

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 478/DEL/2016 (A.Y 2006-07)

(THROUGH VIDEO CONFERENCING)

ITO Ward-51 (3), Room No. 1414, 14 th Floor, E-2 Block, Dr. S. P.M. Civic Centre, J. L. N. Marg, New Delhi (APPELLANT)	Vs	Surinder Kumar Minocha Delhi Rubber Chemical Co. S-6/11 (2 nd Floor), DLF City, Phase-III, Gurgaon AAGPM1536P (RESPONDENT)
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Appellant by	Sh. Rocktim Saikia, SR. DR
Respondent by	Sh. S. K. Singh, Adv & Sh. Sourav Vig, Adv

Date of Hearing	06.09.2021
Date of Pronouncement	12.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 03/11/2015 passed by CIT(A)-17, New Delhi for assessment year 2006-07.

2. The grounds of appeal are as under:-

1. *"The Ld.CIT(A) has erred in deleting addition of Rs. 3,62,30,962/- on account of unaccounted purchased as unexplained investment.*
2. *Ld. CIT(A) has erred ignoring the report of Rubber Board which clearly report that the assessee has made unaccounted purchases and not recorded this in his books of accounts.*

3. *Ld. CIT(A) has erred in relying on report of VAT department and ignoring fact that the VAT department submitted that it has no detail of the assessee as his registration as registered dealer has been cancelled.*

4. *Ld. CIT(A) has erred in relying on information received by the assessee from Rubber Board under RTI Act, which speak that the Board has collected excise (cess) from some of the Rubber dealers and ignoring the fact that RTI does not deny that these parties have not made sales to the assessee.*

5. *The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal*

Certified that the copy of the order of CIT(A)-17, New Delhi in the above mentioned case was communicated on 02.12.2015. Limitation expires on 01.02.2016.

3. The assessee derives income from the business of Purchase and Sale of Rubber, Rent from property and Interest from Savings Bank A/c. The assessee filed his Income-tax Return for the Assessment Year 2006-07 on 30.03.2007 declaring an income of Rs.97,140/-. The Income-tax Return was processed u/s 143(1) of the Income Tax Act. A notice u/s 148 of I. T. Act was issued for the assessment year 2006-07. The assessment was completed at an income of Rs.3,62,30,942/- as income from undisclosed investment vide order dated 28.03.2014 passed u/s 147/143(3) of the Act.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessee has not proved that the information received from the Rubber Board is bogus. The license of the assessee was also suspended w.e.f. 8/4/2007 when it was found that his explanation for his failure to count the Rubber purchased from different sources were not satisfactory and convincing. Thus, the Assessing Officer has

rightly made addition of Rs. 3,62,30,945/- on account of unaccounted purchase/undisclosed investment of the assessee. The Ld. DR further submitted that the CIT(A) has totally ignored his fact and allowed the relief thereby deleting the addition.

6. The Ld. AR relied upon the order of the CIT(A) and further submitted that the Assessing Officer has not given the opportunity to the assessee during the course of assessment proceedings. The Ld. AR further submitted that the relevant information of the Rubber Board as related to the misuse of the name of the assessee proprietorship firm was before the CIT(A) and CIT(A) has rightly deleted the addition. The Ld. AR submitted that the assessee had no income, which escaped assessment under the provisions of Section 147 read with Section 148 of Act for the Assessment Year 2006-07. As such, the notice issued u/s 148 was illegal, void and without jurisdiction. Nevertheless, the assessee filed a letter dated 10.4.2013 requesting the Assessing Officer to treat the Income-tax Return, which was filed on 30.03.2007 for the Assessment Year 2006-07 to have been filed in response to notice u/s 148 of the Act under protest. However, the reassessment has been made at an income of Rs.3,63,28,082/- vide order dated 28.03.2014 passed u/s 147/143(3) of the Act. The Assessing Officer has arbitrarily added Rs.3,62,30,942/- to the income of the assessee as income from undisclosed investment.

7. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) held as under:-

“After going through the facts and circumstances of the case, submission/rejoinder of the assessee and perusal of the assessment order/Remand Report and information received from the Department of Trade and Taxes, I find merit in the argument of the appellant that name of his Proprietorship was misused by the above mentioned rubber dealers to get the benefit of concessional rates of rubber whereas no purchases were made by the appellant from those parties. The appellant himself collected information under RTI Act from the Rubber Board to prove that he had not made any

purchases from those parties. Since, no purchases were made, no "C" form was issued by the appellant, this fact further gets confirmed that the Rubber Board. M/s. Kanak Enterprises license was suspended by the Rubber Board. M/s. Kanak Enterprises had made only one purchase during the year which was from M/s. Mahajan Trading Co., Kochin to whom payment of Rs.4,01,904/- was also made through cheque issued from the State Bank of Travancore, Karol Bagh, New Delhi as he ultimately closed down the business and this fact shows that he never made any transaction in cash. From the above discussion, it is clear that the appellant has proved with the relevant supporting documents/details that he had not. made any purchases from those persons. Further, the AO could not bring any material on record to contravert the submission of the appellant or to prove that the submissions given by the appellant are not correct. After careful consideration of the facts and circumstances of the case, I am of the considered view that since his name was forged whereas no purchases were made by him, therefore, the addition made by the A.O as unexplained investment in purchases was not justified."

From the perusal of the records it can be seen that the assessee's name was misused and the purchases were never made from any of those parties. In fact, all the deals were before the Revenue authorities subsequent to the Rubber Manufacturer Association and the Board constituted for Rubber Manufacturers. Therefore, the CIT(A) has given a proper finding and there is no need to interfere with the same.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 12th Day of October, 2021

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 12 /10/2021
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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