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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12.01.2022

+ **ITA 176/2021**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-3

..... Petitioner

Through Ms.Vibhooti Malhotra, Adv.

versus

M/S GTM BUILDER AND PROMOTERS PVT. LTD.

..... Respondent

Through Mr.Sachit Jolly, Mr.Rohit Garg,
Ms.Mehak Sachdeva, Advs.

CORAM:

**HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (Oral)

The appeal has been heard by way of video conferencing.

CM 45430/2021 (exemption)

Allowed, subject to all just exceptions.

ITA 176/2021

1. The present appeal has been filed challenging the order dated 08.02.2021 passed by the learned Income Tax Appellate Tribunal, New Delhi, Delhi Bench 'C' (hereinafter referred to as the 'ITAT') in

ITA No. 3982/DEL/2015 dismissing the appeal of the Revenue against the order dated 25.03.2015 passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the 'CIT(A)'].

2. It is the case of the appellant that a search and seizure operation under Section 132 of the Income Tax Act, 1961 (in short, the 'Act') was carried out in the case of the respondent-assessee along with other companies which were controlled by the respondent's Directors on 12.12.2006. On the basis of the said search and seizure operation conducted, the respondent-assessee's case was selected for scrutiny and a notice under Section 143(2) of the Act was issued for AY 2009-10.

3. Vide assessment order dated 29.12.2011, the Assessing Officer made additions of Rs. 3,35,87,118/- (Rupees three crore thirty-five lakh eighty seven thousand one hundred eighteen only) on the ground that the same were bogus purchases made by the respondent-assessee from various sham entities. The Assessing Officer computed the total income of the respondent-assessee at Rs. 3,66,68,990/- (Rupees three crore sixty-six lakh sixty-eight thousand nine hundred ninety only) along with interest under Sections 234A, 234B and 234C of the Act.

4. The assessment order was challenged in appeal by the respondent-assessee, being Appeal No. 504/14-15. The same was allowed by the CIT(A) vide order dated 25.03.2015, on the ground that the respondent-assessee did not have an occasion to contravene

the materials gathered by the Assessing Officer. The learned CIT(A) held that the Assessing Officer had failed to consider the fact that the respondent-assessee had been regularly recognizing revenue by adopting the '*construction-linked percentage completion method*' in accordance with the mandatory Accounting Standard AS-7 and in the event the purchases made by the respondent-assessee would be considered bogus, then even the revenue based thereupon will have to be reduced, affecting the profitability of the respondent-assessee.

5. Aggrieved by the above order, the appellant preferred an appeal before the learned ITAT, being ITA No. 3982/DEL/2015, which has been dismissed by the impugned order observing as under:

“6. We find that the AO has disallowed the purchases made from the four parties namely, M/s Meet Enterprises, M/s Suman Enterprises, M/s Durga Enterprises and M/s Bharat Trading. Primarily, we find that the AO has relied on the information collected by the Investigation Wing and no opportunity to cross examine the parties has been afforded which is a violation of principles of natural justice. The assessee has provided copies of purchase bills, weightage bills and architect certificates. The AO has not reasoned that the bills or the certificate of the architects are bogus and wrong on facts.

7. As per accounting standards AS-7, the purchases and working progress have to be reconciled along with architect report. The AO have not rejected the books of accounts and accepted the book profits while making the addition. The Assessing Officer's observation that none of the architects can find out the actual material steel bars used construction of any building of 2 to 3 years

cannot be accepted as the consumption of the material can be well estimated from the drawings and the site books. In the case of M/s Suman Enterprises, the statement of Amit Vashisht indicates that the firm has been registered and run by Shri Deepak, no further enquiries have been conducted. In the case of M/s Meet Enterprises, the statement of Shri Sunil Kumar was recorded but nowhere it reveals or confirms that the purchases were bogus or inflated. There was no doubt about the payments made by the assessee to these parties and no evidence of cash withdrawals have been brought on record. The Assessing Officer contentions that non-production of parties can give credence to the bogus nature of the purchases cannot be accepted. In this regard, reliance is placed on the decision of Hon'ble High Court of Bombay in the case of B.C. Borana Vs ITO 282 ITR 252. In the case of M/s Suman Enterprises, the Inspector report cannot be given credence as the party was found to be genuine on enquiry. The better way for the AO could be, to enquire about the amounts received from the assessee and from such amounts, if any, purchases of material have been made which in turn supplied to the assessee. The non-purchase of material/non-utilization of the amounts for purchase of material by the suppliers would be an appropriate evidence to disallow this purchases but the same has been wanting. Reliance is placed on the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs Rajesh Kumar 172 taxmann.com 74 wherein it was held that failure to follow principles of natural justice vitiate the proceedings. Reliance is placed on the order of the Hon'ble High Court of Bombay in the case of CIT Vs. Nikunj Eximp Pvt. Ltd. 2013 TIOL 04 where it was held that no addition is warranted based on the fact that the suppliers have not appeared before the AO.

8. *Hence, keeping in view the entire facts and circumstances of the case, evidence on record, we decline to interfere with the order of the ld. CIT(A) in deleting the addition.”*

6. The learned counsel for the appellant submits that the learned ITAT as well as the learned CIT(A) failed to consider the material gathered by the Assessing Officer to determine that the respondent-assessee was involved in sham and bogus transactions. The learned counsel for the appellant further submits that both authorities did not appreciate the fact that the respondent-assessee failed to discharge their burden of proof with respect to the genuineness, identity and credit-worthiness of the parties from whom the alleged purchases were so made.

7. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

8. In the present case, both the learned ITAT as well as the learned CIT(A) have placed reliance on and upheld the adoption of the Accounting Standard AS-7 by the respondent-assessee for determination of its revenue. The learned counsel for the appellant does not deny that in case the case of the Revenue is to be accepted, it will also impact the revenue determination for the respondent-assessee and its profits. In any case, the dispute involved is factual in nature and no substantial question of law arises for consideration in the present appeal.

9. Consequently, this Court finds that there is no perversity in the findings of the learned CIT(A) as well as the learned ITAT. Accordingly, the present appeal is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 12, 2022/AB

