

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K (SMC)” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &
SHRI OMKARESHWAR CHIDARA, AM**

**I.T.A. No. 3112/Mum/2024
(Assessment Year: 2018-19)**

Rahul Kumar Singh Rahivashi CHS, Arjun Wadi, Ghansoli, Navi Mumbai-4000701. PAN : EOAPS1857D	Vs.	AO, Ward-28(2)(1), ITO Office, Vashi Railway Station Building, Navi Mumbai-400703.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Mohan Tandon, AR
Revenue / Respondent by : Shri Manoj Kumar, Sr. DR
Date of Hearing : 19.12.2024
Date of Pronouncement : 31.12.2024

ORDER

Per Omkareshwar Chidara, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi [for short 'the CIT(A)] dated 19.04.2024 for the AY 2018-19.

2. In the above cited case, the appellant filed a return of income declaring total income of Rs. 8.11 lakhs. From the assessment order it is observed that information was received from the “Insight portal” that the assessee was a beneficiary of fake invoices. In this case, M/s Himadri Foods Ltd. has provided fake invoices to the assessee to the tune of Rs. 11.88 lakhs. In view of this

information, the Ld. AO issued a notice under section 148 of the Income Tax Act, 1961 (the Act) after obtaining the prior approval of competent authority and passed an order under section 148A(d) of the Act dated 29.03.2022. In compliance to the notice issued under section 148 of the Act, the appellant filed a return of income on 17.06.2022. Subsequently, the ld. AO has issued notices under section 143(2) / 142(1) / 144 of the Act. Thus eight notices were issued by the AO and it was also mentioned that the assessment was non-compliant even though all these notices were delivered. The Ld. AO issued notice under section 133(6) of the Act to various Banks and obtained the relevant information. The Ld. AO applied his mind by going through report of CGST, report of investigation wing. It was mentioned that the Investigation Wing of Income Tax Department received the report from CGST and Central Excise Commissioner-8, Belapur and it was reported that M/s Himadri Foods Ltd. claimed eligible input tax credit on account of fake invoices. The premises of M/s Himadri Foods Ltd. was also visited by the officers and came to the conclusion that these parties have issued bogus invoices and M/s Himadri Foods Ltd. has also provided fake invoices to our impugned assessee to the tune of Rs. 11.88 lakhs. Notice under section 133(6) was issued by the AO to M/s Himadri Foods Ltd. and in response to this notice, M/s Himadri Foods Ltd. has stated that they filed a petition before the NCLT seeking approval of the resolution plan. At page 5 of the assessment order, the Ld. AO has mentioned that there are three entries from the Bank statements where the amounts were received by the impugned assessee from M/s Himadri Foods Ltd. The Ld.AO concluded the proceedings by stating that the assessee has no explanation to offer the amount of Rs. 37.83 lakhs found credited in his Bank A/c from M/s Himadri Foods Ltd. as there is no response from the appellant throughout the assessment proceedings and there was absolutely no compliance to all the statutory notices issued. In view of

the same, the AO has completed the assessment under section 144 of the Act which deals with best judgment assessment. Accordingly the AO has made an addition under section 69 of the Act to the extent of Rs. 37.83 lakhs.

3. Aggrieved by the addition made by the Ld. AO, an appeal was filed by the appellant before the Ld. CIT(A). During the appeal proceedings before the Ld. CIT(A), the Ld. AR of the appellant has stated that the appellant is engaged in the business of security service provider and provided only labour services to M/s Himadri Foods Ltd.. The Ld. CIT(A) confirmed the addition made by the AO stating that the appellant has not provided GSTR-I, P&L A/c, balance-sheet of the appellant, no evidence was provided with respect to the invoices, bills and contract with M/s Himadri Foods Ltd. It was also mentioned in the order of the Ld. CIT(A) that the appellant-assessee has not provided proof of E.S.I. & P.F. paid to the Government on behalf of its employees. As no relevant details were submitted before the Ld. CIT(A) also, it was held by the First Appellate Authority (FAA) that the addition made under section 69A of the Act as unexplained money was confirmed, and the appeal of the assessee was dismissed.

4. As the appellant did not get the relief from the Ld. CIT(A), the appellant has filed an appeal before the ITAT with the following grounds of appeal:

- (a) *The notice issued by the AO under section 148 of the Act is bad-in-law.*
- (b) *The appellant was providing security services to M/s Himadri Foods Ltd. and not sold any goods to that concern.*
- (c) *From the 26AS statement filed by the appellant before the Department, it can be seen that TDS was deducted by the appellant but the services provided by them to M/s Himadri Foods Ltd.*
- (d) *No proper opportunity of being heard was given to the appellant.*
- (e) *Ground No.5, 6 & 7 of the appellant also deals with similar facts and the plea of the appellant is that the case may be remitted back to the AO for fresh consideration.*

5. During the appeal proceedings before the ITAT, the appellant has filed a Paper Book (PB) containing the synopsis of the case, written statements made before the Ld. CIT(A), audited financial statements, invoices issued by the appellant to M/s Himadri Foods Ltd., GST certificate of assessee, copy of audit report under section 44AB of the Act, Bank statements, service tax and GST returns were part of this PB. The Ld. AR of the appellant has argued that the re-opening of the assessment itself is invalid and bad-in-law because the procedure was not followed by the ld. AO. The Ld. AR tried to demonstrate that the appellant is into providing only manpower services and never dealt with M/s Himadri Foods Ltd. with respect to purchase/sale of goods and whatever money received from M/s Himadri Foods Ltd. was only the consideration received for providing the manpower services. The Ld. AR of the appellant has stated that from the 26AS statement filed before the Department and from the Bank statements, which can be seen that TDS was deducted by M/s Himadri Foods Ltd. and hence it is proved that the amount received was only towards providing security services and not for any trading of the goods.

6. The Ld. DR has argued that the appellant has not provided with the information asked by the AO despite 7 to 8 notices issued and hence based on the information available on "Insight Portal" was taken into consideration while completing the assessment. Secondly, the AO has received Bank statements of the appellant under section 133(6) of the Act. It was observed by the AO that certain amounts were received and credited into the assessee's Bank Account from M/s Himadri Foods Ltd. As these receipts were not properly explained by the AO, the additions were made correctly and the same should be sustained.

7. Heard both sides. Because of the following reasons, the issue is remitted back to the file of Ld.AO:

- (a) *Despite 8 notices were issued to the appellant and the same was not disputed and as no information was forthcoming from the appellant, the AO made the addition based on the information received from insight portal and the Bank statements of the appellant.*
- (b) *From the Bank Account, it is observed that certain credits were reflected as receipts from M/s Himadri Foods Ltd. And the nature of these receipts was not explained before the lower authorities despite being asked.*
- (c) *The assessment is validly re-opened which is observed from the assessment order and the appellant did not respond to the notices issued by the Department from time to time. Even before the Ld. CIT(A), the relevant information to show that the assessee is into providing manpower services, balance-sheet and P&L A/c, copies were not provided by the appellant. Based on the prima-facie evidence that there are certain credits from M/s Himadri Foods Ltd., the AO has completed the assessment by way of best judgment assessment in view of the above circumstances.*
- (d) *From the grounds of appeal filed before the ITAT, it is observed that the appellant wanted the addition to be deleted alternatively the case may be remanded back to AO for fresh consideration (Ground No. 5, 6 & 7).*
- (e) *The Bench agrees with the argument of ld. DR that the assessment is validly reopened in view of the decision of Hon'ble Supreme Court in the case of M/s Raymond Woollens Ltd. 276 ITR 34 (SC) where it was held that at the time of reopening of the case, it is enough, if the AO has "reasonable belief" that there is an escapement of income/ tax was not paid on certain incomes. In our case, the AO did everything like obtaining information from the insight portal, satisfied with the reports of Investigation Wing of Income Tax Department and Central Excise that the assessee is a beneficiary of fake invoices provided by M/s Himadri Foods Ltd., and money was received. The AO has received the information from the Investigation Wing which is corroborated by the Bank statements obtained by the AO during the assessment proceedings u/s. 133(6) of Income Tax Act which shows that there are certain credits from M/s Himadri Foods Ltd. and it should be properly explained by the appellant along with necessary evidences. The appellant failed to respond to the 8 notices of AO and further to the notices of Ld. CIT(A) and hence the addition made by AO is correct in those circumstances. Now as the Ld. AR of the appellant filed a Paper Book which contains all the relevant details and the same were not filed before the AO / CIT(A), the issue is remitted back to the file of AO with a direction that*

he should take into consideration all these papers which were filed before the ITAT for the first time and pass a speaking order after giving effective opportunity to the appellant.

8. Accordingly, the file is remitted back to the Ld.AO with the above directions and frame a fresh assessment order in accordance with law after giving sufficient opportunity to the appellant. The appellant is directed to co-operate with the Department in furnishing all the relevant information to prove his contentions.

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

Order pronounced in the open court on 31 -12-2024.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

**SK, Sr. PS*

Sd/-
(OMKARESHWAR CHIDARA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai