

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,  
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITANo.3802/MUM/2024  
(A.Y. 2018-19)**

DCIT Central Circle-1(1), Mumbai, 905, 9 <sup>th</sup> Floor, Pratishtha Bhavan, M.K. Road, Mumbai, Maharashtra – 400 020	v/s. बनाम	<b>Edelweiss Tokio Life Insurance Company Ltd.,</b> 6 <sup>th</sup> Floor, Tower 3, Wing B, Kohinoor City Mall, Kirool Road, Kurla (West), Kurla S.O, Mumbai 400070, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACCE2709H</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Ajay Singh and Shri A. Pawar ARs
Respondent by :	Shri Hemanshu Joshi (Sr. DR)

Date of Hearing	28.11.2024
Date of Pronouncement	23.12.2024

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal emanating from the appellate order dated 30.05.2024 is filed by the Revenue against the order passed by the Learned Commissioner of Income-tax (Appeals)[hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 24.03.2023 as passed by the Deputy Commissioner of Income Tax, Central Circle 1(1), Mumbai for the Assessment Year [A.Y.] 2018-19.



2. The grounds of appeal are as under:

- i. *“Whether on facts and circumstances of the case, and on law, the Ld. CIT(A), is correct in deleting the addition made by the Assessing Officer, on account of bogus purchases made from M/s. One Point One Solution Ltd., without appreciating the fact that M/s. One Point One Solution Ltd. has been found by the GST authorities to be a bogus entity issuing accommodation bills to generate fake Input Tax Credit?”*
- ii. *“Whether on facts and circumstances of the case, and on law, the Ld.CIT(A) was justified in deleting the addition made by the Assessing Officer, on the ground that the AO did not make any investigation and merely completed the assessment on suspicion without appreciating the fact that conclusive evidence had been found by the GST authorities that M/s. One Point One Solution Ltd. is a bogus entity issuing accommodation bills?”*
- iii. *“Whether on facts and circumstances of the case, and on law, the Ld.CIT(A) was justified in deleting addition made by the Assessing Officer, on the ground that the assessee was not afforded enough opportunities to submit documents in its support, without appreciating that the assessee was provided with the reasons of reopening and hence was aware of the issue since the beginning of the assessment proceedings and yet it failed to submit the requisite documents when it was afforded opportunities of being heard during the assessment proceedings?”*

3. Brief facts of the case are that during the year under consideration, it was noticed by the ld.AO that the assessee had made transaction of Rs. 1,02,23,236/- with one M/s One Point One Solutions Pvt. Ltd (henceforth ‘OPOS’). The assessee has availed certain service from it. In this case, an information was received from CGST Belapur that M/s OPOS was engaged in issuing/generating/providing fake/bogus invoices for passing of fraudulent input tax credit without supply of goods. In the course of assessment proceedings, the assessee was asked to detail of services



received from OPOS. In response it submitted copy of ledger account, details of services taken and copy of financials of OPOS. As per details available with the AO, OPOS had been availing fake input tax credit without any supply of services. In the submission filed, the assessee submitted that the transactions with OPOS were in the ordinary course of business. The services utilized from it were genuine and had rightly been claimed as business expenditure. However, the AO rejected the contentions of the assessee on the ground that during the Investigation by the CGST, Belapur, it was observed that the company OPOS has availed Ineligible Input Tax credit on the invoices raised by certain suppliers M/s Cannon Ball Treading Pvt Ltd and M/s Wiggins Coretech Equipment Pvt Ltd, which were fake companies formed by Mr Yogesh Jagiwala and Mr. Nilesh Jagiwala, both arrested in the case of issue of fake invoice. Investigation further revealed that the director of the company Shri Akshay Chhabra was in knowhow of this fraud. The CFO of the company M/s OPOS, Mr. Sunil Kumar also aided the fraud and both were arrested by CGST. Thus, Hence, OPOS, was availing input tax credit without actually providing any service. Therefore, the transaction of the assessee with OPOS could not be held as genuine and the expense claimed by the assessee for Rs. 1,02,23,236/- were disallowed and added to the total income of the assessee.



4. In the subsequent appeal before the Id.CIT(A), the assessee repeated the same contentions and also claimed that the disallowance was made without affording cross examination of the parties concerned. It was submitted that the assessee is a licensed Life Insurance Company registered in India, offering various Life Insurance Products/Policies. During appellate proceedings, it furnished certain documents related to services received from M/s. OPOS i.e. copies of ledger, invoices, GSTR2A downloaded from GST portal, copy of bank statement, copy of Master Service Agreement dated 18.09.2017 entered with M/s. OPOS, Statement of Income, Balances Sheet, Profit and Loss A/c. and Tax Audit Report. All the above documents were claimed to have been also submitted during the assessment proceedings before the AO, however, he has not accepted the same. The Ld. CIT(A) observed that the AO has made the addition as per information of Investigation Wing that M/s OPS is involved in availing fake input tax credits without any supply of service. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the appellant has brought on record the details of supporting documents i.e. details of purchases made/services received, ledger account, payments made by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the appellant and also from the bank of the



suppliers to verify. No such exercise has been done. The AO also did not cross examine the supplier. Further, no adverse comment and no defect had been pointed out regarding the quantitative details and purchase-sales details provided by the appellant. The sales figure had not been disturbed. The A.O. completely disregarded these evidences and resorted to disallowances of expenditure. It was noted by the Id.CIT(A) that appellant during assessment proceedings as well as appellate proceedings submitted the linked documents in relation to services rendered from M/s. OPSO documents proved that the appellant has availed of genuine services from the said vendor. It is further stated that appellant's objection was that the AO has not granted an opportunity for cross examination of concerned persons of OPS. Ltd. In this regard, he stated that similar issue was covered by Hon'ble Apex Court in the case of M/s. Andaman Timber Industries Vs. CCE dated 02.09.2015 wherein the appellant raised a plea that it was not allowed to cross-examine the dealers whose statements were relied upon by the Adjudicating Authority in passing the order and Hon'ble Court has set aside the said impugned order and allowed the plea of the appellant. He also relied on order of Hon'ble ITAT, Jaipur Bench which deleted the addition made in violation of principles of natural justice in the case of **Smt. Sunita Dhadha vs. The DCIT [ITA No. 751/JP/2011]**, which has been also upheld by **Hon'ble Supreme Court (CIT vs. Smt. Sunita Dhadha)**



**[SLP (civil) Diary No. 9432/2018]**. The Hon'ble ITAT had deleted the addition made by AO in her case by stating that there was violation of Principles of Natural Justice in not supplying the sworn statement given by a person, which was relied by the AO for making addition and not providing opportunity of cross examination to the appellant. He further observed that a the appellant had incurred expenses amounting to Rs. 96,43,260/- and not Rs. 1,02,23,236/-. The transaction value with the vendor was Rs. 1,02,23,236/-, out of which actual value pertained Rs. 96,43,260/- and balance sum of Rs. 5,79,976/- was the GST charged on the same. The appellant has accounted expenses of Rs. 96,43,260/- and availed tax credit against GST amount of Rs. 5,79,976/-, hence the appellant requested to allow the expenditure to the extent of Rs. 96,43,260/-.The Id.CIT(A) finally held that there was no justification whatsoever for making an addition on account of non-genuine purchases for the year under consideration which was consequently deleted.

6. Before us, the Id.DR has contested the deletion of the impugned addition by the CIT(A) claiming that there was sufficient basis for making the disallowance. He relied on the findings of the AO as per the assessment order.

7. Per contra, the Id. Counsel has vehemently supported the appellate order. It is argued that the allegation stemmed from an



Investigation carried out by the CGST, Belapur, in the case of M/s. OPOS. wherein it was alleged that the said company was engaged in providing non-genuine services to various persons/ entities. The AO in the assessment order referred to the GST investigation of the said party allegedly claiming some fake input tax credits with another party, however there is no mention about assessee claim vis a vis GST investigation. Thus, the whole reassessment is based on unverified information without application of mind. Merely some wrong input credit claim of third party would not under any circumstances lead to conclusion that the services availed of by the assessee would be termed as non-genuine.

7.1 It is further contented that without providing any evidence for the allegation levied, not providing any cross-examination of said persons related to M/s. OPOS, and without even going into the merits of the services availed and evidence on record, the AO proceeded to make the said addition merely on whims and without any concrete or even circumstantial evidence. The stated GST credit is available and in the present case been availed of by the assessee in its return. Assessee GST returns are accepted. The party OPOS is still rendering services to assessee company. The said party is listed on stock exchange, registered with GST dept. filing GST return, MCA site shows company position, latest annual report shared on MCA site proves beyond doubt that the AO



has failed to make any enquiry and acted merely on information. This goes to show that the said party is legitimate, and to the extent of the business transacted with the assessee, no question could be raised. Further, the vendor has shared a declaration declaring that the services provided to the assessee are genuine and has not indulged in any malpractice while transacting business with the assessee.

7.2 In this regard, the Id. Counsel has also cited certain judicial decisions in support of the above arguments. In the case of **H.R. Mehta Vs. ACIT [2016] 387 ITR 561(Bombay) [30-06-2016]** where assessee had taken loan from one and Assessing Officer added loan amount in income of assessee under section 68 on basis that no confirmation letter had been obtained from, since loan was advanced and repaid vide account payee cheques, Assessing Officer should have provided assessee material used against him apart from providing him an opportunity to cross examine deponents whose statements were relied upon. **Pr. CIT Vs. Kishore Kumar Mohapatra [2024] 162 taxmann.com 4 (Orissa) (para 3)** where Assessing Officer denied exemption claimed by assessee under section 10(38) on long-term capital gain on sale of shares on basis of statement of entry operators recorded on various dates in some other proceedings not connected with assessee and no opportunity to cross-examine so-called entry providers was given to assessee thereby violating



principles of natural justice, Tribunal was justified in deleting addition made by Assessing Officer.

7.3 The Appellant Company is a life insurance company, they are governed by special taxation provision viz. section 44 of the Act read with the First Schedule. Section 44 of the Act is a special provision dealing with the computation of profits and gains of business of insurance and it prevails over other provisions of the Act. The jurisdictional Mumbai ITAT in the case of **Birla Sun life Insurance Company Ltd. Vs. DCIT [2010-TIOL-535- ITAT-MUMI]**. Sahara India Life Insurance Co. Ltd. v. Assistant Commissioner of Income- tax. [2023] 457 ITR 548 (Delhi)

7.4 It is concluded that in view of the factual and legal submission, Assessee submits that GST Investigation does not reveal any finding against or nexus with services availed' by assessee, hence allegation of department is arbitrary. GST investigation referred in Asst. order are not pertaining to the assessee or its services. Therefore addition rightly deleted by CIT(A). Dept appeal may be dismissed.

8. We have duly considered the rival submissions. It is worth mentioning here that the CIT(A) allowed the appeal inter alia with the remarks that though it was a good case for further investigation, the AO failed to do. He also held that the AO did not allow cross examination.



Such an observation is self-contradictory in as much as the CIT(A) is duly empowered under the statute to either make an enquiry himself or through the Assessing officer. No such exercise by done by him though he admitted in no uncertain terms that there was a case of further investigation and enquiry which accordingly, was palpably missing on part of the AO.

8.1 It is a settled law that the CIT(A) has been constituted as a revising authority against the decisions of the AO, a revising authority not in the narrow sense of revision what is the subject matter of the appeal, not in the sense of revising those matter about which the assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the AO but he can revise every process which led to the ultimate computation or assessment. An appeal is a continuation of the process of assessment, and an assessment is but another name for adjustment of the tax liability to accord with the taxable event in the particular taxpayer's case.

8.2 In a tax appeal, the appellate authority is very much committed to the assessment. The appellate authority can itself enter the arena of assessment, either by pursuing further investigation or causing further



investigation to be done. It can do so on its own initiative, without being prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the taxpayer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the assessing authority itself. (**Madras High Court in Arulmurugan and Co. [1982] 51 STC 381**).

8.3 Once an appeal is pending before the CITA, the Commissioner is given the full right to get the order of the AO revised in any manner he thinks necessary in the interest of public revenue. Powers of the Commissioner (Appeals) are narrated as below:-

*Section 251(1): Appeals to the Commissioner (Appeals) 251.*

*(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-*

*a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment*

*b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*

*c) in any other case, he may pass such orders in the appeal as he thinks fit.*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction. Explanation.-In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of*



*the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.*

8.4 A fine reading of the above powers in the light of various judicial pronouncements, we can exemplify the powers of the CIT(A). The Legislature has conferred very wide powers upon the Appellate Commissioner once an appeal is preferred to him by the assessee. An appeal is only a rehearing or a retrial. In the absence of any statutory inhibitions or restrictions, CIT(A) has precisely the same powers, exercisable or in the same manner and to the same extent, as the AO has, in the first instance. The powers of the CIT(A) are in the nature of reassessment and once an assessment order is brought before CIT(A), his power is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance but his powers range over the whole assessment to correct the AO not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the AO and determined in the course of assessment.

8.5 Under sec 250(4)) of the Income-tax Act, the CITA is competent to make such further enquiry as he thinks fit or cause further enquiries to be made by the AO, under remand. He is further empowered to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment. If an income is the subject-



matter of consideration by the AO and even though the AO might have come to the conclusion that that income is not subject to tax, still it would be open to the CITA to take different view and to bring that income to tax.

8.6 In the landmark case of **CIT v. Kanpur Coal Syndicate** in **53 ITR 225**, hon'ble Supreme Court held that AAC has plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the ITO. He can do what the ITO can do and also direct him to do what he has failed to do. If the ITO has the option to assess one or other of the entities in the alternative, the AAC can direct him to do what the ITO should have done in the circumstances of a case. In cases of **KapoorchandSrimal vs CIT(1981) 131 ITR 451,460(SC)/Jute Corporation of India Ltd vs CIT 187 ITR 688(SC)** likewise held that the appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In absence of any such restriction, the appellate authority is vested with all the powers of the assessing authority.

8.7 Thus, in the in the interest of justice, we deem it appropriate to allow the appeal for statistical purposes, emphasizing the need for a thorough and compliant adjudication process. Accordingly, the matter is set aside to the AO for fresh assessment after making further enquiries and investigation as deemed fit. He shall give proper and adequate



opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside remand proceedings for de novo adjudication of the assessee filed before him.

**9. In the result, the appeal is allowed for statistical purposes.**

Order pronounced in the open court on 23/12/2024.

Sd/-

**SANDEEP GOSAIN**

**(न्यायिक सदस्य / JUDICIAL MEMBER)**

Sd/-

**PRABHASH SHANKAR**

**(लेखाकारसदस्य ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 23.12.2024

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai



5. गार्ड फाईल / Guard file.

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