



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 335/RJT/2023  
(निर्धारणवर्ष / Assessment Year: (2014-15)  
(Hybrid Hearing)

|   |     |                          |
|---|-----|--------------------------|
| Singhavi Tradelink Private Limited.<br>Office No.-102, Asopalav Arcade, Plot<br>No.4, Tagore Road, Sector-9/A,<br>Gandhidham. | Vs. | ITO, Ward-2, Gandhidham. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AARCS9794F   |     |                          |
| (Appellant)   |     | (Respondent)             |

Appellant by : Shri D. M. Rindani, Ld. AR  
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR  
**Date of Hearing** : 02/04/2025  
**Date of Pronouncement** : 01/07/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld.CIT(A)”] vide order dated 12/06/2023, which in turn assessment order passed by Ld. Assessing Officer vide order dated 29/12/2016 u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”).

2. Grounds of appeal raised by the assessee are as followed:

- 1) *The learned Commissioner of Income Tax (Appeals), Income Tax Department NFAC, Delhi erred in adjudicating the appeal of the Appellant on merits ex-parte and in upholding additions of Rs. 18,66,470/- made by the ITO to the returned income of the Appellant.*
- 2) *The appellant craves leave to add, alter and withdraw any ground of appeal anytime up to the hearing of the appeal.*



2.1. That the assessee has filed an application prayer for admission of additional ground of appeal, which is reproduced below:

*"The Order passed u/s 143(3) of the Act by the Income-tax Officer, Ward - 2, Gandhidham is bad in law and without jurisdiction in as much as it is passed in the name of a person, not in existence at the date of passing of order, despite being made known to the assessing officer".*

3. Brief facts of the case are that the assessee filed its return of income on 26.09.2014 declaring income of Rs.5,06,650/-. The return was processed under section 143(1) of the Income tax Act, 1961 on 30.11.2014. The case was taken up for limited scrutiny assessment and a notice under section 143(2) of the Income tax Act was issued on 30.08.2015. In response to the notices issued, Miss Anjali Alwani, Chartered Accountant and Authorized Representative and Shri Gyan Chand Singhvi, Director of the company attended from time to time and the case was discussed. The details called for had been furnished, which were placed on record. Books of accounts and supporting documents were produced which were test checked. During the year, the assessee has derived income from trading of heavy melting steel scrap & mill scale.

During the course of hearing on 07.10.2016 the Authorized Representative was asked to explain purchased scrap to the tune of Rs.17,62,070/- from un-registered dealers. In reply, the Authorized Representative stated that some purchases were made from un-registered dealers for which they did not have any supporting evidences. However, to give a fair opportunity to the assessee, further time was granted as desired by the Ld. AO. The Authorized Representative was asked to furnish details of purchases made from un-registered dealers and also their individual ledger accounts. During the assessment proceedings on 14.10.2016 the Authorized Representative had produced ledger accounts of purchase from un-registered dealers and their individual ledgers. From the records produced, it was perused



that certain vouchers (supporting) were missing on one hand whereas there were extra vouchers which were not in the ledger account of the un-registered dealers. The signatures In many vouchers also did not match though being of the same person. Considering all these aspects, cash vouchers in respect of scrap purchases from un-registered dealers produced for verification were impounded. It was perused from the individual ledgers of persons (un-registered dealers) from whom such scrap was purchased, that some of the vouchers were missing. It was also observed that there were some extra vouchers other than the ones mentioned in the ledgers, which were apparently not entered into books or accounted for. On being asked about these unrecorded vouchers the Authorized Representative stated that 'these vouchers could have possibly been prepared by mistake or the name mentioned in the vouchers could have Interchanged. On being asked about the how the business was carried out, she had stated that 'Shri Gyanchand Singhvi, Director of the company used to look after the affairs and he was in a better position to explain." The vouchers produced by the assessee vis-à-vis the ledger accounts from the assessee's books also showed a discrepancy in the sense that the date of payment in the vouchers vis-à-vis the date of payment as recorded in the books was not matching in most cases. Therefore, the alleged purchases shown by the assessee from un-registered dealers was not believable and was proposed to be disallowed. The disallowance worked out to Rs.17,62,070/-. In this regard a show cause notice proposing addition to be made was issued to the assessee on 19.12.2016. In the response the assessee vide letter dated 26.12.2016 filed submission. The reply of the assessee was considered by the Ld. AO, but it was neither satisfactory nor tenable. As the date of payment in cash vouchers and date of payment in books of account was different and there were discrepancies in the cash book presented. It was clear that the actual dates of making payment in cash and dates as per books of accounts are different. The assessee in its reply stated that accounting entries of unregistered dealer purchases were made by clubbing



together cash payment vouchers. The assessee also submitted Identity proofs of unregistered dealer suppliers claiming that the same reflected that the purchases were genuine. The Identity proofs were of different varieties like Aadhar card, PAN card, driving license et cetera. Some identity proofs bore signature of the person and hence those could be matched against the signature in the vouchers. However, from the Identity proofs of un-registered dealers and cash vouchers of payment, it was perused that in some cases the signature of the un-registered dealer in his/her Identity proof and cash voucher was not matching. Accordingly, the Ld. AO made addition as following:

- 1) Rs. 17,62,070/- on account of scrap purchase from un-registered dealers,
- 2) Rs. 83,200/- on account of unrecorded sales
- 3) Rs. 21,203/- on account of disallowance of interest on TDS/TCS.

6. That the assessee filed the appeal against the order dated 29.12.2016 before the Ld. CIT(A).

7. The Ld. CIT(A) has issued three notices dated 24.05.2023, 02.06.2023 and 09.06.2023, the assessee did not response to the notices issued by the Ld. CIT(A), however, the Ld. CIT(A) dismissed three grounds of appeal raised by the assessee. Accordingly to the appeal for AY 2014-15 dismissed by Ld. CIT(A) order dated 12.06.2023.

8. That the appeal filed by the assessee against the impugned order of the Ld. CIT(A), before the Tribunal.

9. During the course of argument, the Ld. AR of the assessee filed detail note in respect of the explanation about the assessee's company converted into limited



liability partnership on 12.10.2015, the detail submitted, which are reproduced below:

*Justification for filing additional ground:*

*The impugned order in name of Singhvi Tradelink Pvt. Ltd. was passed on 29-12-2016. The fact that the Appellant-company was converted into LLP on 12-10-2015 was duly informed to the ITO during the course of assessment proceedings vide reply dated 02-05-2016 in response to notice u/s 142(1) of the Act and hence, the said fact was known to the Income-tax Officer before the passing of assessment order u/s 143(3) of the Act. Even then the assessment was framed in the name of the company that was non-existent as a limited company. Thus, the additional ground is wholly a legal ground and goes to the root of the issue as to whether an assessment order can be passed in case of an entity in law which was not in existence at the time of passing of order. Though this ground was not agitated before the first appellate authority but the fact thereof was made known to the assessing officer. Hence, it is prayed that the additional ground being wholly legal in nature can be raised at any stage of proceedings and may kindly be admitted for adjudication in the interest of justice.*

10. The Ld. AR filed additional ground of appeal wherein it was claimed that the AO passed order in the name of non-existent company, despite being made known to the assessing officer that on 12.10.2015 appellant was converted into LLP and the new name is Singhvi Tradelink LLP.

11. The Ld. AR further submitted that the assessment was completed by the Ld. AO in the old name i.e., Singhvi Tradelink Pvt. Ltd., however, the name has been changed to Singhvi Tradelink LLP.

12. On the contrary, the Ld. Sr. DR for the revenue relied on the order of the Ld. CIT(A) as well as Ld. AO. the Ld. Sr. DR also submitted written submission, which are reproduced below:

*“2. Legal Argument on the Continuity of Legal Proceedings against LLP as Successor Entity:*

*The revenue is raising these legal arguments on the additional legal ground raised in ITA 335 of year 2023 in this Honorable tribunal. The appellant had raised this legal ground that during the course assessment proceedings it was converted from a private limited company into a limited liability partnership and therefore the ongoing income*



*tax assessment proceedings become bad in law and ultra vires of the income tax act provisions, as per revenue this argument is not acceptable at all and will cause a legal anarchy if accepted*

### *3. Introduction:*

*The issue concerns whether a Limited Liability Partnership (LLP) that succeeds a private limited company remains liable for legal proceedings pending against the pre-existing company. The argument supports the position that the LLP, being a successor entity, inherits all rights, obligations, assets, and liabilities of the company, including pending legal proceedings.*

### *4. Legal Framework:*

*The conversion of a private limited company into an LLP is governed by the provisions of the Limited Liability Partnership Act, 2008, specifically Sections 56 and 58. These sections stipulate that upon conversion, the LLP becomes the successor entity, inheriting all assets, liabilities, and legal proceedings of the erstwhile company.*

### *5. Judicial Precedent Supporting Continuity of Proceedings:*

*The Supreme Court already held that where a business entity is succeeded by another, the successor entity inherits all rights and liabilities, including pending legal proceedings. The court emphasized that the continuity of legal responsibilities is essential to prevent disruption and ensure justice. Similarly, in the case of *Rajendra K. Bhuta v. Maharashtra Housing and Area Development Authority & Ors.*, 2009 (3) MhLj 628, the Bombay High Court held that the liability of the predecessor entity, including legal proceedings, is transferred to the successor entity upon conversion. The court affirmed that the successor cannot evade pending legal liabilities.*

### *6. LLP as Successor Entity:*

*Upon conversion from a private limited company to an LLP, the successor LLP is not a completely new entity but a continuation of the pre-existing entity. The LLP inherits all the assets, liabilities, and obligations, including those under ongoing legal proceedings, as explicitly provided under Section 58(4) (b) of the Limited Liability Partnership Act, 2008, which states:*

*"all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed."*

*Therefore, any legal proceeding initiated against the private limited company will continue against the LLP as it steps into the shoes of the company.*

### *7. Argument against the Contrary Position:*

*If the interpretation that the LLP is not liable for the previous legal proceedings against the private limited company is accepted, it would lead to severe legal chaos*



*and anarchy. This would create a loophole allowing companies to evade their liabilities by merely converting to an LLP, thereby frustrating the purpose of the law and undermining the justice delivery system.*

*8. Practical Consequences of Such Interpretation:*

*1. Evasion of Liabilities: Companies would use conversion as a strategy to escape legal obligations, causing a significant loss to creditors, stakeholders, and regulatory authorities.*

*2. Judicial Inefficiency: Courts would be flooded with challenges to the jurisdiction and validity of proceedings, significantly burdening the judicial system.*

*3. Legal Anarchy: If LLPs are considered distinct from their predecessor*

*companies in terms of pending legal proceedings, it would disrupt the entire legal ecosystem, where parties could potentially nullify their legal obligations through a simple restructuring process.*

*9. Conclusion:*

*The law mandates that upon conversion, the LLP is a successor entity inheriting all assets, liabilities, and pending legal proceedings of the private limited company. This ensures continuity and prevents misuse of the conversion process. The judicial precedents and statutory provisions clearly establish that the LLP must be held liable for all ongoing proceedings against the erstwhile company, and any argument to the contrary would lead to legal chaos and anarchy.*

*The recognition of LLPs as successors to private limited companies in legal proceedings is essential to maintaining legal certainty, accountability, and justice in the business environment. Therefore the additional ground of law raised in this appeal is liable to be rejected.”*

13. We have heard both the parties and perused the material available on record. We note that addition ground was raised by the assessee on the issue of that the assessee's company was converted into LLP on 12.10.2015, hence, the order should be passed in the name of new name, i.e., Singhvi Tradelink LLP. The Ld. AR submitted that since the assessee's company converted into LLP, old name become non-existent, thus the order passed on non-existent company, however, the Ld. DR on this issue submitted that a new LLP company i.e., Singhvi Tradelink LLP.



The LLP inherits all the assets, liabilities, and obligations, including those under ongoing legal proceedings, as explicitly provided under Section 58(4) (b) of the Limited Liability Partnership Act, 2008.

The conversion of a private limited company into an LLP is governed by the provisions of the Limited Liability Partnership Act, 2008, specifically Sections 56 and 58. These sections stipulate that upon conversion, the LLP becomes the successor entity, inheriting all assets, liabilities, and legal proceedings of the erstwhile company.

The recognition of LLPs as successors to private limited companies in legal proceedings is essential to maintaining legal certainty, accountability, and justice in the business environment, besides the additional grounds of the assessee has also challenged the addition in income of Rs. 18,66,470/-, and the addition are as follows:

|   |                     |
|---|---------------------|
| on account of Purchase goods from<br>unregistered dealer of | Rs. 17,62,070/-,    |
| on account of Excess Purchase of                            | Rs. 83,200/-,       |
| on account of TDS of  | <u>Rs. 21,203/-</u> |
| Total   | Rs. 18,66,470/-     |

The Ld. AO noted that assessee purchase goods from unauthorized dealer amounting to Rs. 17,62,070/-. That the AO of the view that the purchases shown by the assessee from un-registered dealers is not believable. The assessee had simply tried to give the alleged transaction a colour of genuineness by presenting self-made vouchers in which the signatures of the recipient are not matching. The books of the assessee are also not reliable for the reason that the date of payment in cash for the purchases does not match with the books of accounts. The cash payment is made earlier and the amount is debited in books of account at a later date. Therefore, the total purchases from un-registered



dealers amounting to Rs.17,62,070/- is treated as fictitious and is disallowed the purchase and added back in the total income of the assessee. The assessee claimed that profit element in the total purchase of Rs. 17,62,070/- is to be added in the total income and not the whole purchase is to be added in the total income and relied on the following judgement.

i. Commissioner of Income-tax V. Simit P. Sheth, [2013] 38 taxmann.com 385 (Gujarat)

*“Where purchases were not bogus but were made from parties other than those mentioned in books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of assessee”*

ii. Vijay Trading Co. V. Income-tax Officer, High Court Of Gujarat

*In respect of bogus purchases, only profit element embedded therein would be subjected to tax.*

We are agree with the contention of the assessee that only profit element was to be added in the total income, and we modify the addition to the extent of 10%

- Addition of Rs. 17,62,070/- that comes to Rs. 1,76,207/-
- Addition of Rs. 83,200/- on account of excess purchase,
- Addition of interest on TDS/TCS of Rs. 21,203/-.

We note that the assessee did not advance argument on these two issues before us. Hence, these additions are confirmed. Therefore, the total addition comes to Rs.176207/- + Rs.83,200/- + Rs.21,203/- = Rs.2,80,610/- is confirmed. Therefore, we partly allow the appeal of the assessee.



Since, we have decided the appeal of the assessee on merit, there is no need to adjudicate the additional ground of appeal and Ground no. 2 of the appeal, which is general in nature.

16. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 01-07-2025.**

**Sd/-**  
**(Dr. A. L. SAINI)**  
**ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 01/07/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

**(True Copy)**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot