

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.232/SRT/2020

Assessment Year: (2011-12)

(Physical Hearing)

The ACIT, Vapi Circle, Vapi.	Vs.	M/s Northern India Alcobru Systems, Plot No.730, 40 Shed Area, GIDC, Vapi – 396195.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFN0481F		
(Appellant)		(Respondent)

Appellant by	Shri Airiju Jaikaran, CIT(DR)
Respondent by	Shri Suresh K. Kabra, CA
Date of Hearing	16/08/2023
Date of Pronouncement	06/11/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by Revenue, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the ld. CIT(A)”], dated 24.09.2020, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), dated 27.03.2014.

2. The grounds of appeal raised by the Revenue are as follows:

“i) On the facts and in the circumstances of the case and in law, the Ld.CIT (A) has erred deleting the addition of Rs.7,50,000,000/- made by the assessing officer on account of inflated sales without realizing that the inflated sales only reflected income, as no cost was incurred towards the same.

ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the assessing officer of Rs.61,49,921/- being 2.5% of unconfirmed purchases.

iii) It is therefore, prayed that the order of the CIT(A), be set-aside and that of the Assessing Officer be restored.

iv) The assessee craves to add, modify or alter any grounds during the course of appeal proceedings.”

3. First, we shall take ground no.1 raised by Revenue which relates to deleting of addition of Rs.7,50,00,000/- made by the Assessing Officer on account of inflated sales.

4. Succinctly, the factual panorama of the case is that assessee before us is a partnership firm, and has filed its return of income, for the assessment year 2011-12, by way of e-filing, on 26.09.2011, bearing acknowledgement no. 292869611260911, declaring the total income at Rs.81,57,990/-. The assessee's case had been selected for scrutiny manually and accordingly a notice u/s 143(2) of the Act has been issued on 27.09.2012, which was due on 18.10.2012. Subsequently a letter has been issued by this office on 11.04.2013 requesting the assessee to furnish the paper book containing the audit report in form no. 3CB, 3CDE, 3CEB, 10CCB, 10A, 10B and computation of total income. In response, the assessee, submitted the acknowledgement of return of income, computation of income and audited accounts, as on 25.04.2013. The assessing officer had issued further notice u/s 142(1) of the I.T. Act, to the assessee on 06.06.2013, wherein books of accounts and various details forming part of questionnaire were called for by 18.06.2013. In response to said notice, the assessee submitted the details on 18.06.2013. Further submissions were also made by the assessee before the assessing officer on 12.02.2014.

5. Subsequently, the assessing officer received a charge sheet, issued in the name of the assessee-firm by the Inspector of Police, CBI/BS&FC/Mumbai alongwith the sanction order of prosecution by the Assistant general manager of Punjab National Bank, vide letter dated 19.10.2012. The entire report running of pages from 1-26 and sanction order of 6 pages have been perused by the assessing officer. Subject to the charges framed by the CBI and its enquiry thereon, the following details have come to the light of the assessing officer, which are as under:

Misappropriation of sales of goods (machinery):

On perusal of the Sanction order by the General Manager of Punjab National Bank and the charge sheet of the CBI, it was noticed by the assessing officer that there are certain findings which throws on the hypothecated machinery. The findings mentioned in the sanction order of Page-5, para-17 is reproduced as under:

“Whereas, as per the term loan conditions, Shri Tiwari should have verified the receipt and erection, of all the machineries in the factory of EKPPL. The evidences placed before me has indicated that NIAS which had received about Rs.25.50 crore including margin money had supplied machineries worth Rs.12 crore only and had not supplied machineries worth Rs.7.75 crores of the bank's portion of the funding at all. Whereas it has come to light that the actual cost of all the machineries would have been Rs.19.50 crore inflated reports were submitted by the partners of NIAS that the machineries worth Rs.24.5 crore to cover the margin money.”

The assessing officer noted that as contained in the charge sheet of the CBI report, it has been contented that in view of the contract with M/s Excell Prakriya Pvt Ltd, machineries has been supplied by the assessee-company to the said party for setting up plant for manufacturing. In order to defraud the Punjab National Bank, the machinery cost has been mentioned as Rs.24.50 crores whereas the actual cost of the machinery is Rs.19.50 crores. This evidently

corroborates with the sale value shown by the assessee with M/s Excell Prakriya Pvt Ltd, as Rs.24,01,42,372/-. The assessing officer noted that the company Northern India Alcobru system (NIAS) on the basis of contract, should have supplied machineries worth Rs.19.50 crores. However, in order to procure and to defraud and alongwith malice intention in conspiracy with M/s Excell Krushi Prakriya Pvt Ltd (EKPPPL) an amount of Rs.25.50 crores, as loan inflated the machineries cost to Rs.24.50 crores. Instead of supplying the machineries of Rs.19.50 crores, the assessee-company supplied only machineries to the cost of Rs.12.00 crores. This knowledge came to the light of the Bank only after the discreet enquiry made by the CBI. Meanwhile, the assessee and its customer EKPPPL released the loan amount of Rs.25.50 crores, and the same has been disbursed and siphoned amongst themselves by creating bogus and new accounts opened in the name of Northern India Engineering Works (NIEW). Thus, the assessee-company has fraudulently mentioned the amount of cost/ sales of machineries worth Rs.24.50 crores, which though in extent of Rs.19.50 crores and very ingeniously sold the machineries to the cost of Rs.12.00 crores. Thus, there has been a misappropriation of the sale value, shown by the assessee and the difference of the same i.e. Rs.7.50 crores (Rs.19.50 crores - Rs.12.00 crores = Rs.7.50 crores) is the excess value shown in the sales by the assessee, as receipt. Eventually the assessee has benefited to the extent of Rs.7.50 crores and has been concealed which is added back to the income of the assessee, as unaccounted income and an addition to the tune of Rs.7.50 crores is made u/s 41(2) of the Income Tax Act.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the

addition made by the Assessing Officer. The Id CIT(A) observed that in the assessee's case, the facts indicate that assessee had accounted for sale of Rs. 24.01 crores in the books of accounts, there is no relevance to loan of Rs. 19.50 crores granted by PNB and any such valuation of machinery supplied at Rs. 12 crores.

7. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

8. Learned CIT(DR) for the Revenue, argued that the entire conspiracy was done by the assessee- firm and M/s EKPPL to defraud the bank. To make the entire transaction as genuine, proper offer letter, sale bills were prepared and all transactions were routed through bank. However, during the discreet enquiry by the CBI, it was found that the machinery supplied by the assessee was of Rs.12 crore only instead of actual machinery of worth Rs. 19.50 crore. Hence, the documentary evidences in the form of offer letter, sale bills, ledger extract or bank statements showing genuineness of the transaction does not prove that the assessee did not siphon off the funds in connivance with EKPPL. Further, advancing of loans to the Directors of M/s. EKPPL and one proprietary concern of one of the Director is a further proof that the funds were returned to M/s EKPPL by the assessee. Hence, the amount of Rs.7.50 crore was rightly added to the income of the assessee on account misappropriation of sale of machinery which the Ld. CIT (A) failed to appreciate. Therefore, addition made by the assessing officer may be upheld.

9. Shri Suresh K. Kabra, Learned Counsel for the assessee, pleaded that assessee had furnished during the assessment proceedings, the offer letter, sale bills, ledger account and bank

statements and these evidences prove that transaction was genuine. During the appellate proceedings also the assessee produced copies of sales bill, offer letter from EKPPL before the Id. CIT (A) and stated that the entire income has been offered to tax and moreover, the assessee had already accounted sales worth Rs. 24.01 crore pertaining to M/s. EKPPL in its Profit and Loss account therefore further addition by the assessing officer is tantamount to double taxation on the same income. Therefore, Id Counsel contended that order passed by Id CIT(A) may be upheld.

10. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee company running in to 205 pages. The necessary facts of the case have already been discussed in paragraphs above. During the appellate proceedings, the Id CIT(A) observed from the Profit and Loss account and other relevant documentary evidences that the assessee had already accounted for sales worth Rs. 24.01 crore pertaining to M/s EKPPL. This fact was nowhere acknowledged by the assessing officer in the assessment order. It is apparent from the conclusion of the assessing officer in the assessment order that the assessing officer was bogged down with figures in the charge sheet of CBI against General Manager of PNB-Bank. Even in the remand report, the same issue was repeated to justify the addition. In the current case, the facts indicate that assessee had accounted for sale of Rs. 24.01 cr in the books of accounts, there is no relevance to loan of Rs. 19.50 crores granted by PNB and any such valuation of machinery supplied at Rs. 12 crores. Even this figure of Rs.12 crores was found incorrect as per CBI report itself. Considering the clear fact of recording of sales at Rs. 24.01 crores pertaining to EKPPL, there is no question of any

unaccounted sales of Rs. 7.50 crores in the case of assessee. We also find merit in the arguments advanced by Id Counsel to the effect that entire sales have been offered to tax and once the profit embedded in the sales has been taxed by the Revenue, the same sales should not be taxed again, otherwise it would amount to double taxation on the same sales, which is not permitted under the Income Tax Act. At this juncture, we would like to reproduce a famous quote: Per Lord Halsbury, *Scoble v Secretary of State for India* 4 TC 618, 625 (HL):

“The Income Tax is not and cannot be, I suppose from the nature of things, cast upon absolutely logical lines.”

Thus, we note that double taxation occurs when the same sales/income is taxed twice, and this is not permitted even in international scenario. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A), hence we dismiss ground No.1 raised by the Revenue.

11. Coming to ground No.2 raised by the Revenue, which relates to deletion of the addition made by the assessing officer of Rs.61,49,921/- being 2.5% of unconfirmed purchases.

12. Brief facts *qua* the issue are that during the assessment proceedings, the assessing officer observed that profit and loss account of the assessee shows a purchase of Rs.37,13,19,187/-, therefore the cross examination of these purchases have been done by the assessing officer by way of issuing notice u/s 133(6) of the Income Tax Act, 1961. Against the aforesaid purchases, an amount of Rs.12,53,22,335/- have been brought on record. However, the differential amount of Rs.24,59,96,852/- was still remaining to be

brought to record. In view of the above observation, a show cause notice has been issued to the assessee- company on 14.03.2014, so as to provide the reason and substantial evidence to purport the claim.

13. In response to above show cause notice, the assessee- company submitted a written reply on 25.03.2014 and also attended the office of the assessing officer. The assessee-company has mentioned in the written reply that it is clear that almost 1/3rd of purchases are already confirmed and that the remaining vendors are almost three years old and some may have shifted /close down or relocated themselves. After going through the reply of the assessee, the assessing officer observed that assessee`s reply is justified to some extent, however as 2/3rd portion still remain to be verified, and considering natural justice an amount of 2.5% of Rs.24,59,96,852/- was not allowed and therefore, added back to the income of the assessee. Thus, an amount of Rs.61,49,921/- (2.5% of Rs.24,59,96,852) was added back to the income of the assessee.

14. On appeal, ld. CIT(A) has deleted the addition. The ld CIT(A) observed that assessing officer has not dealt with the fact that verification notices were sent in less than 50% of the purchase parties and no general conclusion could be drawn for balance purchases where no verification notices were sent. Aggrieved by the order of ld. CIT(A), the Revenue is in appeal before us.

15. The ld. CIT(DR) for the Revenue, argued that during the course of assessment proceedings, the assessing officer issued notices u/s 133(6) of the Income Tax Act for verification of purchases of Rs.37,13,19,187/- shown by the assessee in its Profit & Loss account. Out of the total purchases of Rs.37,13,19,187/-, purchases of only

Rs.12,53,22,335/- could be verified and the rest of Rs. 24,59,96,852/- remained unexplained, thus the assessing officer made disallowance of Rs. 61,49,921/-, being 2.5% of the total unconfirmed purchases of Rs.24,59,96,852/-, therefore addition made by the assessing officer may be confirmed.

16. On the other hand, Id Counsel for the assessee pleaded that assessing officer sent verification notices to the parties for Rs.18,07,38,468/- worth of purchases, which is less than 50% of the total purchases of Rs.37,13,19,187/- debited in the Profit & Loss account and thus the conclusion was drawn by the assessing officer for sample purchases of less than 50% of purchases. The Id Counsel further argued that once sales are found accepted disallowance of purchases without any contrary adverse fact was not justified. Therefore, Id Counsel contended that order passed by the Id CIT(A) is just and proper and the same may be upheld.

17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that Ld. Counsel for the assessee submitted the following documents and evidences before us, viz: (i) Details of purchases above Rs. 25 lakh (part of WIP – 31.03.2010 (vide Pb.2 to 5), (ii) Bifurcation of sales including sales of EKPPPL (2010-11) (vide Pb.6 to 18), (iii) Balance sheet and P& L A/c for the year 2010-11 (AY 2011-12) (vide Pb.19 to 22), (iv) Submission dated 16.05.2018 before CIT(A) (vide Pb.23 to 42), (v) Ledger a/c copy of EKPPPL for the year 2008-09, 2009-10, 2010-11 and 2011-12 in the books of the assessee (vide Pb.43 to 46), (vi) Details of purchases in

excess of Rs. 5 lakh (2010-11)(vide Pb.115 to 118), (vii) Summary of sales for the year (vide Pb.119), (viii) Query letter by Assessing Officer regarding Remand Proceedings (vide Pb.121 to 122), (ix) Summary of purchases (vide Pb.123), (x) Details of WIP (vide Pb.124), (xi) Details of purchases made on a/c of the project of EKPPL (vide Pb.125 to 154)

18. We have gone through the above documents and evidences and observed that addition of Rs. 61,49,921/- pertaining to purchases, the assessing officer noted that the assessee could not explain for the purchase value of Rs.24,59,96,852/- out of total purchases of Rs.37,13,19,187/-. Thus, 2.5% of Rs.24,59,96,852/- i.e. Rs.61,49,921/- was disallowed and added to the total income. The ld CIT(A) noted that as regards disallowance of 2.5% unconfirmed purchases of Rs.24,59,96,852/- , the assessee contended that the assessing officer was requested vide letter dated 25/3/2014 to provide list of parties who had not complied to notices u/s 133(6) of the Act, but the assessing officer furnished such list only on 27/10/2014. The assessee also contended that the assessing officer had sent verification notices to parties for Rs.18,07,38,468/- worth purchases out of total purchases of Rs.37,13,18,187/- debited in Profit & Loss account. Thus, the conclusion was drawn by the assessing officer for sample purchases of less than 50% of purchases. It was also contended before ld CIT(A) that in the remand proceedings, all the sale bills copies were produced before the assessing officer for verification. Thus, it was argued by assessee that once sales are found accepted, disallowance of purchases without any contrary adverse facts were not justified.

19. Based on the above facts, the Id CIT(A) observed that as regards the disallowance of Rs. 61,49,921/- (2.5% of unconfirmed purchases of Rs. 24,59,96,852/-), the assessing officer's only reason in the assessment order is that these purchases to the tune of Rs. 24,59,96,852/- remained unconfirmed. In the remand proceedings, the purchase bills, ledger account and relevant documents were filed but the assessing officer stated in the remand that the assessee did not furnish confirmation for the said purchases of Rs.24,59,96,852/-. The assessing officer in the remand proceedings did not proceed to bring any of such purchases as non- genuine and merely put the blame on assessee for not filing confirmations. In remand report, the assessing officer recommended for disallowance of entire purchases of Rs.24,59,96,852/-. This observation of the assessing officer is based on mere presumption as the assessing officer failed to take note of the fact that sales to the tune of Rs. 41.82.cr were recorded in Profit & Loss account and no anomaly towards profit disclosed could be brought forth. In fact, the net profit chart of previous assessment year (A.Y) 2010-11 and current assessment year (A.Y) 2011-12 is found to be same at 1.98%. The Id CIT(A) also noted that once sales is accepted, the purchase cannot be disallowed without any iota of non-genuine purchases proved by the assessing officer in the original assessment or even in remand proceedings. The assessing officer has not dealt with the fact that verification notices were sent in less than 50% of the purchase parties and no general conclusion could be drawn for balance purchases where no verification notices were sent. Assessee also stated that the transactions being related to financial year (F.Y.) 2010-11, many of the parties could not have been able to comply. Considering these facts, the Id CIT(A) held that the disallowance of 2.5% of non- verified purchase of Rs.24,59,96,852/-

and remand report recommendation of full disallowance of Rs.24,59,96,852/- is not based on any findings of non- genuine purchases, therefore, Id CIT(A) deleted the addition of Rs. 61,49,921/-. We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the conclusion reached by Id CIT(A).That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

20. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced on 06/11/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 06/11/2023

SAMANTA

Copy of the Order forwarded to

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

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat