



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND**  
**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA no.7969/Mum./2019  
(Assessment Year : 2010-11)

ITA no.7970/Mum./2019  
(Assessment Year : 2009-10)

M/s. Rajdeep Marketing P. Ltd.  
107, 1<sup>st</sup> Floor, Maker Chamber-V  
Jamnalal Bajaj Marg  
Nariman Point, Mumbai 400 021  
PAN – AACCR5970K

..... Appellant

v/s

Income Tax Officer  
Ward-3(3)(1), Mumbai

..... Respondent

Assessee by : Shri Rajeev Khandelwal  
Revenue by : Shri Bharat Andhale

Date of Hearing – 16.06.2021

Date of Order – 02.08.2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The present appeals have been filed by the assessee challenging the orders of even date 23<sup>rd</sup> October 2019, passed by the learned Commissioner of Income Tax (Appeals)-8, Mumbai, for the assessment year 2009-10 and 2010-11.

2. Since both these appeals pertain to the same assessee involving common issues, except variation in figures, which arose out of

identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal in ITA no.7970/Mum./2019, for assessment year 2009-10.

**ITA no.7970/Mum./2019**  
**Assessment Year : 2009-10**

The present appeal has been filed by the assessee on the following grounds of appeal:-

*"1) That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the loss booked by the appellant is not genuine and is not eligible to be set off against the income from other heads.*

*2) That, without prejudice to the generality of ground of appeal no.1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in placing upon the appellant the burden to produce the parties before Assessing Officer.*

*3) That, without prejudice to the generality of ground of appeal no.1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the Appellant did not discharge the primary onus to prove the identity of the parties.*

*4) That, without prejudice to the generality of ground of appeal no.1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the appellant shelved out 40% more on the purchase of rice to escape the burden of tax.*

5) *That, without prejudice to the generality of ground of appeal no.1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the authenticity of the certificate from All India Rice Exporters association is highly in question.*

6) *That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on facts and in the circumstances of the case of the appellant and in law.*

7) *That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

8) *That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary."*

3. The brief facts of the case are, the assessee filed its return of income for the assessment year 2009-10 on 26.09.2009, declaring total income at ₹ 75,910/-. The assessee filed revised return of income on 26.09.2009, declaring total income at Rs.Nil, in order to claim deduction under section 80GGB of the Income Tax Act 1961 (in short "*the Act*"). The revised return of income was processed under section 143(1) of the Act. Subsequently, the return of income was selected for scrutiny and original assessment proceedings were completed under section 143(3) of the Act on 30.12.2011 by the ITO, Ward-1(1), Solapur, assessing the total income at ₹ 4,01,,47,860/-. The Assessing Officer disallowed the loss of ₹ 380,77,164/- claimed by the assessee on commodity trading and disallowed the donation of ₹ 20 lakhs paid to a political party. The Assessing Officer disallowed the

loss claimed by the assessee on account of commodity trading with the observation that assessee is carrying out three different segments of activities one being insurance agent for Chola MS General Insurance Chennai, 2<sup>nd</sup> being marketing of lifts for Thyssenkrupp Elevator (India) Private Limited, New Delhi and 3<sup>rd</sup> dealing in commodities that is Rice and Nifty Future sales. The Assessing Officer observed that the trading in commodities were started from August 2008 immediately after receiving the commission income as this line of business was not there in the preceding year and it was preplanned to avoid taxes. He observed that the prices charged by the assessee to its customers are much less than the purchase price and without there being any mention of quality but the bills of sales and purchases which contain the quantity rate and weight et cetera. He also observed that all the purchases and sales are routed through a small group of persons having business situated in Naya Bazaar, New Delhi. All the purchases and sales are recorded in the books without documentary proof of its delivery, transportation et cetera. He observed that all the purchases are at higher rates and sales at lower rates which is against the normal commercial transactions. In order to verify the genuineness of the transaction, the Assessing Officer issued notices to all the parties and it is returned un-served. Further, the Assessing Officer referred the matter to ADIT (Inv.), New Delhi, based on their report that only five parties responded to the enquiries and balance were not traceable.

Accordingly, he came to the conclusion that the transactions were not genuine and in order to show the loss from Rice trading activity, it is fabricated loss to avoid taxes. Aggrieved with the above order, the assessee preferred appeal before CIT(A)-III, Pune. The learned CIT(A) after considering the detailed submissions of the assessee dismissed the appeal of the assessee with the observation that on a careful consideration of all the evidences placed on record cumulative and submissions of the assessee. It is amply clear that the entire trading activity in Rice claim to have been carried on by the assessee during the year is sham and the evidence furnished thereof was fabricated, self-serving and the loss claimed from alleged trading activity is fictitious loss. It is only collusive device or arrangement for creating and booking fictitious loss in the books of account in connivance with said parties with a view to set off the same against positive income earned by the assessee from other activities and to defraud the revenue. Further he observed that without prejudice to the above finding, even presuming for a while that they are genuine transactions as claimed by the assessee the losses were speculation loss as the alleged transaction for purchase and sale of a commodity or ultimately settled otherwise than by actual delivery. This speculation loss even presuming to be genuine for a while, cannot be set off against the other profits of the assessee as laid down under section 73 of the Act.

Aggrieved with the above order, the assessee preferred an appeal before Tribunal, Pune Bench. The Tribunal, Pune Bench, after considering the submissions of the assessee, remitted the matter back to the Assessing Officer with the following observations:-

*"5. After going through the rival submissions and material on record, we find that the Assessing Officer has held that the parties from whom the assessee purchased rice and parties to whom the assessee sold the rice did not exist, therefore, both purchases and sales are bogus. The Assessing Officer has based his finding on assertion that notices issued by him in respect of 6 out of 11 parties were returned undelivered by postal authorities and similarly, the notices could not be served on those 6 parties by the concerned ITO, New Delhi as well. The Assessing Officer observed that the assessee could not produce Delhi businessmen for examination by the Assessing Officer at Solapur. The stand of the assessee has been that these findings of Assessing Officer were not justified that the reason of the Assessing Officer was not justified in its finding in relation to 5 parties on whom the notices were served on both occasions. The stand of the assessee has been that in spite of written requests during the course of assessment proceedings, the Assessing Officer did not furnish the assessee any so called material of non-service of 6 parties. As regards non-production of the parties by the assessee before the Assessing Officer, no adverse inference could be drawn that the parties do not exist because*

*(i) the Assessing Officer exceeded his powers in calling upon the assessee to do so in violation of provisions of section 131 of the Act and*

*(ii) the Assessing Officer must have appreciated that those Delhi parties would not attend at Solapur merely at the request of the assessee because they were under no obligation to do so.*

*The CIT(A) at page 24 of its order had appreciated that there was no adverse inference against the assessee for non-service of notice on 6 parties. The stand of the assessee has been that the observation of lower authorities was not justified with regard to non-existence of parties because*

*(i) transactions of assessee are from bank account to bank through RTGS transfer. There were 11 bank accounts of parties at Delhi duly reflected in bank statements of assessee,*

*(ii) the bills issued by the assessee parties mentioned their telephone numbers in most cases mobile numbers also,*

*(iii) TIN numbers are mentioned in every bill and*

*(iv) each of the parties is assessed to Income-tax and have permanent account numbers which have been furnished to the Assessing Officer in the course of assessment proceedings.*

*5.1 According to the learned Authorized Representative that the observations made by the Assessing Officer on suspicion, conjectures and surmises. There is no consideration of vital and clinching evidences filed by the assessee. In the entire assessment order there is not even a word about the fact that the assessee's transactions are from his bank account to 11 bank accounts of different traders situated in Delhi. There is no follow up to the information about PAN and TIN of the parties, which is not justified.*

*5.2 Apart from the alleged non-service of notices on some of the parties as a result of some exercise stated to have been carried out behind the back of the assessee and the same could not be used against the assessee while the same has not been corroborated by clinching evidence. Both the authorities below have raised doubt about the transactions which they did not put to the assessee or parties with whom the assessee has transacted. The various questions which are basis for order by authorities below have not been confronted to the assessee. For example :-*

*a) In absence of any contract in writing, the assessee company was not under obligation to honour the contracts and make losses. This shows that the Assessing Officer has scant knowledge of commercial practice.*

*b) For any transaction to be held on 'Delivery basis' there has to be Quantity Inward physically to its storage, its transportation through lorries, maintaining delivery details, freight bills, delivery challans, dispatch notes.*

*These arguments have been raised while the Assessing Officer knew all the time that the delivery was given by the Appellant's suppliers on the instructions of the Appellant to the Appellant's buyers all situated at Naya Bazar, Delhi.*

*c) The Appellant failed to produce any agreements in absence of which there cannot be inferred pre-agreed rates. How could any*

*agreement be produced when the agreements were oral, in accordance with market practice?*

*d) A letter from Sushilkumar & Sons, Delhi and from Manishkumar Sushilkumar & Sons, Delhi were posted from Solapur. These statements need factual verification in light of merit of case.*

*e) Confirmation letter of Arihant Sales Corporation, Naya Bazar, New Delhi stated that the Appellant purchased rice from him whereas as per the Appellant rice was sold to and not purchased from Arihant Sales Corporation. Without seeking any clarification from Arihant Sales Corporation the Assessing Officer cannot draw adverse inference against the Appellant from what seems to be merely an inadvertent error.*

*f) On perusal of confirmation letters of Arihant Sales Corporation, Premchand Deepakkumar and Sainath Agro India it appeared that these confirmations were commonly drafted and printed. These observations of Id. Assessing Officer and CIT(A) are on their own without seeking any explanation from the parties concerned and ignoring that these were direct correspondence between Assessing Officer and parties without appellant being told about it.*

*g) The letters received from the parties do not give purchase rate, quantity and quality agreed, delivery schedule etc. How this can be held out against the Appellant?*

*h) The purchase bills showed that purchases have been made just one or two days before those were sold and not well in advance as explained by the appellant. This was explained time and again. The fact of the matter is that purchase bills were issued not on the date of contract but on the date of delivery. The Appellant immediately sold goods when the appointed date of delivery arrived because the market had heavily come down. The chart of dates of purchase and dates of sale given by the Assessing Officer at pages 17 to 20 of the Assessment order prove the appellant's case; otherwise there is no which way that such huge difference would arise.*

*i) As mentioned in Para 3 the auditor of the assessee company has also agreed that the company never involved in any trading activities like trading in rice.*

*This is patently perverse statement. In the same para 3 the Assessing Officer himself observes that sale bills, purchase bills of rice were furnished. The auditors have signed the Balance Sheet and Profit and Loss Account which are based on the Appellant's transactions in rice during the year.*



*j) The bills of sales and purchase nowhere mention the quality or specie of rice. Bills or Invoices without quality or type are actually no bills. Assessing Officer or CIT(A) do not rely on any material to indicate that it was mandatory to mention quality of rice in the bills. The Appellant stated and submitted that these bills are issued in ordinary course as per the market practice at Naya Bazar, Delhi at the relevant time.*

*k) Not a single party was produced in spite of requisition. The Assessing Officer's requisition is illegal. U/s 131 the personal attendance of a person has to be enforced by the Assessing Officer himself and no adverse inference can be drawn if the Assessee does not produce any party for examination by him.*

*l) The appellant modified its stand as to whether sales were contracted in advance or purchases were contracted in advance. There was an error only once in the letter of CA that was promptly corrected. Otherwise there has been the consistent stand of the Appellant that it had contracted purchases well in advance and later on the goods thus purchased were sold at loss.*

*5.3 From the above, it may be inferred that even the authorities below have not been confronted, the material relied by them for rejecting the claim of the assessee which is not justified. It amounts in violation of principles of natural justice. We find that the Assessing Officer has power u/s.131 of the Act for enforcing the attendance of the person who could not be produced before the Assessing Officer on behalf of assessee. In such a situation, no adverse inference should be drawn if the assessee does not produce any party for examination. The Assessing Officer has mainly based his finding on assertion that the notices were issued by him in respect of 6 out of 11 parties were return undelivered by postal authorities. Similarly, notices could not be served on 6 parties by the concerned ITO, New Delhi as well. As stated above, the stand of the assessee has been that in spite of written requests during the assessment proceedings, the Assessing Officer did not furnish the assessee any material of non-service of 6 parties. In such situation, no adverse inference could be drawn that parties in question do not exist because the Assessing Officer has option for calling the attendance of parties under the provisions of section 131 of the Act. The observation of authorities below was premature with regard to their finding of non-existence of the above parties because the transaction of assessee was through banking channel. The details of all parties including telephone, PAN, TIN number were available on record. In view of above and in the interest of justice, we set aside the order of CIT(A) and restore the matter to the Assessing Officer with a direction to decide the issue as per fact and law after providing*

*due opportunity of hearing to the assessee. Since we are restoring the matter on broad proportion of violation of principles of natural justice, we are refraining from commenting on the merit of the issue at hand. As a result, this ground of appeal is allowed for statistical purpose."*

4. Accordingly, notice under section 143(2) r/w section 254 of the Act was issued by the ITO, Ward-5(4), Pune, on 14.01.2015 and served on 19.01.2015. The assessee shifted its Registered Office from Pune to Mumbai and on its request and the case was transferred from ITO, Pune, to DCIT, Circle-3(3)(1), Mumbai. Consequent to the change of jurisdiction, notice under section 142(1) of the Act was issued and served on the assessee. In response to the above notice, the learned A.R. of the assessee attended and submitted the relevant information as called for.

5. Considering the facts in this case, the Assessing Officer issued notice 25.01.2016 under section 142(1) of the Act, the assessee was asked to furnish new/latest addresses of all the purchase and sale parties. In response, the A.R. of the assessee furnished the addresses of the parties which is depicted at Page-6 of the assessment order. The Assessing Officer issued notices under section 133(6) of the Act, this was issued on 11.02.2016 to the above listed parties and the same was served on them. The Assessing Officer observed that surprisingly, in all the cases, replies were received stating that the transactions were made by them with the assessee. Considering the

fact that the above parties were not traceable during original proceedings, to verify the genuineness of the transaction, the Assessing Officer issued a commission on 09.03.2016 to the ADIT (Inv), Unit-VI(2), New Delhi, for verification of the purchase and sale parties situated at the above said addresses provided by the assessee. In response, the ADIT (Inv.), New Delhi, submitted the verification report along with inspectors report. As per the above report, the inspectors were able to trace three parties and eight parties were not traceable. Based on the above enquiry report, the Assessing Officer issued show cause letter to the assessee on 23.03.2016 along with the above report, asking the assessee to explain as to why the transactions of purchase and sales should not be treated as bogus and in response the assessee submitted that the relevant point of time all the parties were carrying on the business at the address given. There may be some changes and variations due to lapse of eight years. Further, it is submitted that on enquiries made with the parties, it was learnt from the parties that many of them were served summons beyond the stipulated time to act wherein the compliance time was already over. Further, it was stated that many of the parties have already written to the Assessing Officer in response to the enquiries directly made by the Assessing Officer.

6. The Assessing Officer rejected the submissions of the assessee and by relying on the findings in original assessment as well as findings of the learned CIT(A) in first appellate proceedings, the Assessing Officer came to following conclusion:-

*"14. The facts narrated above have carefully been considered and the submissions made by the assessee's authorized representative is also perused. After taking into consideration the above factual position, it is to state that the assessee's reponse to show cause is not acceptable.*

*i) At the time of original assessment, the then AO has verified the transactions by conducting individual enquiries as well as through the Investigation Wing, New Delhi and clearly stated that the parties were not available at the addresses provided by the assessee company. The detailed findings of the AO in the assessment order have already been summarized above and for sake of brevity, the same are not reproduced here.*

*ii) The Ld.CIT(A), having considered the issue at length has confirmed the additions made by the AO and concluded at Para No.2.3.2 and 2.3.3 as under;*

*"2.3.2. To sum up, on a careful consideration of all the evidences placed on record cumulatively and submissions of the appellant, it is amply clear that the entire trading activity in Rice claimed to, have been carried on-by - the appellant during the year is sham and the evidence furnished thereof was fabricated, self serving and the loss claimed from alleged trading activity is fictitious loss. It is only collusive device or arrangement for creating and booking fictitious loss in the books of accounts of the appellant in connivance with said Delhi parties with a view to set off the same against positive income earned by the appellant from other activities and to defraud the revenue. In such circumstances, the loss claimed of Rs. 3,80,77,1641- from the said rice trading activity was rightly disallowed by the AO. Accordingly, the disallowance of alleged loss of Rs 3 80 77164/ made by the AO does not warrant any interference and the same is upheld. Ground of appeal No.1 fails.*

*2.3.3 Without prejudice "to the above finding that the transactions in question are sham transactions and the loss claimed is fictitious loss, even presuming for a while that they are genuine transactions as claimed by the appellant, the losses were speculation losses as the alleged transactions for*

*purchase and sale of a commodity are ultimately<sup>1</sup> settled otherwise than by the 'actual delivery. As discussed hereinabove, the appellant failed to prove with any evidence that there was physical movement or transfer or delivery of commodity from' supplier to the appellant or from the appellant to the buyer or from the supplier directly to the buyer. For taking out the transaction from the ambit of speculative transaction, actual delivery of goods was essential. As held by the ITAT, Delhi, constructive or symbolic delivery of goods even if it were established was of no consequence (47 ITD 476). In these circumstances, the loss claimed constitutes speculation loss as per the definition of speculative transaction provided under sec 43(5) of the Income-tax Act and the case of the appellant is not covered by any of the exceptions in the proviso to the section. This speculation loss, even presuming to be genuine for a while, cannot be set off against the other profits of the appellant as laid down under sec 73 of the Income-tax Act."*

*iii) On the basis of details available on record, a test check was made in respect of the purchase bill of M/s Manishkumar Sumitkumar and it is seen that the assessee has made purchases for Rs.41,75,050/- on 04.03.2009 of 760 Metric Tons i.e. Rs.5,500/- per Metric Tone and the sale made by the assessee to M/s.Sumitkumar Navinkumar on 06.03.2009 of 641 Metric Ton i.e. Rs.4,085/- per Metric Tone totaling to Rs.26,18,485/-. Thus, from the both the purchase data and sale data and amount of Rs.5,500 (Purchase) and Rs.4,085 (Sale) itself shows huge difference. The details clearly proved that there remain no change in the facts of the case as the assessee has shown the purchase price at a higher rates and effected sales at lower rates, with a motive to book loss on the entire transactions. The assessee has not furnished any evidences in the form agreement, transport vouchers, bills, etc., in the present proceedings to prove that rice was actually purchased by the assessee company and the same has been sold to various parties. Without furnishing any basic details in the present proceedings, the assessee merely stated that it had given all the relevant evidences in this regard and evidences filed from time to time, clearly establish the genuineness of the parties as well as the transactions carried out with them by the assessee. The said submission of the assessee is liable to be rejected outright as except for furnishing the latest addresses, the assessee has not furnished any further evidences in respect of the transactions under reference. Further, it is worth mentioning that the addresses provided by the assessee were also found to be not correct or latest addresses, as has been found by the Investigation Wing, New Delhi in the enquiries conducted by them in response to the commission issued by this office.*

*iv) The findings of the Investigation Wing in their report as*

*reproduced above show that three parties viz., Arihant Sales Corporation, Shri Sai Nath Agro India and Sumit Kumar Navin Kumar were actually not available at the addresses provided by the assessee company but have shifted their business to some other locality in New. Delhi, but surprisingly', the notices issued at the addresses provided by the assessee were served and promptly complied with.*

*v) In case of the remaining parties, "the investigation report clearly show that none of the parties exist at the addresses - provided. by the Assessee, but surprisingly, the notices issued at the addresses provided by the assessee, where the parties were actually not available, have been served and promptly complied with.*

*vi) Even after confronting with the factual position by providing the copy of Investigation Report, the assessee still maintains that the transactions were actually made by it with said parties It is not known how the assessee could conduct business with the parties, which didn't exist at the addresses provided by it.*

*vii) Further, it is pertinent to mention that the replies have been sent through speed post booked at Counter No.2 of Chandni Chowk Post Office on 01.03.2016 at 2:40 p.m and in the case of Baj rant Traders, Sainath Agro and Sumeet Kumar Naveen Kumar, the replies were sent by speed post booked from Delhi GPO at 6.24 p.m. As at the first instance the existence of the parties is in quandary, the circumstances that the notices issued at the addresses where the parties were found to be not existing and subsequent prompt compliance to said notices clubbed with the fact that the replies to the notices were booked at the same counter of a post office at the same time, further strengthens the premises that the assessee, in order to maintain its stand that it has made the transactions with said entities, which actually were not, is trying to fabricate the things to suit its contentions. Its worth to draw reference to the findings of the AO in the original order that the replies, to the notices sent at New Delhi addresses were complied with from Solapur. In the present proceedings, as stated above, though the replies were sent from New Delhi, the fact that the same were dispatched from a single counter at the same time, appears to be an effort of the assessee to stick to its submissions made earlier, rather accepting that the transactions were bogus.*

*viii) The assessee has not provided any single piece of evidence to show, that the purchases and sale transactions were genuine The assessee has not provided any documentary evidences in the form of transport bill and amount paid towards carriage, loading & unloading, hamali charges etc, which would have definitely been*

*incurred have the transactions been actually done by the assessee Here, it is to state that mere routing the transaction through banking channel does not make a transaction good In this regard, reliance is placed on the decision of the decision in the case of Gayathri Associates, wherein it has been held that identity, creditworthiness and genuineness of transaction is not established merely by filing bank account details [Gayathri Associates vs Income-tax Officer, Hyderabad [2014] 41 taxmann corn 526 (Andhra Pradesh)]*

*ix) It is to state that on going through the bills, it is seen that there is no transportation charges/bills/vouchers, recipient signature etc reflected on the same.*

*x) The facts beginning from the original assessment proceedings suggest that the assessee has created all these transactions with a clear motive of only booking huge losses, in order to set off these losses against the profits earned from other business activities during the. year.*

*xi) The Enquiry Report of the Asst D I T (mv), Unit-6(2), New Delhi as reproduced above, clearly throws the fact of assessee's efforts in fabricating the things to suit its requirements The Inspectors who have visited the locations have reported the original status and the assessee is still not ready to accept the facts This shows the rigid determination of the assessee to make a false claim right, without appreciating all the facts narrated above.*

*15. In the light of the above, it is clear that the assessee again failed to utilize the opportunity granted to it to prove that the transactions were actually made by it by producing proper evidences. The assessee has even not expressed its intention of discharging its onus, but has simply stated that all the evidences have already been filed, without appreciating the facts of the case. The assessee, in the present proceedings has also failed to justify as to why the sales were effected at a lower rate than the purchase rate. The assessee has not furnished any agreements entered by it with the above parties for the purchase and sale of rice.*

*Considering all the above, it is held that the transactions of purchase & sale of rice are sham transactions and the loss booked is bogus and the same cannot be allowed to be set off against the profits/income from other heads. Accordingly, I hereby disallow entire loss shown by the assessee of Rs.3,80,77, 164 as bogus and the same is hereby added to the total income of the assessee company. Penalty proceedings u/s.271(1)(c) of the Income- tax Act, 1961 is separately initiated for furnishing inaccurate particulars of income and concealment of income."*

7. Aggrieved with the above order, the assessee preferred appeal before the learned CIT(A) and filed additional evidences. The learned CIT(A) remanded the matter to the Assessing Officer and based on the remand report and submissions of the assessee, the learned CIT(A) dismissed the grounds raised by the assessee with the following observation:-

*"3.1.13 The observations regarding the transactions are discussed by me in succeeding paragraph:-*

*a) Huge difference in purchase and selling price of rice.*

*I have perused the purchases transactions as well as sale transaction made from various traders. The appellant has submitted purchase as well as sale invoices to substantiate the transactions.*

*Purchase transactions*

<i>Sr. no.</i>	<i>Name of Trader</i>	<i>Rate at which rice Purchased (₹/Metric Tonne)</i>	<i>Date of Purchase</i>
<i>1.</i>	<i>Shri Sai Nath Agro India</i>	<i>6400</i>	<i>02.10.2009</i>
<i>2.</i>	<i>Shri Sai Nath Agro India</i>	<i>6411</i>	<i>05.10.2009</i>
<i>3.</i>	<i>Shri Sai Nath Agro India</i>	<i>6100</i>	<i>05.11.2009</i>
<i>4.</i>	<i>Shri Sai Nath Agro India</i>	<i>6500</i>	<i>25.11.2009</i>
<i>5.</i>	<i>Shri Sai Nath Agro India</i>	<i>7121</i>	<i>24.12.2009</i>
<i>6.</i>	<i>Shri Sai Nath Agro India</i>	<i>6150</i>	<i>12.11.2009</i>
<i>7.</i>	<i>Shri Bhagwati Traders</i>	<i>7200</i>	<i>16.12.2009</i>



8.	<i>Shri Bhagwati Traders</i>	7411	17.12.2009
9.	<i>Shri Laxmi Agro Food</i>	6250	27.11.2009
10.	<i>Shri Laxmi Agro Food</i>	6500	30.11.2009
11.	<i>Shri Laxmi Agro Food</i>	7341	04.12.2009
12.	<i>Sumit Kumar Naveen Kumar</i>	7030	20.02.2010
13.	<i>Sumit Kumar Naveen Kumar</i>	7025	23.02.2010
14.	<i>Arihant Sales Corporation</i>	6500	02.10.2009
15.	<i>Arihant Sales Corporation</i>	6500	02.10.2009

*Sale Transaction*

<i>Sr. no.</i>	<i>Name of Trader</i>	<i>Rate at which rice Purchased (₹/Metric Tonne)</i>	<i>Date of Purchase</i>
1.	<i>Neki Ram Overseas</i>	5958	27.02.2010
2.	<i>Divyam International</i>	4580	28.12.2009
3.	<i>Divyam International</i>	5958	22.02.2010
4.	<i>Shri Adeshwar Traders</i>	4680	29.12.2009
5.	<i>Shri Adeshwar Traders</i>	6200	30.11.2009
6.	<i>Sumeer Chand Kapil Kumar</i>	5960	22.02.2010
7.	<i>Haryana Sales Corporation</i>	6150	30.11.2009
8.	<i>Haryana Sales Corporation</i>	4900	16.12.2009

9.	Giri raj jee Enterprises	4800	06.12.2009
10.	Giri raj jee Enterprises	4600	16.12.2009
11.	Premchand Deepak Kumar	4600	07.12.2009
12.	Premchand Deepak Kumar	4900	04.12.2009
13.	Sumitkumar NAVEEN Kumar	6500	05.10.2009
14.	Sumitkumar NAVEEN Kumar	6500	12.10.2009

3.1.14 Now, the issue before hand is to find whether these prices are genuine or not. To controvert the same, there cannot be more reliable resource document than that of website of Government of India. As per website of Government of India, <https://data.gov.in>, I came across rates of Basmati Rice existent at that time. The same can be accessed through the following links:-

<a href="https://data.gov.in/resources/variety-wise-daily-market-prices-data-rice-2009">https://data.gov.in/resources/variety-wise-daily-market-prices-data-rice-2009</a>	For F.Y. 2009-10
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#### Price of rice in October – December 2009.

State	District	Market	Crop	Variety	Date	Price 1	Price 2	Price 3
Kerala	Thiruvananthapuram	Chala	Rice	Basmati Charmi	09/10/2009	5700	5710	5700
Kerala	Alappuzha	Alappuzha	Rice	Fine(Basmati)	06/10/2009	3400	5700	4550
Assam	Kamrup	P.O. Uparhali Guwahati	Rice	Fine(Basmati)	14/10/2009	3000	4600	4250
Kerala	Malappuram	Thirurangadi	Rice	Pusa Basmati Raw (Old)	27/10/2009	4000	4200	4100
Karnataka	Raichur	Sindhanur	Rice	Pusa Basmati Raw (Old)	21/11/2009	2700	2700	2700
Andhra Pradh	Kurnoor	Atmakur	Rice	Sona Mansoori Non Basmati	20/11/2009	2300	2500	2400
Andhra Pradh	West Godavari	Palakole	Rice	Sona Mansoori Non Basmati	20/10/2009	2000	2200	2200
Karnataka	Mangalore(Dakshin Kann)	Belthangdi	Rice	Kachha Basmati	02/11/2009	1600	2200	1900
Andhra Pradh	Vijayanagaram	Gajapathinagaram	Rice	Sona Mansoori Non Basmati	05/11/2009	1500	1550	1575
West Bengal	Hooghly	Kaipuri(Champadanga)	Rice	Sona Mansoori Non Basmati	01/12/2009	1500	1550	1530
Karnataka	Koppal	Gangavathi	Rice	Pusa Basmati Raw (Old)	22/10/2009	1067	1540	1495
West Bengal	North 24 Parganas	Habra	Rice	Sona Mansoori Non Basmati	23/11/2009	1370	1430	1390
West Bengal	North 24 Parganas	Habra	Rice	Sona Mansoori Non Basmati	03/11/2009	1320	1400	1350
West Bengal	North 24 Parganas	Habra	Rice	Sona Mansoori Non Basmati	14/11/2009	1340	1400	1370
Kerala	Alappuzha	Harippad	Rice	Fine(Basmati)	31/10/2009	0	0	8000

3.1.15 On a perusal of the above table, I find that the maximum prices of basmati rice across various states in India have been ranging from ₹ 1500 to 5710 PMT during October 2009 to December 2009. Therefore, the factual analysis above leaves a very high scope of manipulating the purchase prices.

3.1.16 As perused from the above table, approx. purchase price of the appellant in October 2009 and November 2009 is around ₹ 6500/- Per Metric Tonne (PMT) whereas the sale price was around ₹ 5900/- PMT whereas purchase price is around ₹ 7500 PMT in December 2009 and sale price is around ₹ 4500 PMT. It is evident that the appellant has kept the purchase price at around 40% higher of the sale price.

3.1.17 Further, it is seen that the sale price taken by the appellant is as per the market price prevalent in market. Therefore, the factual analysis above leaves a very high scope of suspicion and manipulation in the purchase as well as sale prices.

3.1.18 The rice has been purchased and sold by the appellant from the same market i.e., Delhi. Moreover, it is seen that the appellant may have made some of purchase and sale on the same day and if it was knowing the market price rates, then, why did it keep on purchasing the rice at higher rates and selling the same at lower rate!

There is something (in fact, a lot) more than what meets the eyes.

For example, at sr. no.7 of purchase transaction above, the appellant has purchased the rice at 7200 PMT on 16.12.2009

7	Shri Bhagwati Traders	7200	16.12.2009
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at sr.no.8 of sale transaction above, the appellant has sold the rice at 4900 PMT on 16.12.2009

8	HARYANA Sales Corporation	4900	16.12.2009
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This is a glaring example. Need there be any doubt about the falsity of claims being made! And, the above example is not a such single instance. It is a pattern that has left a very big scope of doubt on the appellant's intentions. Another example of the same is as follows:-

In the sr. no.11 of purchase transaction above, the appellant has purchased the rice at 7341 PMT on 04.12.2009

11	Shri Laxmi Agro Food	7341	04.12.2009
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In the sr. no.12 of sale transaction above, the appellant has sold the rice at 4090 PMT on 04.12.2009

12	Premchand Deepak Kumar	4900	04.12.2009
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*3.1.19 It is very logical for a prudent businessman to minimize its losses if the intentions are so. In the above example, if the appellant has sold the rice at 4900 PMT (lower rate) on 16.12.2009, then why it has purchased the rice at 7200 PMT (higher rate) on very same day. Why it has not purchased the rice from the trader who is trading the rice at a very lower rate. In today's world, when 8% is considered a very good profit, shelving 40% more (147% of 4900 + approx 7200) on the same rice is either foolishness or a very intelligent to escape the burden of tax."*

8. Further, the learned CIT(A) rejected the contentions of the assessee on submission of PAN, certificate of incorporation, etc., of the parties, whether it is enough to discharge the primary onus of the assessee by relying on various case law including the decision of the Hon'ble Supreme Court in Sumati Dayal and Durga Prasad More. Aggrieved with the above order, the assessee is in appeal before us.
9. Before us, the learned A.R. briefly explained the facts of the case and submitted that this is the second round of appeal in litigation and subsequent to remitting the issue back to the file of the Assessing Officer by the Tribunal, Pune Bench, the Assessing Officer issued the show cause notice under section 133(6) of the Act to all the relevant parties from New Delhi, involved in the transactions with the assessee. All the parties confirmed to the Assessing Officer that they made transactions with the assessee. After their confirmation, the Assessing Officer wanted to further verify the genuineness of the transaction and hence issued a communication only on 09.03.2016 to the ADIT (Inv.), New Delhi. He highlighted the important date of events for completion

of the assessment under section 143(3) r/w section 254 of the Act. For the sake brevity, the relevant chart is reproduced below:–

<i>Date</i>	<i>Event</i>
<i>05.05.2014</i>	<i>ITAT order</i>
<i>2<sup>nd</sup> innings</i>	
<i>14.01.2015</i>	<i>Issue of notice under section 143(2)</i>
<i>25.01.2016</i>	<i>Transfer of charge to A.O. at Mumbai</i>
<i>25.01.2016</i>	<i>Issue of notice under section 142(1) – asking for addresses of purchase and sale parties</i>
<i>10.02.2016</i>	<i>Reply of assessee</i>
<i>11.02.2016</i>	<i>Issue of notices under section 133(6)</i>
<i>Dates required</i>	<i>Reply to 133(6) – All responded</i>
<i>09.03.2016</i>	<i>Issue of commission to ADIT (Inv.), New Delhi</i>
<i>16.03.2016</i>	<i>Deputation of inspector</i>
<i>21.03.2016</i>	<i>Deputation of inspector</i>
<i>23.03.2016</i>	<i>Report of ADIT (Inv.)</i>
<i>31.03.2016</i>	<i>Assessment order</i>
<i>Remand by CIT(A)</i>	
<i>05.03.2018</i> } <i>04.02.2019</i> }	<i>CIT(A) required the A.O. to give Remand Report (copy not marked to appellants; therefore, the appellants are not aware of the terms of reference)</i>
<i>20.02.2019</i>	<i>Remand report of A.O. to CIT(A) – 01.05.20218 – A.O. required appellants to furnish new address of parties</i> <i>08.05.2018 – Letter of A.R.</i>
<i>26.03.2019</i>	<i>Appellants' response to remand report.</i>

10. He submitted that the Assessing Officer commences the verification of the directions, based on the order of the Tribunal, Pune Bench, only near the period of limitation for completion of assessment

and he completes the assessment in hurry. Further, he brought to our notice the facts from Page-3 to 7 of order of the learned CIT(A). Further, he submitted that ADIT (Inv.), deputed the Inspectors for verification of the address as per the old address after a period of eight years. There is ample chance that the parties may have moved their addresses. He brought to our notice at Page-23 and 24 of the learned CIT(A)'s order and submitted that the assessee has submitted certain additional information/evidences which was remanded back to the Assessing Officer for confirmation, but the Assessing Officer merely relies on the Inspector's report received from New Delhi and rejected the submissions of the assessee. He submitted that the learned CIT(A) erred in sustaining the additions made by the Assessing Officer. He brought to our notice the decision of the Hon'ble Supreme Court in CIT v/s Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78 (SC), and inviting our attention to Para-3 of the above order submitted that the facts are similar to the case of the assessee and that the conclusion in the above case is important. He submitted that in the given case, the Assessing Officer and ADIT (Inv.) did empty formalities merely to complete the assessment. Further he relied on the following cases:-

*i) CIT V/s U K Shah (1973) 90 ITR 396. (Bom. HC)*

*iii) CIT v/s Dwarkadhish Investment Pvt. Ltd. [2010] 330 ITR 298 (Del.)*

11. With regard to lapse of time, he submitted that the Assessing Officer has verified the transaction only after lapse of eight years of the transaction and in that process he relied on S. Hastimal v/s CIT, [1963] 49 ITR 273 (Mad.), H.R. Mehta v/s ACIT, [2016] 387 ITR 561 (Bom).

12. On the other hand, the learned D.R. heavily relied on the order of learned CIT(A) and submitted that the learned CIT(A) has discussed the facts and conclusion in detail. He submitted that the parties were never presented before the Assessing Officer and they are not traceable, therefore, the transactions are sham. With regard to submission on lapse of time, he submitted that the Assessing Officer has to go by the rules and provisions of the Act. Without prejudice to the above submission, he submitted that the issue may be remitted back to the Assessing Officer for verification of the addresses based on the new submissions made by the assessee.

13. In rejoinder, the learned A.R. submitted that the ADIT (Inv.), New Delhi, was entrusted with the task and it was not informed to the assessee and submitted that all these transactions were routed through banking channels only and if the tax authorities were serious, they could have collected the present address from the bank since the assessee has supplied all the information relating to the suppliers like PAN, sales tax information and details. He submitted that verification

made twice but both the times the authorities served the notices only in old addresses. He opposed the suggestion of remitting this issue back to the Assessing Officer once again for verification.

14. Considered the rival submissions and material on record. We notice that the respective Assessing Officer at the time of original assessment and revised assessments carried out similar investigations without there being any improvements in the method or verification. During the first investigation, the Assessing Officer taken the assistance of ADIT (Inv.), New Delhi, and they could trace out five parties out of 11 parties with whom the assessee made the transactions. During the second round, the present Assessing Officer again taken the assistance of ADIT (Inv.), New Delhi, and this time, they could trace three parties out of 11 parties. The Assessing Officer/CIT(A) merely relying on the findings of ADIT (Inv.) and only verifying the address aspect, came to conclusion that these parties are bogus and do not exist. They did not care to verify the other evidences filed by the assessee like bank details, PAN, sales tax details, etc. What we are concerned is, the Co-ordinate Bench of the Tribunal, Pune, has clearly expressed their observations and expressing apprehensions on the findings in original assessment and the tax authorities have not addressed any of the concerns expressed by the Tribunal, Pune Bench. It clearly indicates that they are more interested



in completing the assessment rather than actually addressing or investigating the real issues. After considering the submissions of the parties, we note that the assessee was dealing in Rice contracts in the area Naya Bazaar, Delhi, which functions as mandi/local market and there are chances of movement of buyers and sellers over the period. In the given case, the tax authorities have verified the existence of parties after eight years of transactions. The Courts have held that after lapse of reasonable time, the findings after lapse of such reasonable time is not trustable and chances of migration is proved. In the given case, the investigation is carried out after lapse of eight years, which is after lapse of considerable time.

15. When we considered the present issue under dispute, the Revenue authorities allege that the assessee is carrying on three types of transactions and in order to avoid tax on the huge income earned by the assessee in the insurance division and elevator division, the assessee had indulged in the trading of Rice transactions in order to book the fictitious losses to avoid the tax. When we look at the above proposition, what benefit the assessee might have gained by this way. The assessee has led go of the profit to the extent of ₹ 380,77,164/-, which literally goes out of the business. Will any prudent businessman will indulge in such transactions without their being any benefit. We presume that maximum what they will do in this kind of transaction is

that they will book the loss as per the above method and they will make sure that at least 90% to 95% of the loss booked, if at all planned, will come back to them by other means or the parties involved are their relatives or business associates. In the given case, the tax authorities have not brought on record that the parties involved are relatives or business associates of the assessee. Neither they brought on record any evidence to prove that assessee has received back the funds or any benefit from the parties/suppliers. The investigation has to be fruitful and meaningful. In the given case, the Assessing Officer has not carried out any useful investigation but merely followed the previous pattern of investigation and completed the assessment on preconceived notion that the parties are bogus without really verifying the real aspect. In our considered view, the assessee has clearly given the details of suppliers and parties with whom the assessee has made purchases and sales to Revenue authorities, not only the address but also the PAN details, sales tax details, bank details, etc., the Assessing Officer cannot verify one aspect of identifying the parties and neglecting the other important aspect of identification and comes to conclusion which itself is not proper. Therefore, in our considered view, as held in the case of *Dwakadhish Investment (P) Ltd.* (supra) that any matter the onus of proof is not a static one, though the initial burden of proof lies on the assessee, yet once they proves the identity of the parties by furnishing

the PAN details or income tax assessment numbers and the genuineness of the transactions in their books and making payments by account payee cheques or drafts then the onus of proof would shift to the Revenue. Just because the creditors could not be found at the address given, it would not give the Revenue the right to invoke the provisions of section 68 of the Act. One must not lose the sight of the fact that it is the Revenue which has all the powers and wherewithal to trace any person. We respectfully follow the above ratio that the assessee has given all the relevant details of all the parties along with the confirmations still the Revenue doubts the identity and genuineness then it is they who has to prove that the assessee has indulged in the activities to avoid tax. In the given case, the Revenue has not brought any material in support of their belief and applied assumptions merely on verification of address aspect of identification. Therefore, we are inclined to allow the grounds raised by the assessee and delete the addition made by the Assessing Officer.

16. In the result, assessee's appeal is allowed.

**ITA no.7969/Mum./2019**  
**Assessment Year : 2010-11**

17. The assessee has filed the present appeal on the following grounds of appeal:—

1) *That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the loss booked by the appellant is not genuine and is not eligible to be set off against the income from other heads.*

2) *That, without prejudice to the generality of ground of appeal no. 1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in placing upon the appellant the burden to produce the parties before Assessing Officer.*

3) *That, without prejudice to the generality of ground of appeal no. 1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the Appellant did not discharge the primary onus to prove the identity of the parties.*

4) *That, without prejudice to the generality of ground of appeal no.1 above, on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in holding that the appellant shelved out 40% more on the purchase of rice to escape the burden of tax.*

5) *That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*

6) *That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

7) *That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary."*

18. Considered the rival submissions and perused the material on record. Having a bare look at the grounds of appeal raised by the assessee in the present appeal, we find that, except variation in figures, the facts and circumstances of the sole issue arising out of the grounds raised in the present appeal are mutatis mutandis identical to

the facts and circumstances relating to the issue arising out of the grounds raised by the assessee in its appeal being ITA no.7970/Mum./2019, for the assessment year 2009-10, wherein the said issue is decided in favour of the assessee and against the Revenue for the reasons stated therein vide Para-14 and 15 of this order. Consistent with the view taken therein, we set aside the impugned order passed by the learned Commissioner (Appeals) by deleting the disallowance made by the Assessing Officer.

19. In the result, assessee's appeal is allowed.

20. To sum up, both the appeals are allowed.

Order pronounced in the open court on 02.08.2021

**Sd/-**  
**C.N. PRASAD**  
**JUDICIAL MEMBER**

**Sd/-**  
**S. RIFAUH RAHMAN**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED:**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai