

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 188/RPR/2024
(निर्धारण वर्ष Assessment Year: 2018-19)

Shree Shyam Sales Corporation, 35-B, Shala Marg, Choubey Colony, Raipur, 492001 (C.G.)	v s	Income Tax Officer, Ward-1(2), Raipur (C.G.)
PAN: ADKFS4723P		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sakshi Gopal Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	10.12.2024
घोषणा की तारीख /Date of Pronouncement	:	24.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), Raipur-3 (in short "Ld. CIT(A)"), u/s 250 of the Income Tax Act, 1961 (in short "the Act"), passed on 23.02.2024, which in turn arises from the orders u/s 143(3) read with section 144B of the Act for AY. 2018-19, passed by the National e-Assessment Centre, Delhi, (in short "Ld. AO"), dated 23.04.2021.

2. The grounds of appeal raised by the assessee, are as under:

1. *That the learned CIT, Raipur has erred both in law and on the facts of the case in confirming the disallowance of Rs.123,97,06,013/- of the Act by treating purchases as unexplained expenditure.*
2. *That the learned assessing officer has erred for both in law and on facts of case in passing an order u/s 143(3) dtd. 23/04/2021 as the time frame set out for response to notice cum draft assessment order was extremely narrow and also the assessee's request for time extension on account of lockdown in entire city till 26/04/2021 was being ignored by the learned assessing officer and thereby failing the law of natural justice while framing the assessment order.*
3. *Without prejudice to above, the Ld. AO has erred in making addition under section 69C in respect Of entire purchases instead of restricting the addition/disallowance to reasonable percentage of alleged bogus purchases in accordance with Law.*
4. *That the leaned assessing officer has erred for disallowing whole purchases by invoking section 69C - arbitrarily without rejecting books of accounts and without doubting the sales. And also when during the course of assessment proceedings the assessee had submitted the copies of invoices for purchases, GSTR-3B, GSTR-1 and GSTR-2A. And honorable CIT(A), Raipur has been erred for confirming the action of learned assessing officer.*
5. *That on the fact .and circumstances of the case, the honorable CIT(A) has been erred for the order of learned assessing officer without properly appreciating the fact of the case.*
6. *That, assessee reserves the right to add, amend, alter or withdraw any ground/grounds of appeal at the time of hearing.*

2. The brief facts of the case, as described by the Ld. CIT(A), are that the appellant is a resident partnership firm, as per the partnership deed dt. 19.07.2017 furnished by assessee, the firm was constituted to carry on the business of trading in food grains. It is stated by the assessee before the Ld. AO that the partnership firm was formed to carry on the business of trading in food grains items but the business could not be started in that line and after mutual consent of the partners the

firm engaged in the business of trading in iron & steel and cement during the year under consideration. Return of income for the above period was filed by the appellant on 31.10.2018, declaring total income of Rs.1,61,706/-. The case thereafter was selected for complete scrutiny assessment under the E-assessment Scheme 2019, to examine the issue regarding business purchase & business expenses. Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 was issued on 22.09.2019. Consequently, notice u/s 142(1) of the Income Tax Act, 1961 were issued on 01.05.2020, 23.12.2020, 07.01.2021 and 25.02.2021. In response to the above notices, the assessee filed reply on 04.01.2021, 27.01.2021 & 15.03.2021. A show cause notice was issued to the assessee on 19.04.2021, wherein the draft assessment order was reproduced with a request to show cause on or before 21.04.2021, as to why the assessment order may not be passed as per the modifications proposed in the draft assessment order. In response to above show cause notice, no reply was filed by the assessee. After considering the material available on record and proper opportunity, assessment order u/s 143(3) r.w.s. 144B was passed for the year under consideration, by making an addition on account of bogus purchase treating the same as unexplained expenditure u/s 69C of the Act for Rs.1,23,97,06,013/- and

the total assessed income of the assessee was determined at Rs.1,23,98,67,719/-.

3. Aggrieved with the aforesaid findings enhancing the income of assessee by Rs. 1,23,97,06,013/-, an appeal is preferred before the Ld. CIT(A). It is evident that the assessee's conduct was not found to be law abiding / compliant, which initially have not responded to the notice of hearings on 09.07.2021, 02.12.2021 and 07.09.2022, however, a requested for adjournment in the matter was sought on 10.11.2022 to fix the matter sometimes in the month of January 2023, which was considered by the Ld. CIT(A), but in subsequent opportunities to represent provided to the assessee on 29.11.2023, 27.12.2023, 15.01.2024 and 16.02.2024, the assessee remain absent, with no further request for adjournment and despite several opportunities there was no compliance on behalf of the assessee. Under such circumstances, Ld. CIT(A) deliberated upon the issue in the present case, and have decided the matter against the assessee, with the following observations:

Decision on merits:-

3.1 Ground No.1 to 6: - *Ground No. 1 to 6 are related to the same issue, hence theses grounds are being discussed together. Through these grounds of appeal, the appellatant has challenged the addition of Rs.1,23,97,06,013/-.*

During the course of assessment proceedings, the assessee has shown total purchases of Rs.1,23,97,06,013/- and total sales of Rs.1,24,33,22,731/-

Vide notice u/s 142(1) dt.23.12.2020, the assessee was requested to provide the details of purchases/sales made along with the details of transportation i.e. date of transportation, name & address of the transporter, vehicle number, weight, amount paid, details of TDS. Vide reply dt.05.01.2021 the assessee furnished only the details of sales/purchases made and transportation details not submitted. The assessee was vide notice u/s 142(1) dt.07.01.2021 requested to provide digitally signed copy of annual GST return and GSTR 2A field for the relevant period. Vide reply dt.27.01.2021 the assessee stated that the annual return of GST has not been filed till date but copy of GSTR 2A was not furnished.

As per the details furnished the assessee firm has made purchases form the following 22 parties during the year:

1.	<i>A.D. Ispat</i>	<i>ALXPD2089A</i>	<i>21ALXPD2089AIZD</i>
2	<i>Sri Bishnu Traders</i>	<i>BNTPM5353D</i>	<i>21BNTPM5353DIZO</i>
3	<i>Jai Balajee Enterprises</i>	<i>GWMP57169Q</i>	<i>21GWMP57169QIZD</i>
4	<i>Kasera Steel Traders</i>	<i>BKPPK7779G</i>	<i>21BKPPK7779GIZO</i>
5	<i>K.K. Enterprises</i>	<i>CZAPM9678R</i>	<i>21 CZAPM9678RIZH</i>
6	<i>M/S Utkal Trading Co</i>	<i>EAYPP3688B</i>	<i>21EAYPP3688BIZA</i>
7	<i>Royal Enterprises</i>	<i>AVBPT0486D</i>	<i>21AVBPT0486DIZW</i>
8	<i>R. S Steel Traders</i>	<i>FELPS6435F</i>	<i>21 FELPS6435FIZC</i>
9	<i>Subala Enterprises</i>	<i>CVOPS4320Q</i>	<i>21 CVOPS4320QIZ2</i>

10	<i>Shiv Shakti Traders</i>	<i>IBRPS1663D</i>	<i>211BRPS1663DIZH</i>
11	<i>Apex Marketing</i>	<i>ANGPJ2685P</i>	<i>23ANGPJ2685PIZJ</i>
12	<i>Amar Enterprises</i>	<i>AFMPJ9281M</i>	<i>23AFMPJ9281MIZU</i>
13	<i>Amber Enterprises</i>	<i>FPRPS5427E</i>	<i>21FPRPS5427EIZN</i>
14	<i>Annapurna Enterprises</i>	<i>AUGPS4997L</i>	<i>21CVOPS4320QIZ2</i>
15	<i>Ayush Steels</i>	<i>AFZPA7090L</i>	<i>22AFZPA7090LIZZ</i>
16	<i>Gravity Ferrous Pvt Ltd</i>	<i>AACCG3005C</i>	<i>22AACCG3005C1 ZL</i>
17	<i>Maa Kali Industries</i>	<i>IAPD7188A</i>	<i>22AIAPD7188AIZU</i>
18	<i>Om Sai Traders</i>	<i>AOAPD0954N</i>	<i>21AOAPD0954NIZ9</i>
19	<i>R.K. STEELS</i>	<i>AHNPN5209N</i>	<i>22AHNPN5209NIZI</i>
20	<i>Rajendra Kumar Agrawal</i>	<i>ADUPA4591R</i>	<i>22ADUPA4591RIZW</i>
21	<i>Rajesh Traders</i>	<i>DDNPS5639J</i>	<i>22DDNPS5639JIZZ</i>
22	<i>Suresh Enterprises</i>	<i>CPCPP6230A</i>	<i>21CPCPP6230AIZL</i>

Notice u/s 133(6) was issued to the parties from whom purchases have been made to furnish information regarding the purchases made but no reply has been received except from Gravity Ferrous Pvt. Ltd. Rajesh Traders and Royal Enterprises. As per the confirmation received from Gravity Ferrous Pvt. Ltd. purchases of Rs.7,70,383/- have been made during the year against which the assessee has shown purchases of

Rs.2,20,967/- only. The seller has also furnished copy of GST return filed. As per the confirmation received from Rajesh Traders purchases of Rs.9,50,250/- have been made against which the assessee has shown purchases of Rs.5,94,052/- only. The seller has furnished copies of ITRs filed for the assessment year 2017-18 & 2018-19. The information furnished by Royal Enterprises is incomplete as the purchases amount has not been confirmed and only copy of ITR filed for the assessment year 2018-19 has been furnished. Vide notice u/s 142(1) dt.25.02.2021, the assessee was requested to furnish confirmation from all the parties from whom purchases have been made alongwith copy of ITRs filed to prove the genuineness of the purchases made. In reply dt.09.03.2021 the assessee stated as under:

"Since more than two years, we have closed all our business activity due to my health issue and unfavorable business circumstances. Hence at present we have no direct contacts with any party. Further the details called are very voluminous, it will take some more time to collect the same."

Further vide reply dt.15.03.2021, the assessee stated as under:

"We are enclosing the digitally signed copy of Form No. 2A downloaded from the site of GSTIN for your kind perusal. Your honor will appreciate the facts that purchases from all such persons are being reflected there. In other words, this is nothing but confirmations of our purchases by all those parties."

The reply filed by the assessee has been duly considered.

As per the trading account the assessee has shown gross profit of Rs.27,76,718/- after claiming expenditure of Rs.8,40,000/- on account of loading/unloading. The assessee has furnished ledger of loading/unloading expenditure perusal of which reveals that all the payments have been made through journal entries. In reply dated 05.01.2021 the assessee stated that the labourers in the ordinary course either don't have the bank account or are reluctant to accept payment through banking channel and all the payments to them have been made in cash. The assessee has failed to appreciate the facts that under the Prime Minister Jan Dhan Yojna, 2016 majority of labourers have opened their bank accounts. Further, as per section 40A(3) of the Income Tax

Act, 1961 amended by the Finance Act, 2017 the limit of cash payment has been reduced to Rs.10,000/-. Moreover, if the labourers were employed on monthly payment basis on contract, the assessee was required to deduct tax on the payments made as the payment made to each labourer exceeds Rs.1,00,000/- as per the ledger furnished. Alternatively, if the labourers were employed the assessee was required to deduct PF from the monthly payment made to employees and contribute an equal amount but no such deduction/contribution made has been mentioned in the audit report. Thus, the loading/unloading expenditure shown by the assessee is unexplained.

In the profit and loss account the assessee has claimed salary expenditure of Rs.1,20,000/- only. Considering the huge sales turnover of Rs.1,24,33,22,731/- the salary payment of Rs.1,20,000/- is unrealistic. The major expenditure claimed by the assessee in the P&L account is discount of Rs.18,64,344/- paid to M/S. Sawariya Enterprises which is the proprietorship concern of Sh. Santosh Aggarwal who is also one of the partners in the firm. Besides discount, the assessee has paid remuneration of Rs.4,67,560/- to partners. Thus, out of gross profit of Rs.27,76,718/- the assessee has incurred expenditure of Rs.4,44,814/- only for running of business against gross turnover of Rs.1,24,33,22,731/- which puts a question on the genuineness of business activities. The assessee has not produced any evidence that the purchases made were genuine. As per the audit report the assessee has purchased 33228MT of iron & steel and 16189 bags of cement and sold the same without any closing stock but no transportation charges have been claimed to have been paid either as buyer or as seller.

In the balance sheet the assessee has created sundry creditors of Rs.1,15,80,50,651/- and sundry debtors of Rs.1,15,36,65,608/- Further, as per the e-filing portal no ITR/Audit Report has been filed by the assessee for subsequent assessment years. The assessee has filed ITR with huge turnover of Rs.1,24,33,22,731/- in the first year of business and no further ITRs have been filed. The assessee has even not filed his annual GSTR till date.

As per information available the Directorate General Goods and Services (DGGST), Raipur has detected that the firm M/s Shree Shyam

Sales Corporation run by Sh. Santosh Aggarwal and Sh Ayush Garg has committed fraud by using fake invoices issued by nonexistent firms to claim ineligible input tax credit of GST. Also, more than 100 dealers of the state have been found to have done bogus transaction with M/S Shyam Sales Corporation.

From the above facts it is evident that the purchases/sales shown by the assessee firm are bogus. The assessee has furnished copy of statement of bank account no 25930003500 in IndusInd Bank maintained during the relevant year but all the entries are accommodation entries without actual transportation of materials.

Therefore, the Id. AO the entire purchase of Rs.1,23,97,06,013/- is treated as unexplained expenditure within the meaning of section 69C of the Income Tax Act, 1961 and added back to the income of the assessee.

The assessee has not been able to provide any supporting evidence regarding the genuineness of purchases made. In view of the above, the amount of the entire purchase of Rs.1,23,97,06,013/- found credited in the books of the assessee maintained for the F.Y. 2017-18 is treated as unexplained expenditure and added back to the income of the assessee u/s 69C of the I.T. Act, 1961 and the same is taxed u/s 115BBE at maximum marginal rate of tax.

Show cause notice was issued to the assessee on 19.04.2021 wherein the draft assessment order was reproduced with a request to the assessee to show cause on or before 21.04.2021 as to why the assessment order may not be passed as per the modifications proposed in the draft assessment order. No reply was filed by the assessee.

In view of the above, the amount of the entire purchase of Rs.1,23,97,06,013/- found credited in the books of the assessee maintained for the F.Y. 2017-18 is treated as unexplained expenditure and added back to the total income of the assessee u/s 69C of the I. T. Act, 1961 and the same is taxed u/s 115BBE at maximum marginal rate of tax.

Since, the Id. AO passed the assessment order u/s 143(3) r.w.s. 144B for the year under consideration according to procedures provided in the

Act and all the additions were made as per following procedure provided in the I. T. Act, 1961.

"During the course of assessment proceedings, the assessee was requested vide notice u/s 142(1) dt.23.12.2020 to provide the details of purchases/sales made alongwith the details of transportation ie. date of transportation, name & address of the transporter, vehicle no., weight amount paid, details of TDS, the assessee furnished details of sales/purchases made by them but transportation details was not submitted and stated that no transportation expenses have been borne by the firm, the same have been borne by the seller/purchasers themselves. The copy of annual return of GST was also not filed during assessment proceedings and copy of GSTR2A was not furnished by the assessee. While the assessee was requested to produce the evidence regarding loading/unloading expenditure, the assessee stated that the labourers have been employed on monthly payment basis for the purpose of loading/unloading of materials. However, no evidence regarding the payments actually made have been furnished. The assessee in his reply dt.27.01.2021 has stated that the labourers in the ordinary course either don't have the bank account or are reluctant to accept payment through banking channel and all the payments to them have been made in cash. As per section 40A(3) of the I.T. Act 1961 amended by the Finance Act, 2017 the limit of cash payment has been reduced to Rs.10,000/-. The labourers were employed on monthly basis on contract, the assessee was required to deduct tax on the payments made as the payment made to each labourer exceeds as per the ledger furnished and also was required to deduct PF from the monthly payment made to employees and contribute an equal amount but no such deduction/contribution made has been mentioned in the audit report. Thus, the loading /unloading expenditure shown by the assessee is unexplained. As per the information available the Directorate General of Goods and Services Raipur has detected that the firm M/S Shree Shyam Sales Corporation committed fraud by using fake invoices issued by non-existent firms to claim ineligible input tax credit of GST and more than 100 dealers of the state have been found to have done bogus transaction with M/S Shyam Sales Corporation." I have gone through the assessment order and found that the Id. AO carefully assessed the case

after consideration of assessee reply and facts related to above case, the above case is fit for applying section 69C of the I.T. Act, 1961.

"69C — Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year"

The Id. AO referred to Section 69C of the Act and pointed out that once it is established that the expenditure is unexplained/bogus, the entire amount of bogus expenditure is to be added to the total income of the assessee. When the AO gave an opportunity to the assessee to explain the transaction, the assessee did not produce any document. The Id. AO issued a show cause notice to the assessee regarding proposed of addition, the assessee was failed to submit his reply. Therefore, it would mean that the assessee had accepted the allegations.

Despite the repeated opportunity of hearing to appellant, no explanation has been furnished by the appellant during the course of assessment' proceedings and appellate proceedings on the findings and conclusion of the Id. AO. In absence of any explanation and supporting documents for favoring appellant contention & on the basis of facts gathered and discussed by the Id. AO, considering entire facts in the assessment order, I find that the Id. AO is justified in assessing the total income of the appellant as discussed above. Hence, the appeal filed by the appellant deserves to be dismissed accordingly, addition of **Rs.1,23,97,06,013/- is hereby confirmed** and ground of appeal is dismissed.

3.2 Ground No. 7: - This ground of appeal is general in nature and do not require any specific adjudication.

4. In the result, appeals are **dismissed**.

4. Being dissatisfied with the aforesaid order of Ld. CIT(A), the matter is carried by way of an appeal before this tribunal, the same is adjudication in the present case.

5. At the outset, before starting on the merits, Ld. AR, referring to ground no. 2 of the present appeal have submitted that, the order u/s 143(3) was passed on 23.04.2021, for which a show cause notice / draft assessment order (DIN:ITBA/AST/F/143(3)(SCN)/2021-22/1032520331(1) was issued on 19.04.2021 (04:41 PM), copy of the same is placed before us at page no. 36-41 of the APB. In the said communication, assessee was requested to submit response through registered e-filing account at www.incometaxindiaefiling.gov.in by 23:59 hours of 21.04.2021, on the following matters:

- (a) *accept the proposed modification; or*
- (b) *file your written reply objecting to the proposed modification; or*
- (c) *if required, you may request for personal hearing so as to make oral submissions or present your case after filing of written reply. On approval of the request, personal hearing shall be conducted exclusively through video conference.*
- (4) *In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.*

6. Ld. AR further submitted that, in response to aforesaid notice dated 19.04.2021, a reply was submitted by the assessee on 22.04.2021 to allow time up to 29.04.2021 copy placed before us at page no. 82, stating that “*due to Covid’ 2019 in the Raipur there is complete lockdown till 26.04.2021, hence we are not allow to out of home except some medical emergencies, the office of our Counsel is also closed*”. Ld. AR further mentioned that the adjournment application of the assessee was not considered by the Ld. AO., in fact, Ld. AO had mentioned that no reply was filed by the assessee. It was the submission that the order was passed on 23.04.2021 whereas the time barring date was available to the Ld. AO till 31.04.2021, which was thereafter extended up to 30.09.2021. In backdrop of such submission, it was the contention by Ld. AR that, reasonable opportunity of being heard was not given to the assessee to reply particularly when a huge variation was proposed in draft assessment order, therefore the law of natural justice had not been followed.

7. Ld. AR placed his reliance on the following judgments:

- (i) **M/s Sri Gopal Store vs AO, Assessment Unit, NFAC in W.P. (C)No. 18079 of 2023, dated 13.07.2023**, by Hon’ble High Court of Orrisa, Cattuck dated 23.07.2023, wherein on the issue of reasonable time for the assessee to answer, considering the directions of Central Board of Direct Taxes

(CBDT) to allow minimum 7 days notice, unless to be curtailed by reason expiring period of limitation for the assessment, has been the question of law addressed by the Hon'ble Court. The observations of Hon'ble Orrisa High Court in the aforesaid matter are as under:

4. *We made query from Court on whether there is any CBDT provision in Income Tax Act, 1961 or the rules having empowered the CBDT to issue a directive on dispensation of requirement to give show cause notice on earlier omission by assessee in the proceeding. Nothing could be shown. It transpires that revenue was mandated to give the show cause notice and on having given it was bound by directions made by CBDT on reasonable time for the assessee to answer. The statement in relied on passage in the counter saying that though compliance date was 16th December, 2022, scrutiny order was passed on 23rd December, 2022 after 11 days and assessee did not comply till then, demonstrates that there is no basis for curtailment of the response time.*
5. *For reasons aforesaid we set aside and quash impugned assessment order and demand, both dated 23rd December, 2022. The show cause notice is restored for being replied to. Assessee is to answer by 20th July, 2023, failing which scrutiny order dated 23rd December, 2022 culminating in impugned assessment order and demand will all stand automatically restored.*

(ii) **M/s Gemini Film Circuit vs the Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/ ITO/ Income Tax Department, NFAC,**

Delhi, W. P. No. 354 OF 2022 AND W.M.P. No. 395 of 2022, dated 17.10.2023, In the High Court of judicature at Madras.

6. *The respondent/Assessing Officer issued a show cause notice calling for the petitioner's reply and the same was served on the petitioner only through online portal on 11.09.2021, which falls on Saturday and time stipulated for filing reply was 16.09.2021, i.e. only five days, within which time, no assessee could file an effective reply/objections. Therefore, the contention of the petitioner that only a short period of time, i.e. 5 days was granted to the petitioner to file their reply/objections, which is not sufficient for the petitioner to file detailed reply merits consideration.*

6.1 *The next contention of the learned counsel for the petitioner is that, in the show cause notice, admittedly, there is no mentioning about the opportunity of personal hearing. The provisions of Section: 144 B of the Income Tax Act clearly states that no directions, which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard. In the present case, in the show cause notice, dated 11.09.2021, admittedly, there is no whisper with regard to provision of personal hearing to the petitioner.*

6.2 *Therefore, as rightly pointed out by the learned counsel appearing for the petitioner, even assuming without admitting that the petitioner has failed to file reply/objections to the show cause notice, the same would not per se deprive away of the rights of the petitioner for being provided with opportunity of personal hearing.*

6.3 *It would not be out of place to mention here that the real intention of Section 144 B, etc of the Income Tax Act is to provide an opportunity of being heard to the assessee before passing any orders, which are prejudicial to their rights/ interests. It is, with such motive, law has been enacted to safeguard the interest of the assessee, but, it is very unpleasant to see that in umpteen number of Writ Petitions, the assessment orders were assailed on the very ground of violation of principles of natural justice, audi alteram partem. If the real thoughts and intention of the Assessing Officer attached to the Income Tax Department is to provide fair opportunity of hearing to the assessee to put forth their defence, the same should be extended to the assessee in a real nature and it should not be a nominal one. This Court would like to point out that under the guise of providing opportunity, the assessee should not be called for to file reply within a short span of time. If done so, the object behind, which the provisions of the Act was enacted, will not be achieved and the same would lead to depriving away the legal rights of the assessee.*

6.4 *Reverting to the present case, as already stated supra the respondent-Assessing Officer proceeded to issue show cause notice, which was dated 11.09.2021 and the same falls on Saturday, and by means of the said show cause notice, the petitioner was granted only a short span of time i.e. 5 days, and excluding the Sunday, which is a holiday, only three working days was given for filing their reply/objections. At any costs, it does not merit on the aspect of providing due opportunity. The petitioner should have been provided at least 21 days initially for filing their reply, unless and until, sufficient time is granted to the petitioner, they will not be in position to file their effective reply. Though in the present case, the petitioner has an alternative remedy to approach the Appellate Authority*

by way of an Appeal, still the Appellate Authority is not conferred with such power to remand the matter before the Assessing Officer.

6.5 Further, even under the Scheme of the Income Tax Act, the petitioner is entitled to have two occasions of the matter to be adjudicated by two Authorities and thereby, to avail two well considered opinion, in the present case, due to the failure on the part of the respondent/Assessing Officer to provide real opportunity, which the Act intends to provide, the petitioner had been deprived of their rights of defending themselves before the Assessing Authority.

6.6 Though the Appellate Authority will have the power of the Assessing Officer to make assessment by providing opportunity of personal hearing, th'e order to be passed by the Appellate Authority cannot be equated with the order that would be passed by the Assessing Officer who would pass orders after considering the elaborate evidence, which are available before him. That apart, the assessee Is also loosing one well considered opinion of the Assessing Officer, which the assessee is entitled to legally under the provisions of law.

6.7 Therefore, the aspects, which are to be borne in mind by the Assessing Officer before passing any assessment order is that the Assessing Officer, while issuing show cause notice shall provide sufficient time for the assesseees to file their reply/objection, minimum of 21 days, unless and otheIwise any specific time limit is fixed under the provisions of the Act; thereafter, shall afford an opportunity of personal hearing; in case, if the assessee is in need of any documents, which forms the basis for issuance of_ show cause notice, the same shall also be funIshed to the

assessee, as the case may be, wherever, it is required; and after conducting a full-fledged enquiry, shall conclude the assessment proceedings, in which, the Assessing Officer has to deal with the queries/points, (which the assessee would raise/put forth in the form of reply/objections) in detail along with reasons for rejection of the reply, if any and thereafter, shall pass final assessment order in accordance with law.

6.8 Unless and otherwise, the above aspects are not scrupulously followed, the same would pave a way for the assessee to go on Appeal before the Appellate Authority and even in the Appeal, if the assessee is unable to succeed, ultimately, it will come to the scrutiny of this Court and Hon'ble Supreme Court, in which case, if the assessment order is set aside, the Department will lose its revenue. Therefore, it is the bounden duty of the Assessing Officer to pass a detailed order, providing reasons for rejection of the contention of the assessee. If any cryptic order is passed without touching upon the queries/contentions of the assessee, ultimately, it would be fatal to the assessee and also cause huge revenue loss to the revenue. Therefore, the orders to be passed by the Assessing Officer should always be a speaking order, safeguarding both the interest of the assessee and the Revenue.

6.9. On the aforesaid reasons, this Court is inclined to set aside the impugned order of assessment.

8. Based on aforesaid submissions, it was the prayer by Ld. AR that the matter in the present case deserves to be set aside for fresh

adjudication to the files of Ld. AO, affording the assessee to represent its case in accordance with law.

9. Ld. CIT-DR, representing the revenue, on the other hand strongly supported the orders of revenue authorities and have requested to sustain the same, considering the assessee's careless and non-compliant behaviour before the Ld. AO as well as before the Ld. CIT(A). It is further submitted that the assessee should not be rewarded by setting aside the matter, specially in a case of an assessee against which the Directorate General Goods and Services (DGGST), Raipur has detected that the firm M/s Shree Shyam Sales Corporation run by Sh. Santosh Aggarwal and Sh Ayush Garg has committed fraud by using fake invoices issued by nonexistent firms to claim ineligible input tax credit of GST. Also, more than 100 dealers of the state have been found to have done bogus transaction with M/S Shyam Sales Corporation. Under such facts and circumstances, it was the prayer by Ld. CIT-DR that the additions made by the Ld. AO and confirmed by the Ld. CIT(A) have substance to be sustained.

10. We have considered the rival submissions, perused the material available on record and case laws relied upon by the parties.

Apropos, the issue *qua* the reasonableness in the time allowed to the assessee to respond towards the notice / draft assessment dated 19.04.2021, for which the assessee was permitted to respond by 21.04.2021, which is disputed by the assessee alleging that a period of 3 days including the day of notice allowed to the assessee was not a reasonable period as per the provisions of Act as well as the same has been laid down by the Hon'ble High Courts in the case of (i) **M/s Sri Gopal Store vs AO (supra)**, (ii) **M/s Gemini Film Circuit vs the AO, NFAC (supra)**.

11. It is also a case, wherein draft assessment order was served on the assessee, the outbreak of pandemic Corona was in force under its 2nd wave and, therefore, the administrative authorities have declared complete lockdown till 26.04.2021, this fact was brought to the knowledge of Ld. AO by the assessee vide its request for adjournment dated 22.04.2021, though such request was after the date i.e., 21.04.2021, upto which the assessee was requested to respond, also no acknowledgement of such online request made by the assessee has been furnished before us, since the time allowed by the Ld. AO was only for 3 days, the same cannot be considered as a reasonable time to respond. We, thus, are of the considered view that the assessee was

not afforded with reasonable time to respond, that proves violation of the principle of natural justice, our such opinion is supported with the view expressed by Hon'ble High Courts of Orissa and Madras in the cases referred to (**supra**), which is further fortified by the decision of Hon'ble Jurisdictional High Court of Chhattisgarh in the case of **MM Wonder Park Private Limited vs. Union of India & Others**, in **Writ Petition (T) No.172/2022, dated 17.06.2022**, while dealing with the issue of reasonable time to respond towards the show cause notice u/s 148A(b) of the Act, wherein Hon'ble High Court had observed that the time period of 7 days provided to the assessee company vide notice u/s 148A(b) of the Act was unreasonably short, and thus, violative of principles of natural justice. Accordingly, the Hon'ble High Court in the aforementioned case had quashed both the order passed by the A.O. u/s 148A(d) of the Act, dated 04.04.2022 and the notice u/s 148 of the Act, dated 05.04.2022, and set aside the matter to the file of the A.O. with a direction to decide the matter afresh in accordance with law after affording an opportunity of being heard to the assessee/petitioner. For the sake of clarity, the observations of Hon'ble High Court are culled out as under:

“5. I have heard Learned Counsel appearing for the parties and perused the above referred to documents/Annexures and other material available with due care.

6. From perusal of the documents/Annexures, it appears that the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act has been passed with regard to a transaction which occurred in the financial year 2014 15 after serving a notice dated 25.3.2022 (Annexure P1) and **giving a mere 7 days' time to the Petitioner/assessee to furnish a reply to the said notice. The time granted to the Petitioner/assessee to submit reply to the said notice appears to be unreasonable short and the Petitioner/assessee cannot be blamed for not being able to file the reply within such a short period. Thus, it appears that there is a violation of principle of natural justice.** Therefore, the prayer made on behalf of the Petitioner/assessee appears to be reasonable. Thus, the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act and the notice dated 5.4.2022 (Annexure P3) issued under Section 148 of the Act are quashed and the Respondents are directed to afford proper opportunity of hearing to the Petitioner/assessee and thereafter decide the matter afresh in accordance with law.

7. Accordingly, the instant writ petition is allowed” (emphasis supplied by us)

12. Adverting to the facts of the present case, as the show cause / draft assessment order, was issued by the Ld. AO to assessee on 19.04.2021, with the request to respond or revert to the same by 21.04.2021, the same cannot be construed to be a reasonable time allowed to comply by the assessee, in terms of the mandate of law, as deliberated upon and interpreted by the Hon'ble High Courts in the cases referred to (supra). We, thus, in terms of aforesaid observations deem it appropriate to set aside the show cause notice / draft assessment order dated 19.04.2021 and remit the

matter back to the file of Ld. AO to decide the issue afresh after affording reasonable opportunity of being heard to the assessee, in accordance with the law. In result, **Ground no. 2** of the assessee, is **partly allowed** for **statistical purposes**.

13. Ground No. 1, 3, 4, 5 & 6 : Since, we have remitted the matter back to the file of Ld. AO for fresh adjudication, therefore, we refrain ourselves to deal with and deliberated upon the issues on merits as well as challenge to the legality involved therein. Consequently, since the matter is restored for fresh adjudication to the file of Ld. AO, remaining grounds of the present appeal became infructuous, thus, are not separately adjudicated.

14. In result, the appeal of assessee in **ITA No. 188/RPR/2024** has been rendered as **partly allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 24/01/2025.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 24/01/2025
Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Shree Shyam Sales Corporation
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur