

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.446/Bang/2024
Assessment Years: 2018-19

M/s A.M Enterprises, No.7, S. No.52/1, A.I, 11 th Cross, Thigalarapalya, Balaji Nagar, Peenya 2 nd Stage, Bengaluru – 560 058 PAN – ABAFA 1457 G	Vs.	The Income Tax Officer, Ward – 6(2)(1), Bengaluru. The NFAC, New Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Aprameya K, Advocate
Revenue by	:	Shri N Senthil Kumar, CIT

Date of hearing	:	10.12.2024
Date of Pronouncement	:	16.12.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order passed by the NFAC, Delhi, dated 26.12.2023, vide DIN No. ITBA/NFAC/S/250/2023-24/1059073963(1) for the assessment year 2018-19.

2. The only issue raised by the assessee is that the learned CIT(A) erred in disallowing the purchases from two parties in their entirety on

the ground that the suppliers were engaged in providing bogus/ fake bills.

3. The necessary facts are that the assessee, in the present case, is a partnership firm and among other parties showed purchases from the parties, namely, M/s Ratan Enterprises and Royal Enterprises, amounting to Rs. 7,59,48,920/- and Rs. 76,78,500/- respectively, aggregating to Rs. 8,36,27,420/- only.

4. The AO, based on the information, found that both suppliers were subject to proceedings and were found guilty of economic offenses punishable under the relevant CGST Act, 2017, and KGST Act, 2017. Accordingly, the AO proposed to treat the impugned purchases from these parties as bogus in nature.

5. The assessee, in support of its purchases, filed copies of the bank statements, purchase register, sample copies of purchase bills, e-way bills, and ledgers of the suppliers. However, the AO disregarded the submissions of the assessee, observing that both suppliers were engaged in issuing fake/ bogus tax invoices without supplying goods/services to the assessee. This was also evident from the findings of the Department of Commercial Tax, Karnataka Government. Thus, the AO treated the purchase of Rs. 8,36,27,420/- as bogus and added it to the total income of the assessee.

6. Aggrieved, the assessee preferred an appeal to the learned CIT(A). The assessee reiterated the submissions made during the assessment proceedings before the CIT(A). However, the learned CIT(A)

upheld the order of the AO, further observing that no evidence was submitted by the assessee demonstrating that the so-called goods were subsequently sold or retained in closing stock.

7. Being aggrieved by the order of the learned CIT(A), the assessee is now in appeal before us.

8. The learned AR before us filed a paper book running from pages 1 to 124, contending that all the impugned purchases were supported by purchase invoices, e-way bills, and subsequent payments were made through banking channels as per the details enclosed in the paper book. In addition to the above, the learned AR further submitted documents demonstrating that due taxes on the purchases from M/s Ratan Enterprises were paid, which is evident from the order of the Department of Commercial Taxes dated 17-03-2022 placed on pages 1 to 4 of the additional paper book compilation. The AR also filed proof of payment of GST in respect of M/s Ratan Enterprises, placed on pages 5-6 of the additional paper book compilation.

9. Regarding the payment of GST by Royal Enterprises, the learned AR orally submitted that the due payment of GST had already been made. Based on these additional documents and oral submissions, the learned AR contended that the impugned purchases could not be disallowed.

10. On the other hand, the learned DR submitted that both the suppliers in question were engaged in issuing fake invoices and, therefore, the same could not be allowed as deductions.

11. The learned DR also argued that no evidence was filed by the assessee about the payment of GST in respect of the supplier, namely, M/s Royal Enterprises. The learned DR vehemently supported the orders of the authorities below.

12. The learned AR, in his rejoinder, submitted that the assessee, by furnishing the necessary details about the purchases, had discharged its onus, and therefore, no adverse inference could be drawn against the assessee.

13. The learned AR alternatively contended that even if M/s Royal Enterprises had not made the payment of due taxes, the purchases in their entirety could not be disallowed. The AR reasoned that against such purchases, the assessee had shown sales, and disallowing the purchases would amount to double addition. He further argued that sales could not be effected without purchases, and if purchases were disbelieved, the corresponding sales should also be disbelieved, granting the benefit of the same to the assessee.

14. We have carefully considered the submissions made by both parties and perused the relevant materials on record. From the preceding discussion, we note that the revenue alleged that the assessee made purchases from M/s Royal Enterprises and M/s Ratan Enterprises, which were engaged in issuing bogus bills. Regarding the purchases from M/s Ratan Enterprises, we find that the assessee, by filing additional evidence, has demonstrated that the GST on the purchases was duly paid. Therefore, these purchases cannot be treated as bogus. Since, the document, delayed payment of GST, constitutes

additional evidence which is crucial to deciding the issue, we exercise our power conferred under Rule 29 of the ITAT Rules and admit the same for advancing the substantial justice to the parties concerned. However, as the impugned documents have not been verified by the AO, we set aside the issue of purchases from M/s Ratan Enterprises to the AO for fresh adjudication in light of the additional evidence submitted by the assessee and as per the provisions of law.

14.1 Regarding the purchases from M/s Royal Enterprises, there is no record suggesting that GST payments were made, except for the oral statement of the learned AR. Nevertheless, this aspect can be verified by the AO. In the interest of justice, we grant one more opportunity to the assessee to file the necessary evidence justifying the payment of GST. The AO is also empowered to gather the necessary information under section 133(6) of the Act regarding the GST payment by M/s Royal Enterprise.

14.2 Without prejudice to the above, even if M/s Royal Enterprises has not paid the due GST, we are of the view that 100% of purchases from Royal Enterprises cannot be disbelieved. However, the assessee must establish that the purchases were either sold in the year under consideration or retained as stock and subsequently sold in later years. If the assessee correlates the purchases with subsequent sales, such alleged bogus purchases cannot be added in entirety, otherwise, this would lead to double addition, which is unjustifiable. However, the AO can make an addition based on the impugned purchases to protect the revenue's interests, as the assessee might have made purchases from the grey market without bills. If such unaccounted purchases are

brought into the books, the assessee might have obtained bogus bills from M/s Royal Enterprises. Generally, in grey market rates are lower than those in the organized market. The AO should consider the gross profit declared by the assessee when making any additions. Thus, the ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in court on the 16th day of December, 2024.

Sd/-

(PRAKASH CHAND YADAV)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 16th December, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore