

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.309/Nag./2023
(Assessment Year : 2011-12)

VGI Marketing Division
Shop no.15, Shivaji Market
Akola 444 001 PAN – AAGGV2154A

..... Appellant

v/s

Income Tax Officer
Ward-3, Akola

..... Respondent

Assessee by : Shri Shubham Jain
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 10/02/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

The instant appeal by the assessee challenging the impugned order dated 18/07/2023, passed by the learned Commissioner of Income Tax (Appeals)-55, Nagpur, [*learned CIT(A)*], for the assessment year 2011-12.

2. The core issue raised by the assessee is, whether or not the learned CIT(A) was justified in upholding the addition made by the Assessing Officer on account of bogus purchase of ₹ 4.26 crore without giving effect of the obvious corollary sale transaction executed.

3. Before us, the learned Authorised Representative for the assessee relied upon the contents of Paper Book containing following documents and case laws.

1. *Income Tax Return - 5*
2. *Tax Audit Report/ Audited Financial Statements*
3. *Ledger - Vani Enterprises*
4. *Purchase bills - Vani Enterprises*
5. *VAT Return*
6. *Sales bills*
7. *Judgment of Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd*
8. *Judgment of Principal Commissioner of Income-tax v. S.V. Jiwani*
9. *Judgment of Principal Commissioner of Income Tax, 15, Mumbai v. Jakharia Fabric (P.) Ltd."*

4. The learned Departmental Representative, at the outset, invited our attention to Para-7.2.1 to 7.7 of the impugned order passed by the learned CIT(A), which is reproduced below:-

"7.2.1 The AO made the independent enquiry by sending letter u/s. 133(6) of the Act which was not served to the supplier and returned with remarks "not known". Further, it was narrated in the assessment order that the invoices submitted by the appellant and from the voices, it was evident that the supplier was building material supplier. However, the appellant made purchase of medical equipment and the material related to medical purposes. Further, the Investigation Directorate had also the information that M/s. Vani Enterprises was engaged into accommodation entry and one of the beneficiaries is appellant 100.

7.3 In the case of PCIT vs Mrs. Premlata Tekeriwal (2022), the Hon'ble High court of Kolkata held that bogus purchase was fully taxed in the hands of the appellant. The relevant para of the decision is reproduced as under:

"Having left with no option the PCIT proceeded to take for considering the matter and passed the order dated 5th March, 2018. It was held that from materials available on record it is proved beyond doubt that the alleged purchase claimed by the assessee against the parties were bogus. The PCIT 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. Reliance was placed on the decision of the Hon'ble Supreme Court in N.K.Proteins Vs. DCIT [2017] 84 taxmann.com 195(SC). Further, the PCIT pointed out that the assessment officer had to examine each and every transaction and finally assess the correct income of the assessee. However, the assessing officer without arriving at any logical conclusion and without conducting any inquiry made a disallowance only to the extent of 3% of the bogus purchase. With regard to the aspect of the assessing officer as to making inquiries, the PCIT referred to the decision of the Hon'ble Supreme Court reported in Rampyari Devi Saraogi Vs. CIT (1968) 67 ITR 84, Smt. Tara Devi Aggarwal Vs. CIT (1973) 88 ITR 323 (SC) and the decision of the other High Courts. Further, the PCIT took note of the Explanation 2 to Section 263 of the Act inserted by the Finance Act, 2015 with effect from 1.6.2015 and pointed out if an order has been passed by the Assessing Officer without making any inquiry or verification

then it would be a case where the order is deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the PCIT held that the entire expenses has to be disallowed as being bogus purchases. The Assessing Officer was directed to reassess the income of the assessee for the relevant assessment years.

The assessee carried the matter on appeal to the Tribunal. The Tribunal had allowed the assessee's appeal by relying upon the decision of the Coordinate Bench in Om Foregoing & Engineering P. Ltd. Vs. PCIT in ITA Nos. 5098 510/Kol/2017 for the assessment yeas 2010-2011 and 2011-2012 dated 13.12.2017 and the decision of this Court in PCIT Vs. M/s. Subarna Rice Mill, ITAT/196/2015, dated 20.06.2018. Firstly, we find that the decision in Om Foregoing & Engineering Pvt. Limited is clearly distinguishable on facts. In the said case the assessee had filed records and the copies of the sales bills etc. were filed in the form of a paper book and on facts the Court found that inquiry was conducted by the assessing officer and, therefore, the Commissioner was wrong in exercising his power under Section 263 of the Act. The facts as mentioned in the said judgment had been quoted by the Tribunal in paragraph 6 of its order. Reading of the said order will clearly show that the said decision could not have been applied to the assessee's case. The decision of this Court in the case of M/s. Subarna Rice Mill (supra) also is distinguishable on facts as the source from where the purchases were made was identified. At this juncture, it would be relevant to note that when the assessing officer gave an opportunity to the assessee to explain the transaction, the assessee did not produce any document, but stated that 2% of the purported bogus purchase may be added to the total income. Thus it would mean that the assessee had accepted the allegations against them and precisely for such reason they offered that 2% of the bogus purchase may be added to the total income. If such was the factual position in the case on hand then it is incumbent upon the Assessing Officer to inquire into the matter and take the proceedings to the logical end. Having not done so, the PCIT was fully justified in exercising jurisdiction under Section 263 of the Act. Thus, we are of the view that Tribunal erroneously interfered with the order passed by the PCIT."

7.4 Further in the case of M/s. Karni Jewellers[TS-691-ITAT-2020 (HYD)], the Hon'ble ITAT has held that "just because the assessee had made payments through banking channels to the vendors and recorded the diamonds purchased in its stock book does not make the transactions to be genuine with conclusive evidence.

7.5 In the instant case, the appellant made the purchase from the supplier which was alleged in accommodation entry. The relevant facts revealed from the AO's enquiry that the supplier is not available at the place of business as the letter issued u/s. 133(6) of the Act was not served and marked the supplier as "not known" The creditworthiness and genuineness of the transaction remained under question. Simply submitting the invoices in which the business of the supplier was also mentioned different to what the appellant purchased from the supplier also create suspicion. Further, the appellant did not submit the other required documents to establish his claim as genuine such as:

- delivery challans,*
- transport receipts,*
- octroi receipt for payment of Octroi duty,*
- receipt of weighbridge for weighing of goods,*
- excise gate pass,*
- goods inward register maintained at godown/warehouse/storage house etc."*

7.6 After considering the arguments of the appellant it is evident that the relevant documents submitted by the appellant during the course of assessment and appellate proceedings, does not establish the genuineness of the transaction. Further once, the genuineness of the transaction is not established, there is no question of allowing the deduction of such expenses.

7.7 In view of the above discussion and following the decisions of the appellate authorities(supra), the undersigned is of considered view that the appellant is not eligible to claim the deduction which is bogus in nature. Thus, the addition made by the AO during the course of assessment proceedings does not need any interference. Accordingly, the ground No. 2 raised by the appellant is dismissed.”

5. The learned D.R. vehemently submitted that purchases are bogus since transaction did not materialise and payment by cheque cannot be held to be sacrosanct. He relied upon the decision of the Hon'ble Gujarat High Court in N.K. Industries Ltd. v/s DCIT, and its dismissal by the Hon'ble Supreme Court. He also relied upon the decision of the Hon'ble Calcutta High Court in PCIT v/s Mrs. Premlata Tekriwal, in support of his submissions.

6. The learned A.R. miserably failed to controvert the above findings of the learned CIT(A). He could not point out any infirmity in the impugned order passed by the learned CIT(A) warranting us to take a different view.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The assessee is a manufacturer of drugs and pharmaceutical products. As per Tax Audit Report, quantitative details of principal items of goods traded were not made available. The supplier Vani Enterprises is situated at Mumbai and deals in building materials. Items supplied by the concern are as under:–

- i) Surgical Cotton 400 GRM;
- ii) Blender Machine; and
- iii) Rotary Machine.

8. It is beyond comprehension that how these items fall within the scope of building materials. ICDS Medicine kit is sold to Sameer Corporation situation at Mumbai. There is absolutely no co-relation between the items purchased and sold. There is no correlation between the items purchased and items sold. The assessee has failed to discharge his onus by submitting all relevant evidences and further there was no response from the supplier as well. Recently, the Hon'ble Jurisdictional High Court in PCIT v/s Kanak Impex (India) Ltd., vide order dated 03/03/2025, had sustained entire disallowance of bogus purchases and estimation of embedded profit has not been held to be the correct path. The impugned order passed by the learned CIT(A) is accordingly upheld by dismissing the ground raised by the assessee.

9. In the result, appeal by the assessee stands dismissed.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur