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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 179/2022

SH. ASHOK KUMAR Appellant

Through: Mr. S. Krishnan, Advocate.

versus

PRINCIPAL COMMISSIONER OF
INCOME TAX Respondent

Through: Mr. Kunal Sharma, Sr. Standing
Counsel for Revenue with Ms. Zehra
Khan, Advocate.

% Date of Decision: 07th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 27234/2022

Exemption allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

ITA 179/2022

1. Present income tax appeal has been filed challenging the order dated 27th April, 2021, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 7603/Del/2017 for the Assessment Year ('AY') 2013-14.
2. Briefly stated, the facts giving rise to the present appeal are that the



appellant-assessee who is engaged in the business of trading in chemical products filed his return of income for the relevant assessment year on 30th September, 2013, which was selected for scrutiny assessment leading to the scrutiny of the assessee's sundry creditors.

3. During the course of the scrutiny, the Assessing Officer ('AO') issued notices to four parties who as per the assessee have supplied material to him during the period 2013-14. The AO conducted enquiries to verify the purchases made from the said parties. The AO was not satisfied with the genuineness of purchases made from three out of four parties and therefore, disallowed the amounts of purchases made from the three parties, which could not be verified, treating the same as bogus expenses. This led to an addition of Rs. 48,01,597/- in the returned income.

4. The assessee contested the assessment order in appeal before the Commissioner Income Tax (Appeals) ['CIT(A)'], which was dismissed. The order of the CIT(A) was challenged before the ITAT which has culminated in the impugned order dated 27th April, 2021, whereby the ITAT has restored the issue to the file of the AO for deciding afresh the purchases made from the three parties, after taking into consideration the assessee's stock reconciliation statement along with relevant invoices of sales, documents in support of delivery of goods from purchase parties. Further, the ITAT has directed the assessee to produce the relevant purchase parties along with their confirmation before the AO and further, directed the AO to pass an order after providing an opportunity of being heard to the assessee.

5. During arguments, the learned counsel for the appellant stated that he is aggrieved by the direction of the ITAT to produce the purchase parties before the AO and use of the expression 'shall' in the said direction. He



states that the purchases in question pertain to financial year 2012-13 and the direction to produce the said purchase parties is onerous. He states that there is independent corroborative evidence available on record in the form of VAT Returns filed by the assessee during the relevant period, which duly reflects the purchases made by the assessee from the said purchase parties. He states that the said purchase parties have VAT registrations. He states that the assessee shall produce the quantitative details of the sales made by the assessee during the financial year itself, which proves the quantum of purchases made by the assessee.

6. He submitted that he is willing to limit his prayer in the present appeal to the extent that the direction of the ITAT in paragraph 7.1 of the impugned order which states that the assessee 'shall' produce relevant purchase parties may be modified to read as 'may', so that if the assessee is unable to trace the said parties after such a long time no adverse inference is drawn against him. He states that this modification is necessary to prevent miscarriage of justice as it is possible that the assessee may be unable to trace the purchase parties after a passage of almost a decade.

7. The operative portion of the ITAT order being paragraph 7 & 7.1 reads as under:-

"7. ...In such circumstances, we are of the opinion that the purchases claimed by the assessee are not free from doubt. The assessee has to demonstrate sales corresponding to the purchases. In the case relied upon by the assessee, the sales were made to government department and thus sales were not doubted, but the instant case it has not been brought on record, whether the sales are made to the government Department or export sales. If the sales corresponding to the purchases are not demonstrated, then possibility of the entire purchases being doubtful cannot be denied. If the corresponding sales are demonstrated, then even if delivery of goods from purchase



parties is not established, then possibility of purchase of goods in cash from another parties, cannot be denied. In the facts and circumstances of the case, we are of the opinion that without reconciliation of purchases and corresponding sales with the help of the stock register, sustaining the disallowance of entire purchases is not justified. Therefore, we restore this issue back to the file of the Assessing Officer for deciding afresh with the direction to the assessee to file stock reconsideration statement along with relevant invoices of sales, documents in support of delivery of the goods from purchase parties.

*7.1 The assessee **shall** also produce relevant purchase parties along with their confirmation. The Assessing Officer may carry out inquiries as deemed fit in the facts and circumstances of the case and pass order after providing adequate opportunity of being heard to the assessee. The ground raised by the assessee is allowed for statistical purposes. ”*

(Emphasis Supplied)

8. We have heard the learned counsel for the parties. Keeping in view the fact that the purchases in question pertain to FY 2012-13, and it may not be possible for the assessee to locate the said parties, we modify the direction in paragraph 7.1 of the ITAT order to the limited extent that the word ‘shall’ will be read as ‘may’:

*“7.1 The assessee **may** also produce relevant purchase parties along with their confirmation. The Assessing Officer may carry out inquiries as deemed fit in the facts and circumstances of the case and pass order after providing adequate opportunity of being heard to the assessee. The ground raised by the assessee is allowed for statistical purposes.”*

(Emphasis Supplied)

9. This shall, however, not absolve the assessee from discharging the onus of satisfying the AO with respect to the genuineness of purchases in question through independent corroborative evidence. The AO shall



consider afresh the documentary evidence produced by the assessee before the ITAT in accordance with the directions contained in the ITAT order except to the limited extent modified above.

10. The learned counsel for the Appellant has expressed an apprehension that the AO may not consider the evidence placed on the record of the ITAT and draw an adverse inference against the assessee and raise a presumption that the ITAT did not accept the sufficiency of the said documents. We have perused the impugned order and it is evident that the ITAT has not rejected the said documents or expressed any opinion on the admissibility of the said documents. ITAT has remanded the matter back to the AO to verify the said documents and the issue for a fresh decision. We accordingly direct the AO to consider all the documents produced by the assessee for verification of the purchases including the documents filed before the ITAT while deciding the issue.

11. The present appeal is, therefore, partially allowed with the aforesaid directions.

12. It is clarified that we have not examined the merits of the present case and the contentions of the appellant as regard the genuineness of the purchases shall be considered by the AO on its own merits after perusing the evidence filed and produced before the AO.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 07, 2022/msh