

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.906/Bang/2024
Assessment year : 2021-22

The Income Tax Officer, Ward 1, Shivamogga.	Vs.	Smt. Suvarna, Near Old NGO Bhavan, Sarvagna Circle, Honnali Road, Shimoga – 577 201. PAN: HCDPS 6641R
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Ramesh, CA
Respondent by	:	Shri E. Sridhar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.01.2025
Date of Pronouncement	:	27.01.2025

ORDER

Per Prakash Chand Yadav, Judicial Member

The present appeal of the revenue is arising out of the order of the Id. CIT(Appeals), National Faceless Appeal Centre, Delhi (NFAC) dated 15.03.2024 having DIN ITBA/NFAC/S/250/2023-24/10692709848(1) and relates to assessment year 2021-22.

2. The brief facts of the case as coming out from the orders of the authorities below are that the assessee is an individual and engaged in

the business of trading in Areca nuts. She filed her return of income on 4.1.2022 declaring total income of Rs.8,77,060. Return of income filed by the ass was processed u/s. 143(1) of the Act and thereafter selected for scrutiny. During the course of assessment proceedings, the Id. AO observed that the assessee has made substantial purchases from such suppliers who are either non-filer or have not filed any ITR reflecting any business. The Id. AO was of the view that the assessee has booked certain bogus purchases in her books of account. Therefore, for verifying the genuineness of purchases made by assessee, the AO issued questionnaires to the assessee u/s. 142(1) on 25.11.2022. The assessee filed part reply before the AO without the support of any evidence. Thereafter, the assessee vide submission dated 25.8.2022 filed certain details of the purchases made during the year under consideration. However, it is an admitted position of fact that assessee has failed to furnish details of the party wise purchases, GST returns, copy of ledger accounts of the above parties, etc. before the AO. Thereafter, the AO issued notices u/s. 133(6). Only one party viz., Chinna Durai has submitted reply before the AO, against this party, no adverse inference has been drawn by the AO in the assessment proceedings itself. For the remaining 4 parties, the AO observed that the assessee has failed to file any documentary evidence and the parties also could not comply with the notices u/s. 133(6) of the Act. Therefore, the AO made an addition of Rs.13,13,06,800 disallowing all the purchases made from the remaining 4 parties as mentioned in the assessment order.

3. Aggrieved with the order of the AO, the assessee preferred appeal before the CIT(Appeals) and filed certain documentary evidence. The Id. CIT(A) forwarded the submissions and the documents to the jurisdictional AO and called for remand report vide his letter dated 14.12.2023. The observations made by the CIT(A) vis-à-vis receipt of remand reports are as under:-

“10. Reminders for remand report:

All these submissions were forwarded to the AO vide letter dated 14-12-2023 with a request to examine the same. As the AO did not respond, reminders dated 28-12-2023 and 08-01-2024 was issued to the AO to expedite the same as the appellant moved an early hearing request on account of huge demand raised in her case. The AO vide his letter dated 16-01-2024 requested to provide further time. As per the request of the AO, the case was adjourned to 02-02-2024. On 01-02-2024 the AO sought for further time up to 15-02-2024. As per the request of the AO, the case was again adjourned to 15-02-2024. However, no remand report was received from the AO. Hence another reminder dated 20-02-2024 was issued to the AO by posting the case to 01-03-2024. However, the AO failed to submit any remand report. As the AO has not submitted any remand report, the appeal is decided on the basis of the information available on record as under;”

4. Thereafter, the Id. CIT(A) allowed the appeal of the assessee observing as under:-

“ 3. The claim of the appellant in her written submission that if the AO doubts her creditors, then the debtors also could be doubtful whereas the AO accepted her debtors appears valid claim.

4. The AO treated almost 35% of the purchases (Rs.13,13,06,800 out of Rs.37,25,75,430) as bogus in the assessment order. The balance sheet of the appellant has almost 98% of the total

purchase as credit purchase (Rs.36,70,29,144). The creditors were agriculturist. The debtors were also almost 98% (Rs.36,54,18,151 out of total sales of Rs.37,31,79,760).

13.2 Confirmation of two creditors:

The appellant claimed that the majority of the creditors were repaid in the subsequent year as and when the sales are realised. It is analysed as under;

13.2.1 Veera Raghava Traders: (Prop: Gopalakrishnan Padmanabhan)

1. The purchase from him was Rs.8,43,66,219/- and the outstanding balance of M/s Veera Raghava Traders as on 31.03.2021 was Rs.7,17,12,667/-. It was subsequently cleared in FY 2021-22. As on 24.08.2021, it was only Rs.9,08,362/-.

2. The AO in the assessment order recorded that the purchase figure (Rs.8,09,73,820) not tallied with the information available with the department (Rs.7,70,99,340). Hence entire amount was added back. This is not correct fact recorded in the assessment order. The ledger account and bank accounts could have been called for and examined.

3. In the reply dated 19-12-2022, the appellant replied to the AO that the notice issued u/s 133(6) of the IT Act dated 10-11-2022 and 25-11-2022 were not received by the creditor. However, the appellant claimed that he has filed the return of income for the relevant AY 2020-21 and given confirmation letters.

4. As per the ledger and the confirmation letter entire outstanding due were cleared by August 2021 itself i.e. before passing the assessment order.

5. Hence, it cannot be held that the total purchase of Rs.7,70,99,3401 as bogus. The appellant sufficiently demonstrated that this purchase was a genuine purchase only. The AO is directed to delete this addition.”

5. Similarly the Id. CIT(A) has deleted the other addition also. Aggrieved with the order of the Id. CIT(A), the Revenue has come up in appeal and raised two grounds of appeal.

6. At the time of hearing, the Id. DR at the outset contended that the observation of the CIT(A) that the AO could not send any remand report are factually incorrect inasmuch as the office of the AO has sent interim remand report vide letter dated 21.2.2024. Copy of the same has been filed with the Bench. The Id. CIT(DR) prayed that the matter may be restored back to the file of CIT(A) / AO for deciding it afresh in accordance with law.

7. The Id. counsel appearing on behalf of the assessee has filed detailed written submissions before the Bench and argued that assessee has strong objection with respect to the request of the Id. CIT(DR) for restoration of the matter before the CIT(A) or the AO because evidence was filed before the lower authorities. The main plank of the arguments of the counsel for the assessee is that when the debtors are not in doubt then creditors also to be treated as genuine.

8. We have heard the rival submissions and perused the material available on record. It is the case of assessee that the purchases made from the 4 parties were genuine. It is also the contention of the assessee that it is a repaid the liability of one of the sundry creditor in subsequent year which has not been considered by the AO, however appreciated by the Id. CIT(A). We observe that the observations made by the Id. CIT(A) in para 10 at page 31 in his order that AO failed to

submit any remand report is factually incorrect. As evident from the documents filed by the Id. CIT(DR) which consists of interim remand report of the AO's office. It is settled position of law that the power of the CITJA is coterminus with that of the AO, which means that what AO can do, the CIT(A) also can do. In the case at hand, the Id. CIT(A) has simply relied upon the documents filed before him without considering the averments made by the AO in the interim remand report and even without conducting enquiries on his own. The provisions of section 250(4) are clear and unambiguous, which provides that CIT(A) has powers to conduct further enquiries as he thinks fit.

9. We would like to refer to the judgment of Hon'ble Delhi High Court in the case of **Jan Sampark 92 CCH 100(Del)** wherein the Hon'ble Delhi High Court has observed as under:-

'The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section

250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

10. When we examine the facts of the present case in the light of the provisions of law and the view of the Hon'ble High Court then it is clear that the CIT(A) has failed to discharge his statutory duties. However, we are sending this matter to the file of AO, in the interest of justice, so that meaningful enquiries can be conducted. Ld. AO will examine the matter afresh in accordance with law.

11. In the result, the appeal of the revenue is allowed for statistical purposes.

Pronounced in the open court on this 27th day of January, 2025.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Bangalore,
Dated, the 27th January, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.