

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE V. SRISHANANDA

I.T.A. NO.342/2014

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE, C.R. BUILDING
QUEENS ROAD, BANGALORE.
2. THE DY. COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE-1(2), C.R. BUILDING
QUEENS ROAD, BANGALORE.

... APPELLANTS

(BY MR. K.V. ARAVIND, ADV.,)

AND:

M/S. ANANTHA REFINERY PVT. LTD.,
SIDDAPURA VILLAGE
BANGALORE ROAD
CHALLAKERE-577522.

... RESPONDENT

(BY MR. SHANKAR A, SENIOR COUNSEL A/W
MR. M. LAVA, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 13.02.2014 PASSED IN ITA
NO.1554/BANG/2013 FOR THE ASSESSMENT YEAR 2007-08,
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED ABOVE.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.1554/BANG/2013 DATED 13/02/2014 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE1(2), BANGALORE.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2007-08. The appeal was admitted by a bench of this Court vide order dated 24.11.2015 on the following substantial questions of law:

"(i) Whether the Tribunal was correct in holding that the assessing officer did not make any independent enquiry, whereas, in fact it was the assessing officer who had initiated enquiry and requested the sales tax Department to investigate the existence of the three purchase parties at Solapur?"

(ii) Whether the Tribunal was correct in holding that there was no independent enquiry made by the assessing officer except for the report of the sales tax authorities, which cannot find basis for coming into conclusion of entire amount of purchases being bogus and considering the facts the tribunal has ordered for disallowance of only 20% of the purchasers from three entities for each of the assessment years involved?"

2. Facts leading to filing of this appeal briefly stated are that the assessee is a private limited company registered under the Companies Act, 1956 and is engaged in the business of edible oil extraction and trading. A search under Section 132 was conducted in the premises of the assessee on 03.12.2010 and notice under Section 153A of the Act dated 16.04.2012 was issued to the assessee. The assessee in response to the aforesaid notice, filed the return of income for Assessment Years 2006-07 and 2007-08 on 04.09.2012 declaring total income of Rs.23,96,810/- and

Rs.33,96,670/- respectively. Subsequently, notice under Section 143(2) of the Act dated 15.10.2012 was issued and was served on the assessee and the Assessing Officer by an order dated 13.02.2013 passed under Section 153A and Section 143(3) of the Act for the Assessment Year 2006-07 and 2007-08 determined the total income of the assessee at Rs.9,86,93,820/- and Rs.12,28,61,820/- respectively by disallowing the purchases made by the assessee from three parties viz., Sri.Siddeshwara Commercial, Solapur, Spoorthi Commercial, Solapur and Priya Commercials, Solapur, on the ground that the aforesaid purchases are not genuine.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 31.10.2013 dismissed the appeal preferred by the assessee. Thereupon the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The

tribunal by an order dated 13.02.2014 partly allowed the appeal of the assessee and restricted the disallowance to 20% of the purchases made from the aforesaid three parties to the extent of Rs.1,92,59,401/-. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the revenue submitted that the tribunal itself has categorically accepted that all the aforesaid three parties were never in existence and their representatives were never produced for verification and therefore, there were no purchases from the aforesaid three parties. It is further submitted that the suppliers to the assessee have not been identified and the same have been found to be bogus and the sales tax registration number shown in the invoices has been confirmed to be bogus by the sales tax authorities and there were no stamps on the invoices by the government authorities like Agricultural Produce Market Committee (APMC) and check post. It is also pointed out that the documents relied on by the assessee like receipt

of goods, weightment slips, invoice slips are self made by the suppliers said to be registered in Solapur and the bank accounts have been maintained in the place of the assessee and the cash has been withdrawn by the employees of the assessee. It is also pointed out that the bank accounts were introduced by the director of the assessee company and the identity of all the three parties / suppliers have not been established and the tribunal without application of mind has proceeded to record that the aforesaid aspect amounts to irregularities in the purchase of raw materials. It is further submitted that the finding recorded by the tribunal is perverse and since, the assessee was claiming expenditure under Section 37 of the Act towards purchase of the material, the burden was on the assessee to establish that expenditure was laid out or expended wholly and exclusively for the purpose of business or profession and the aforesaid burden could not have been shifted on the Assessing Officer by the

tribunal. It is also contended that the finding recorded by the tribunal that the sellers were bogus but purchase of material is not bogus is baseless and the tribunal grossly erred in accepting the supply of material as genuine merely on the ground that if the purchase cost is disallowed, the gross profit would be 35% to 37%, whereas, gross profit for further years is in the range of 8% to 10%.

5. It is also argued that only because gross profit would be higher the purchases of the material from non existing person or bogus purchasers cannot be termed to be genuine. It is also urged that there is no basis for restricting the disallowance to 20% and holding that 80% of the supplies as genuine once the tribunal accepts non existence of suppliers. Alternatively, it is submitted that even if the finding of the tribunal is to be accepted that without there being any purchase there cannot be any sale, the order of the tribunal or the explanation of the assessee to the extent that from

where the purchases were made, which is subject matter of sale is silent. This fact itself would establish the fallacy in the findings recorded by the tribunal without any basis and the order of the tribunal suffers from the vice of non application of mind.

6. On the other hand, learned Senior counsel for the assessee submitted that during the course of assessment proceedings, the assessee had produced the details to the Assessing Officer viz., copy of invoice, copies of delivery challan, details of payment made in regular course through account payee cheque and details of products manufactured with input output ratio. It is also submitted that transactions have taken place through account payee cheques and therefore, the findings of the Assessing Officer that the transactions were non existent is incorrect. It is also pointed out that merely because, the suppliers did not appear before the Assessing Officer, no inference can be drawn that purchases made by the assessee were bogus. It is also

urged that it is not the case of the Assessing Officer that the price at which the goods were purchased from the three suppliers was in excess of prevailing market price and the purchases were properly recorded in the books of accounts. It is also submitted that due to addition made by the Assessing Officer in the order of assessment, the gross profit of the assessee was increased from 8.56% and 8.30% to 37% and 35% for Assessment Years 2006-07 and 2007-08, which is not possible. Our attention has also been invited to para 30 and 31 of the memorandum of appeal filed by the assessee in I.T.A.Nos.285-286/2014 and it has been submitted that the tribunal has rightly made disallowance at 20% of the purchases from the three parties. It is also urged that the expenditure was incurred by the assessee exclusively for the purpose of business for the procurement of raw materials and the same has rightly been allowed by the tribunal under Section 37(1) of the Act and once there exists a nexus

between the business of the assessee and the expenditure incurred, the same cannot be disallowed on the facts and circumstances of the case. It is also submitted that a finding of fact has been recorded by the tribunal, which has not been demonstrated to be perverse therefore, no interference is called for in this appeal. In support of aforesaid submissions, reliance has been placed on decisions in **'CIT VS. SA BUILDERS', 288 ITR 1 (SC), 'CIT VS. NIKUNJ EXIMP ENTERPRISES (P) LTD', 372 ITR 619 (BOMBAY), 'CIT VS. SUNRISE TOOLING SYSTEMS (P) LTD.', 361 ITR 206 (DELHI), 'CIT VS. BHOLANATH POLY FAB(P) LTD', 355 ITR 290 (GUJ), 'CIT VS. NANGLIA FABRICS (P) LTD', 220 TAXMAN 17 (GUJ), 'PCIT VS. CHAWLA INTERBILD CONSTRUCTIONS CO (P) LTD', 412 ITR 152 (BOMBAY), 'CIT VS. LEADER VALVES (P.) LTD.', (2006) 285 IR 435 (P & H), 'KULWANT KAUR VS. GUDIAL SINGH MANN', (2001) 4 SCC 262, 'VIJAY**

KUMAR TALWAR VS. CIT', 330 ITR 1 (SC), 'K.RVANINDRANATHAN NAIR VS. CIT', 247 ITR 178 (SC), 'CIT VS. DURGA PRASAD MORE', 82 ITR 540 (SC), 'SUDARSHAN SILKS AND SAREES VS. CIT', 300 ITR 205 (SC).

7. We have considered the submissions made by learned counsel for the parties and have perused the record. From perusal of the order passed by the Assessing Officer and in particular paragraph 3.3 and 3.1, it is evident that Assessing Officer has conducted an enquiry. Paragraph 3, 3.1 and relevant extract of paragraphs 4, 4.2 and 4.3 and paragraph 7, read as under:

3. *As the invoices for supplies of SF oil cakes from the above three parties did not contain stamps of APMC, Check Post seals, etc., in order to ascertain the genuineness of the above purchases, enquiries were made in the addresses at Solapur, mentioned in the invoices of suppliers mentioned above. Also, the*

addresses given by the above suppliers to the bank at the time of opening the account were obtained and enquiries were caused at such addresses.

3.1 Enquiries at the addresses given in the account opening forms and the invoices of suppliers at Solapur showed that the above parties were not found in the places / addresses given by them. Enquiries were caused through the jurisdictional Sales Tax Officer of the above parties of Solapur. The above officer after enquiry has filed a report stating that the above there parties were never present at the addresses given in the invoice bills issued to the assessee and that they never carried on any such business. In this regard, enquiries were also made with the owners of the premises shown in the above said addresses at Solapur. The report of Sales Tax officer (VAT-CO13) dated 20.12.2012 is scanned and reproduced below.

4. Further on analysis of banks statements of the above there Solapur Parties, it was found that payments made by the

assessee to the above parties were immediately withdrawn on the date of credits to the accounts of the said three parties as detailed below:

4.2 The Chitradurga Bank furnished account opening forms of M/s Sree Siddeswara Commercials and M/s Spoorthi Commercials.

4.3 The above introducer of the account of M/s Priya Commercials is none other than the director of the assessee-company.

7. An analysis of the above documents and the answers of the chief manager indicate that a common person had signed the pay-in-slips of assessee company, at the reverse of the cheque leave of the assessee company for withdrawal of cash, the pat-in-slips of the three Solapur parties and the cheque leaves of the Solapur parties and the cheque leaves of the Solapur parties on the reverse side for receiving cash from the Bank.

8. Thus, from perusal of the relevant extracts of the order passed by the Assessing Officer, it is axiomatic that the Assessing Officer has conducted an independent

enquiry and thereafter, has recorded the conclusion with regard to genuineness of the transaction as follows:

1. The assessee could not produce the parties from whom purchases are claimed to be made.

2. Enquiries made showed that the alleged suppliers were not present at the address given by them.

3. Enquiries with the sales tax officers revealed that the Sales Tax Registration Number shown on the invoices given by the alleged suppliers were bogus.

4. Sales Tax Authorities have categorically stated that no entity by the names shown in the invoices ever were registered with them.

5. Stamps of APMC are not present in the purchase bills.

6. Stamps of Check posts are not present in the invoices.

7. The documents relied upon the assessee viz., receipt for goods, weighment slips, inward slips are all self made.

8. There is no independent evidence to prove the purchases made from the above said Solapur parties.

9. Identity of the three parties has not been established by the assessee.

10. The assessee has used at least two of its own employees to operate and withdraw from the bank accounts of the alleged suppliers.

11. Assessee has not proved the genuineness of the transactions.

9. However, the tribunal vide impugned order has held that there is no credible evidence to suggest that assessee has not made any purchase of material at all and even though an inference can be drawn that the parties / sellers were bogus but not the entire purchase of materials.

10. From perusal of the order passed by the tribunal, we find that the finding recorded by the tribunal that the Assessing Officer has not made any independent enquiry is perverse. Therefore, the substantial questions of law framed in this appeal are answered in the

affirmative and in favour of the revenue. However, on the basis of meticulous appreciation of material available on record, the Assessing Officer has recorded the conclusions, which has been reproduced above, however, the tribunal has not dealt with the conclusions of the Assessing Officer and in a cryptic and cavalier manner has allowed the appeal preferred by the assessee. The tribunal has also failed to appreciate that in fact, the burden was on the assessee to establish the genuineness of the transaction.

In view of preceding analysis, the impugned order passed by the tribunal is hereby quashed and the matter is remitted to the tribunal to decide the issue afresh in the light of observations made in this judgment.

In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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