

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.8886/Del/2019
(ASSESSMENT YEAR 2009-10)

Income Tax Officer Ward-60(4), Delhi	Vs.	Aravindakshan Pillai Flat No.7A, MIG Flats Pocket-V, Mayur Vihar, Phase-3, Delhi-110096 PAN:AJOPP0293R
(Appellant)		(Respondent)

Assessee by	Shri Abhishek Mathur, Adv.
Department by	Shri Rajesh Mahajan, Sr. DR

Date of Hearing	19/12/2024
Date of Pronouncement	19/12/2024

ORDER

PER BENCH:

This appeal by Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-23, New Delhi in appeal No. 199/18-19 vide order dated 29/08/2019. Assessment was completed by Income Tax Officer, Ward-60(4), New Delhi for Asst. Year 2008-09 u/s 143(3)/254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 27/12/2016.

2. The only issue in this appeal of Revenue is as regards to order of CIT(A) restricting the addition at Rs.27,52,606/- made by AO on

unverifiable purchases of Rs.2,74,56,626/-. For this, the Revenue has raised following ground No.2:-

“2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,46,53,020/-.”

3. We have heard the rival contentions and gone through the facts and circumstances of the case. The AO made addition of unverifiable purchases being sundry creditors, outstanding as on 31/03/2009 for the relevant Asst. Year 2009-10. AO required the assessee to explain the identity, genuineness and creditworthiness of the fifteen sundry creditors along with their confirmation. The assessee is engaged in the business of trading of fabrics in the name and style of M/s A.R. Silk and during the year, the assessee made purchases amounting to Rs.3,93,03,427/- and sundry creditors were declared at Rs.2,74,05,626/-. The AO has listed out of fifteen creditors i.e., were never served notices u/s 133(6) of the Act, rather these returned back as unserved. For another six parties, the notices issued u/s 133(6) of the Act by the AO were received but no confirmation or they have not provided any details. For the balance three creditors, there is slight difference in outstanding amount as on 31.03.2009 and the AO, after going through the facts of the case, noted that the assessee could not provide any details and, hence, added the same at Rs.2,74,05,626/- as income from unexplained source of income u/s 68 of the Act. Aggrieved, the assessee preferred appeal before the Ld. CIT(A).

4. The CIT(A) restricted the addition at Rs.2,46,53,020/- as contested by Revenue before us, by observed as under:-

“4.17 In the present case certain, letters issued u/s 133(6) were received back, unserved because the parties are not existing at given address, at present but the appellant argued that transaction look place in FY 2008-09 and longtime has elapsed since them Since, the purchases were made in FY 2008-09, therefore no adverse inference can be drawn from the fact that a particular party has shifted from the address (where it was available in FY 2008-09). It is also a fact that the books of accounts are audited and have not been rejected by the AO. Therefore, the quantity of the purchase cannot be doubted. At the most question can be raised about the rate of purchase. Thus the action of the AO in terms of making addition equivalent amount of un-confirmed purchases cannot be sustained in toto. No, doubts, the books are having defects in as much as the PAN Nos. of nine Parties (actually eight PANs-One party is having two ledger accounts) are non-existent. During the appellate proceedings (ref. order sheet entry dated 28.08.2019), the AR could not deny that there were defects in books and could not explain as to why books should not be rejected. However, the AO repeated that that the gross profit ratio of the appellant have increased from 5.33% in the financial year 2007- 08 to 8.24% during the financial year under consideration. Also the net profit ratios of the appellant have increased from 1.11% in the financial year 2007-08 to 2.03% in financial year 2008-09. However, the defects cannot be ignored. Therefore, books of accounts are rejected and the element of suppressed profit is estimated as under and added to the total income.

4.18 The following purchases cannot be said to be verified.

Sr. No.	Name of the party	Amount of Purchases made in the P. Yr.(Rs.)
1.	Dinesh Fabrics	NIL (opening balance)
2.	Manoranjan	8,85,483/-
3.	Al Adwar Tour & Travels	21,15,000/-
4.	Narayana	NIL- Only transaction is of Cheque received of Rs. 50,000/-)
5.	Bharat Textile	1,94,67,320/- (as per balance confirmation letter is given)
6.	Gubbana Silk House	NIL (opening balance)

7.	Atul Kapoor	NIL (Transaction are of professional Fee)
8.	Mehndi Silk Fabs	4,88,949/-
9.	Narayana Silk Mills	1,97,400/-
10.	Omider	NIL(Opening balance)
11.	Pankaj Cargo Movers	44,425/- (Freight)
12.	R.S Shanmugam	36,73,778/-
13.	Sahil Courier Service	98,957/- (Freight)
14.	Singhvi Industries	54,752/-
15.	SNS Textile Ltd.	NIL (Opening balance)
Total		2,70,26,064/-

4.19 Considering the facts that i) the gross profit ratio of the appellant have increased from 5.33% in the financial year 2007-08 to 8.24% during the financial year under consideration, and ii) the net profit ratio of the appellant have increased from 1.11% in the financial year 2007-08 to 2.03% in financial year 2008-09, it is would meet interest of justice if element of suppressed profit is taken at 10% of the unverified purchases i.e. Rs.27,02,606/- and the same is added to the total income of the appellant. Also, deemed income of Rs.50,000/- sustained u/s 68; in respect of Shri Narayana. In result, the grounds (Nos. 1 to 5) **are partly allowed** and as a consequence addition is **sustained** upto the extent of Rs. 27,52,606/- and balance addition is **deleted.**”

Aggrieved, the Revenue is in appeal before the Tribunal.

5. After hearing both sides and going through the facts and circumstances of the case, we noted that these are sundry creditors arising out of purchases made by assessee. The assessee had made purchases as assessee is engaged in the business of trading of fabrics in the name and style of M/s A.R. Silk as a proprietor. We noted that even now before us, Revenue could not controvert the findings of

CIT(A) that the profit rate earned by assessee is over and above 10% of unverifiable purchases. We are of the view that CIT(A) has rightly confirmed the suppressed profit @ 10% on unverifiable purchases because Revenue has no doubt that the sales carried the same purchases. Hence, we confirm the order of CIT(A), and, accordingly, this issue of Revenue's appeal is dismissed.

6. In the result, the appeal filed by Revenue is dismissed.

Order pronounced on conclusion of hearing on 19th December, 2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 19/12/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI