

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.180/Nag./2016
(Assessment Year : 2008-09)

M/s. Shree Agarwal Coal India Pvt. Ltd.
216, Dev Kripa Society, Wardhaman Nagar
Nagpur 440 008 PAN – AAFCS6709L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-1(2), Nagpur

..... Respondent

Assessee by : Shri Sachin V. Luthra
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the assessee challenging the impugned order dated 18/12/2015, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*"the learned CIT(A)"*], for the assessment year 2009-10.

2. Following grounds have been raised by the assessee:-

"1. the facts and in the circumstances of the case, Learned CIT(A) erred in maintaining addition of Rs. 8,83,000/- made by AO on account of unaccounted purchases.

2. Any other ground of appeal that may be raised at the time of hearing of the appeal."

2. During the course of hearing, the Registry has pointed out that there is a delay of 32 days in filing the present appeal by the assessee. The cause of

delay in filing the present appeal was due to the ill-health of the assessee himself and sufficient evidence has been brought to our notice which is placed on record. Application dated 23/03/2016, for condonation of delay enclosing therewith a medical certificate is placed on record. After considering the submissions of the learned Authorised Representative and averments made in the application for condonation of delay, we are of the opinion that the assessee is prevented in filing the appeal belatedly and we are satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, we condone the delay of 32 days in filing the present appeal and admit the same for adjudication on merit.

3. The sole issue for our adjudication relates to the addition made by the Assessing Officer on account of unaccounted purchases.

4. Facts in Brief:- In this case, during the year, the assessee is engaged in the business of trading and liasoning of coal and wind power. On 16/03/2011, a search under section 132 of the Income Tax Act, 1961 ("*the Act*") was conducted at the office and residential premises of the assessee's Director and connected family members in the group cases of Shri Agarwal Coal India Pvt. Ltd. The assessee, for the year under consideration, filed its return of income under section 139(1) of the Act on 30/09/2009, disclosing total income of ₹ nil. Subsequently, the assessee's case was selected for complete scrutiny by the Assessing Officer and high pitched assessment was completed under section 143(3) r/w section 153A of the Act by passing assessment order dated 21/03/2013, determining the total income at ₹ 52,76,37,930 by making following additions:-

1.	Interest on FDR	₹ 38,57,643
2.	Investment in land	₹ 75,000
3.	Agricultural treated as business income	₹ 1,93,083
4.	Deemed Dividend u/s 2(22)(e)	₹ 5,80,89,178
5.	Deemed Dividend u/s 2(22)(d)	₹ 7,69,50,670
6.	Share application & premium treated unexplained	₹ 3,70,00,000
7.	Unsecured loans treated unexplained	₹ 6,15,49,178
8.	Sundry creditors treated unexplained	₹ 26,74,93,739
9.	Expenses disallowed	₹ 8,69,520
10.	Expenses disallowed	₹ 73,11,789
11.	Expenses disallowed	₹ 54,18,018
12.	Purchases addition	₹ 88,30,079
		₹ 52,76,37,960

The assessee being aggrieved by the assessment order so passed by the Assessing Officer carried the matter before the first appellate authority.

5. The learned CIT(A), however, directed to delete all the major additions made by the Assessing Officer excluding the addition on account of unaccounted purchases which was confirmed by the learned CIT(A) to the extent of gross profit @ 10% of the aggregate purchases made by the assessee to the tune of ₹ 8,83,000. The relevant observations of the learned CIT(A) while confirming the said addition are extracted below for ready reference:—

"70. The facts in the case including assessment order, remand report and submissions of the assessee are considered. The AO has added a portion of purchases made by M/s. Siddheshwar Coal Corporation, where Mr. Premroop Sahu was partner, in hands of the assessee. The AO had made this addition on basis of statement of Mr. Sahu and stated in his order that unaccounted purchases of Rs. 88,30,079 are of the assessee and added to total income on protective basis.

From the submission of the assessee, it is seen that Mr. Sahu had left job of assessee on 15.02.2008 and started his coal business in M/s Siddheshwar Coal Corporation and M/s. Texela Industries from 01.04.2008. Hence Mr. Sahu was not employee of the assessee conducted on the on date of the search i.e 16.03.2011. The documents of purchase, bills, etc were seized from the premises of Mr. Sahu and Mr. Sahu stated that he was doing coal business in his two concerns had made purchases of Rs. 2,09,28,156. But he stated in his statements that out of total Purchases, amount of Rs. 88,30,079 do not pertain to him though all documents are in his name. The coal was purchased for PSU companies like WCL. SECD etc through e-auction. The purchaser Mr. Sahu was registered with these companies giving all KUC documents. Also all the purchases were made through e-auction and advance payments were made to coal companies. Mr. Sahu had made bids for coal through e-auction and made payments for said purchase. Mr. Sahu has stated that the Delivery Orders (DO) were transferred to Mr. Dharampal Agrawal.

The conclusion of the AO in the Remand Report is accepted. Unaccounted purchase and sale has been made by the assessee by transfer of Delivery Orders(DO) involving the said amount of Rs. 88,30,079/-. The entire amount can not be added in the hands of the assessee, rather, a reasonable Gross Profit on the amount needs to be added in assessee's hands. Accordingly, addition to the extent of Rs 8,83,000/ is confirmed being the gross profit @10% Of the unaccounted transaction of purchase. The AO is accordingly directed."

Consequent upon passing of the impugned order passed by the learned CIT(A), the assessee is in further appeal before the Tribunal.

6. Before us, the learned Counsel, Shri Sachin V. Luthra, appearing for the assessee submitted that during the year under consideration and in the preceding year, the assessee has earned the average gross profit not more than 6% (approx.). Therefore, to this extent, the gross profit rate on such purchases to be added at the same rate as of other genuine purchases.

7. On the other hand, Shri Sandipkumar Salunke, the learned Departmental Representative vehemently argued that the assessee is engaged in inflating purchases and hence the assessee cannot be given clean cheat based on the modus operandi of purchases through transfer of delivery order.

8. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The entire addition has generated out of the statement of an ex-employee. No cross-examination was allowed to test the veracity of the statement. Further, in case of search and seizure, attempt should be made on collecting irrefutable evidences to pin point the charge rather than merely relying on confusions. The documents were not found at the premises of the assessee, but were seized from an unconnected person. Moreover, the addition has been restored on protective basis which demonstrates that even the statement is untrustworthy and is fragile. Thus, the addition has no legs to stand upon and is directed to be deleted. There is no scope of estimation of gross profit because it is not a case of bogus purchase. Consequently, we set aside the impugned order passed by the learned CIT(A) by allowing ground no.1, raised by the assessee.

9. Ground no.2, being general in nature, hence no separate adjudication is required.

10. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 15/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2025

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