

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 134/Ran/2023

(Assessment Year: 2013-14)

Shah Brothers, Thana Lane, Chaibasa-833201 (Jharkhand) PAN No. AAZFS 7498 F	Vs.	A.C.I.T., Central Circle-1, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Sri R.R. Mittal, A.R.
Department represented by	Shri Khub Chand Pandya, Sr. DR
Date of hearing	10/06/2025
Date of pronouncement	10 /06/2025

ORDER

PER: BENCH

1. This is an appeal filed by the assessee against the order of the learned CIT(A), Patna-3, Patna in appeal No. CIT(A), Patna-3/10246/2017-18 dated 30/05/2023 for the A.Y. 2013-14.
2. Shri R.R. Mittal, Id. A.R. is represented on behalf of the assessee and Shri Khub Chand Pandya, Id. Sr.DR is represented on behalf of the revenue.
3. It was submitted by the Id. AR that the assessee is doing work in mining, the assessee had sub-contracted part of its work to Rajshila Nirman Pvt. Ltd.. The said Rajshila Nirman Pvt. Ltd. had also raised a bill for its work to an extent of Rs. 80,52,044/-. It was a submission that the payment was made alongwith service tax and TDS was also deducted. It was a submission that Rajshila Nirman Pvt. Ltd. was assessed in Kolkata. The Assessing Officer of Rajshila Nirman Pvt. Ltd. treated the activities of Rajshila Nirman Pvt. Ltd. as bogus

transaction and as a paper company and consequently he had intimated the Assessing Officer of the assessee. It was a submission that 263 proceedings had been done and as per the directions of the Id. Pr.CIT, the assessment in the case of assessee was redone. It was a submission that the assessment came to be completed on 28/12/2017 under Section 143(3) r.w.s. 263 wherein the Assessing Officer took the stand that Rajshila Nirman Pvt. Ltd. was not existent at the given address and Rajshila Nirman Pvt. Ltd. did not have the machinery/excavation machinery to carryout the development of mining area. It was a submission that consequently the Assessing Officer disallowed the expenditure of Rs. 80,52,044/- as claimed by the assessee. It was a submission that under similar circumstances, the Coordinate Bench of this Tribunal Kolkata Benches in the case of M/s Paharpur Cooling Towers Ltd. in ITA No. 217 to 219/Kol/2018 and C.O. No. 94 to 96/Kol/2018 vide an order dated 28/02/2020 had held that the expenditure in respect of payment of Rajshila Nirman Pvt. Ltd. was an allowable expenditure. In the decision of the Coordinate Bench, the Coordinate Bench of this Tribunal Kolkata Benches in para 26 at pages 35 to 38 of its order has held as follows:

"26. Next comes disallowance of ₹34,01,811/- on account of assessee's payment made to M/s Rajshila Nirman Pvt. Ltd. for management consultancy services made by the Assessing Officer after holding that the said payee was a bogus entity already struck off from the muster data. The CIT(A) has reversed the Assessing Officer's action as follows:-

"32. DECISION: 1.

1. I have carefully considered the submissions of the Ld. ARs as against the observations made by the Id. AO in the impugned order. In the assessment order the Id. AO observed that during the relevant year the appellant had made contractual payment of Rs.34,01,811/- to M/s Rajshila Nirman Pvt Ltd. ('RNPL'). He further observed that information was received by him from the AO of the

payee company that the payee was a shell company and was not in existence was also reported that the payee had neither expertise nor the infrastructure provide the services claimed in the audited accounts and there was no compliance on behalf of the payee company. On these facts, the Id. AO of the payee reported that the payee was used for routing unaccounted monies. According to Id. AO the payee had received cheques from the beneficiaries and subsequently equivalent amount was returned back to the broker behalf of the beneficiary companies after completing web of transactions but multilayering of funds. The Id. AO observed that the payee had sub-contracted the work to other fictitious concerns for the purposes of layering of the funds and therefore addition on protective basis were made in the hands of payees. The explanations put forth by the appellant and the evidences produced were rejected by the Id AO on the ground that the Inspector after conducting enquiry did not find existence of RNPL at the given address. On verification of company's master data of MCA database, the Id. AO found that the status of the payee was shown to be "strike-off". The Id. AO therefore concluded that the appellant did not prove the genuineness of the transactions nor could prove that the expenses were made wholly & exclusively for the business purposes and treating the amount paid as bogus expenditure the disallowance was made.

2. On careful consideration of the submissions of the Ld. AR and transactional documents furnished, I find that in the course of assessment the appellant had produced before the Ld. AO all material documents which it was expected to maintain in the ordinary course of business. It was submitted before the Ld. AO that in connection with the contract awarded by BHEL, the appellant had availed the consultancy services of RNPL. In support of the services rendered, an invoice was raised on the appellant, copy whereof was filed before the Ld. AO. It appeared from that the payee was registered with service tax department and the assessee number under the service tax was duly mentioned. The appellant had also furnished before the Ld. AO, the ST registration certificate which proved that the payee was assessed under service tax. The appellant had discharged the payment of service tax and credit therefore was allowed in the indirect tax proceedings without there being any adverse inference. It is further noted that the payee company was issued a certificate u/s 197 of the Act by the Dy. CIT Circle 59 (TDS), Kolkata which showed that not only the existence of the payee company was known to the Income-tax Department but the Ld. AO had issued certificate u/s 197 on being satisfied that the payee would not have any liability to pay tax for the relevant year.

3. In the light of the above documentary evidences, it is difficult to accept the Id. AO's contention that the existence of RNPL remained unproved or that it was a nonexistent company. It is also noted that the payee was assessed to tax and for the relevant year the return of income was filed by the payee. It may be so that in the assessment proceedings, there were non-compliances by the payee company, for which adverse inference could not be drawn against the appellant particularly

when the appellant's transactions were supported by proper documentary evidences which are required to be maintained in the ordinary course of business. As admitted by the Id. AO of the payee company, the gross contractual receipts for FY 2012-13 were to the order of Rs.6716.69 lacs whereas the amount billed to the appellant was only Rs.34.01 lacs. In percentage terms the amount billed to the appellant did not even constitute 0.5% of the contractual receipts of the payee company. I also find that the payments were made by the appellant by account payee cheques and the payments were cleared through proper banking channel and documentary evidence in support thereof was filed before the Ld. AO. The payments made inter alia included the service tax levied by the payee on the invoiced value and the payee was duly registered with the Service Tax Department. In the circumstances the primary onus cast on the appellant of substantiating the transactions was discharged by the appellant. In the assessment order the Ld. AO has observed that Inspector deputed to conduct enquiries from the payee could not locate the said company at the given address and this was the reason which prompted the Id. AO to draw adverse inference. However I note that the reason for not finding the payee at the given address has been provided by the Ld. AO himself when he observed that as per MCA data the payee company's name was struck off from the ROC, meaning thereby the company was wound up. The transactions of the appellant were conducted in FY 2012-13 whereas the enquiry about the transaction was conducted in FY 2016-17. In the circumstances if in the intervening period, the payee company had gone into liquidation, then for such circumstances the appellant could not be held responsible and for the reason that the company was found liquidated, inference could not be drawn that the appellant's transaction was bogus. In support of this inference, reference is invited to the judgment of the Calcutta High Court in the case of CIT, Kolkata-I vs. Inbuilt Merchant Pvt Ltd (G.A. No. 3825 of 2013). The relevant findings of the High Court were as follows:

"The views expressed by the Assessing Officer are erroneous in law. The Assessing Officer has overlooked the importance of the books of accounts maintained in the ordinary course of business. Reference in this regard may be made to sub-section (2) of Section 32 of the Indian Evidence Act, 1872. The books of accounts maintained in the ordinary course of business are relevant and they cannot be discarded in the absence of appropriate reasons. The mere fact that recipient did not reply in some cases or they were not found at the address furnished by the assessee does not in the least prove the fact that they were non-existent or that the payments shown to have been made by the assessee were imaginary. With the advancement of technology, it has become possible to sell goods throughout the country through the internet. For that purpose, agents are required throughout the country. The mechanism in that regard has been disclosed by the assessee and has been recorded in the order of the CIT (Appeals). For the purpose of carrying on its business, the assessee has to recruit the agents. It may not be possible for the assessee to know them personally. Whatever address was furnished to the assessee, has been disclosed to the Income-tax Department.

Payments were admittedly made by cheque after deduction of tax. The tax deducted as source has duly been deposited. The judgment in the case of CIT vs. Precision Finance Pvt. Ltd. reported in 208 ITR 465 relied upon by Mr. Bhowmick does not really assist him. The aforesaid judgment is an authority for the proposition that mere payment by account payee cheque cannot establish that the transaction was genuine, but in the case before us, besides the fact that payment was made by cheque, there are other pieces of evidence available which are as follows:

a) Books of Accounts maintained by the assessee in the ordinary course of business;

b) Deduction of Tax at source;

c) Deposit of the money deducted at source;

d) Particulars of the recipient were duly furnished;

We are, as such, of the opinion that the views expressed by the learned Tribunal are unexceptionable. We, therefore refuse to admit the appeal. The appeal is thus dismissed."

4. Similar view was taken by the Gujarat High Court in the case of CIT Vs. Nangalia Fabrics Pvt. Ltd (40 taxmann.com 206) involving similar circumstances, the relevant extracts thereof are as follows:

"The second question pertains to brokerage commission of Rs.72,37,808/- disallowed by the Assessing Officer. The Assessing Officer disallowed the commission on the ground that M/s. Shree Shantinath Silk Industries did not maintain its record and its name did not appear on sale bill. When it was challenged before the CIT(A) it was of the opinion that the only one party had been examined by the Assessing Officer and the person examined for and on behalf of such party in fact was not dealing with sales, and therefore, would not be having any knowledge of the brokerage. After dealing with the issue at length, it sustained addition of Rs. 36.18 lacs (rounded off).

6. When CIT(A)'s order was challenged before the Tribunal, the Tribunal deleted the entire addition by observing thus:

"23. We have heard the rival submissions and the materials placed on record. We are inclined to agree with the submission made on behalf of the assessee and find that no evidence, had been placed on record that the commission expense is bogus. Assessee made payment of commission expenses is bogus. Assessee made payment of commission through account payee cheques for sales canvassed by the party and also in consideration of the collection

recovered from purchaser. Payments cannot be unreasonable particularly when M/s. Shree Shantinath Silk Industries is not related to the assessee and so even disallowance made by CIT(A) is not proper. We therefore delete the full disallowance of Rs.72137,808/- made by the assessing officer. Hence assessee's ground of appeal is allowed and revenue's ground of appeal is allowed and revenue's ground of appeal is dismissed."

7. This issue is again based on facts. Essentially the Tribunal ties, with cogent reasons dealt with the issue, no question of law, much less any substantial question of law arises. The Tax appeal is resultantly, dismissed"

5. Applying the ratio laid down in these decisions to the facts of the case, I find that the appellant had produced before the Id. AO; all the relevant documents to substantiate its transactions with RNPL. The Ld. AO did not prove any specific falsity or infirmity in these documents. Even though in the impugned order the Ld. AO alleged that the payments made by account payee cheques were returned back to the appellant through multi-layering of the transaction, no supporting evidence to substantiate such allegation was brought on record. Even the cause for nonexistence of the company at the given address was explained by the Ld. AO to the effect that company had been wound up at the time when enquiry was conducted. In view of these facts therefore, I hold that there was no valid for the Ld. AO to make disallowance of Rs.34,01,811/- and the same is accordingly deleted. Ground No. 17 is therefore allowed."

27. *We have given our thoughtful consideration to rival pleadings supporting and contesting the impugned disallowance. The Assessing Officer had admittedly invoked the impugned disallowance mainly on the ground that the payee herein alleged to have provided consultancy services to the assessee's turned out to a shell entry in mere accommodation entry business. Learned CIT-DR fails to dispute that the assessee had placed on record all the relevant evidence of the said recipient. Hon'ble jurisdictional high court's decision in Inbuilt Merchant Pvt. Ltd. (supra) has already set identical issue to treat that such a compliance by way of all detailed evidence forms sufficient reason to prove rendering of the services as well as genuineness of payments. We thus affirm the CIT(A)'s findings deleting the impugned management consultancy services disallowance as well.*

It was a submission that this order of the Coordinate Bench of this Tribunal Kolkata Benches have been challenged by the revenue before the Hon'ble High Court of Kolkata in ITAT 182/2021 and the Hon'ble Kolkata High Court vide its

order dated 12th September, 2022 had upheld the order of the Tribunal by holding as follows:

"We have perused the order passed by the learned Tribunal and we find that the learned Tribunal rightly took note of the legal position and granted relief by referring to the order passed by the Hon'ble Supreme Court in CIT Vs Woodward Governor India P. Ltd. (2009) 312 ITR 254 (SC) and the decision in Oil and Natural Gas Corporation Ltd. Vs CIT 322 ITR 180 (SC). Identical issue was considered by this Court in the case of Principal Commissioner of Income Tax-1, Kolkata Vs M/s Price Waterhouse Coopers Pvt. Ltd. in ITAT 269 of 2017 dated 17th December, 2021 and the issue was decided in favour of the assessee. Similar was the decision taken by this Court in the case of Principal Commissioner of Income Tax (Central-1), Kolkata Vs M/s Himadri Chemicals & Industries Ltd. in ITAT 124 of 2021 dated 20th July, 2022."

It was a submission that by the time, the investigation was being done in respect of said Rajshila Nirman Pvt. Ltd., Rajshila Nirman Pvt. Ltd. had already been struck off that was the reason why the said company was not found at the address provided and its accounts could also not be verified properly. It was a submission that the said Rajshila Nirman Pvt. Ltd. had done work on behalf of assessee and the payments had been made through banking channels. It was a submission that the addition as made by the Assessing Officer and as confirmed by the Id. CIT(A) is liable to be deleted.

4. In reply, the Id. Sr.DR has vehemently supported the order of the Assessing Officer and the Id. CIT(A). It was a submission that the assessee has not been able to prove that Rajshila Nirman Pvt. Ltd. was a genuine company. It was a submission that no details of Rajshila Nirman Pvt. Ltd. was provided before the Assessing Officer in the course of assessment.
5. We have considered the rival submissions. In respect of existence and the business capabilities of Rajshila Nirman Pvt. Ltd., it is noticed that the issue is

now squarely covered by the decision of the Coordinate Bench of this Tribunal, Kolkata Benches in the case of M/s Paharpur Cooling Towers Ltd. (supra) which is a public sector undertaking and the order of the Coordinate Bench of this Tribunal, Kolkata Benches has also been upheld by the Hon'ble Kolkata High Court. As the issue now stands covered by the decision of the Coordinate Bench of this Tribunal, Kolkata Benches. Respectfully following the judicial precedents, the Assessing Officer is directed to allow the assessee's claim in respect of payment to Rajshila Nirman Pvt. Ltd.

6. In the result, this appeal of the assessee is allowed.

Order announced in open court on 10th June, 2025.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Ranchi, Dated: 10/06/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi