the Act to both the above said persons, but they did not reply to them. Accordingly, the AO took the view that the above said two parties were not traceable. Accordingly, he issued show cause notice to the assessee seeking explanations.

3. In response to the show cause notice, the assessee submitted that the actual amount of purchases made from the above said two parties was Rs.31,51,16,378/- and Rs.68,23,030/- aggregating to Rs.32,19,39,408/-. The assessee also furnished the details of ROC registration, PAN, TAN and GST number of M/s Yoro Bullion P. Ltd. He also submitted that the above said supplier has duly uploaded monthly GST returns. It was submitted that the above said company has collected TCS from the purchases made by the assessee. With regard to Shri Abhay Ravindra Yadav, the assessee furnished PAN, GST number and also submitted that this supplier has also uploaded monthly GST returns. The assessee also furnished copies of purchase bills, screen shot of profile of GST site for both the parties.

4. However, the AO was not convinced with the reply given by the assessee. The AO noticed that the return of income was selected for scrutiny for the reason that the assessee has purchased gold from high risk billers. The AO deputed people to physically verify the address and it was reported that both the parties were not available in the given addresses. Accordingly, the AO held that the purchases made by the assessee from above mentioned two parties are bogus in nature. The AO also taken support of the decision rendered by Hon'ble Supreme

Court in the case of M/s N K Proteins Ltd vs. CIT (SLP(c) No.769 of 2017), wherein the Hon'ble Apex Court had upheld the decision of Hon'ble Gujarat High Court in confirming the disallowance of 100% of the value of bogus purchases. Accordingly, the AO disallowed entire amount of purchases made from above said two parties as bogus in nature and accordingly disallowed the purchases amount of Rs.32,19,39,408/- u/s 69C of the Act. We notice that the AO has invoked section 69 while computing total income in respect of above said addition.

5. Before the Ld.CIT(A), the assessee explained that both the above suppliers have filed GST returns and hence the AO was not right in observing that they are non-filers of returns under GST Act. He submitted that the purchases are duly reflected in Form 26AS. M/s Yoro Bullion P. Ltd has collected TCS on the purchases made by the assessee. Accordingly, it was contended that the AO was not right in making this addition.

6. The Ld.CIT(A) held that the AO was not right in invoking the provisions of sec. 69C for making this addition, since the source of expenditure is proved by the assessee. He also held that the AO could not doubt the purchases and he has accepted the corresponding sales. Accordingly, he expressed the view that the profit element alone could be assessed to tax, since it is possible that the assessee has taken bill from one party and goods from other party. For all these propositions, the Ld.CIT(A) referred to certain decisions rendered by the Hon'ble High Courts and Tribunals. Having observed so, the Ld.CIT(A), however, proceeded to dismiss the grounds of the assessee. Hence, the assessee has filed this appeal.

7. The Ld.AR reiterated the contentions raised before the tax authorities. He also brought to our attention the copies of GST returns

filed by both the above said suppliers. He further submitted that the suppliers had come to Mumbai during Covid period and they have shifted back to their regular address thereafter. He further submitted that the goods have been sold by the assessee and they could not have been sold without making purchases. Hence, there is no reason to doubt the genuineness of purchases. He submitted that the payments for purchases are supported by the bank transactions and further, the suppliers have collected TCS also. Accordingly, the Ld.AR contended that there is no reason to doubt the genuineness of purchases only for the reason that the suppliers are high risk billers. The Ld.AR submitted that the gross profit of the assessee in this trade is very meagre in the range of 0.10% only. He submitted that the decision rendered by the Hon'ble Bombay High Court in the case of Mohamed Haji Qadam has held that the difference between the regular profit margin and the margin on alleged bogus purchases should be added. He submitted that no addition would be warranted, if the above said decision of the Hon'ble Bombay High Court is followed.

8. The Ld.DR, on the contrary, supported the order passed by the AO. She submitted that the suppliers could not be located at their given address. They have not filed GST returns. She submitted that they have been identified as high risk billers. The assessee could not disprove the findings of the department.

9. We heard the parties and perused the record. We notice that the AO has made enquiries with regard to two suppliers only for the reason that they were categorised as high risk billers. According to AO, both these suppliers are non-filers of GST returns. Further, both of them were not available in the given addresses. Accordingly, the AO has taken the view the purchases made from both these persons are bogus in nature.

10. However, the contention of the assessee is that the assessee actually purchased goods by making payments through bank channels. Further, the purchases are supported by bills and stock register. They have been sold. Accordingly, it was contended that the categorisation of the suppliers as “high risk billers” will not be relevant. It is further submitted that both these parties have filed the GST returns and the Ld.AR invited our attention to certain reports placed in the paper book. He also invited our attention to the search result based upon GST number for both the suppliers. Accordingly, he contended that there is no reason to suspect the purchases made from these two suppliers.

11. We perused the reports referred to by the Ld.AR. From the said reports, we notice that the registration of Shri Abhay Ravindra Yadav under GST has been suo moto cancelled effective from 01-09-2020. Similarly the registration of Yoro Bullion P. Ltd has been suo moto cancelled effective from 26-03-2020. However, we notice that both these parties have uploaded GST returns thereafter also, which we are unable to understand. The Ld.AR also appears to be not ready with answer on this point. Thus, the details furnished by the assessee are contradictory to each other. We find merit in all other contentions except the contradiction noticed by us. However, when the assessee has reconciled the purchases and sales, then the AO was not right in disallowing entire value of purchases, mainly for the reason that the goods could not have been sold without making purchases. However, it is not clear as to whether the AO has examined the stock details.

12. However, as observed by the Ld.CIT(A), there is a possibility that the goods might have been sourced from a person and bills might have been sourced from some other person. In that case, the profit element, if any, should have been added. We noticed earlier that the AO had taken support of the decision rendered by Hon’ble Supreme Court in the case of N K Proteins (supra). In our view, the said decision was

rendered in the peculiar facts prevailing therein and it cannot be taken support of in the present case.

13. We noticed that the Ld.CIT(A), after observing the correct propositions discussed above, has proceeded to confirm entire disallowance of purchases. We notice that the AO has also not properly examined the documents furnished by the assessee. The contradictions noticed by us also require clarification. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO in the light of principles discussed above. Accordingly, we set aside the order passed by the Ld.CIT(A) restore the same to the file of the AO with the direction to examine this issue afresh in the light of principles discussed above. We also direct the assessee to fully co-operate with the AO by offering all information and explanations that may be called for by the AO.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 12-12-2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Mumbai,  
Date: 12-12-2024

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

TNMM

Copy to :

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

By Order

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