

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.2544/Del./2019
Assessment Year 2007-2008

Mr. Anil Arora, Prop. M/s. Jay Cee Metal, 5212, Basti Harphool Singh, Sadar Bazar, Delhi – 110 006. PAN AANPA4428M (Appellant)	vs.	The Income Tax Officer, Ward – 63 (3) New Delhi. (Respondent)
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For Assessee :	Shri Ved Jain, C.A.
For Revenue :	Shri Om Prakash, Sr. D.R.

Date of Hearing :	02.12.2021
Date of Pronouncement :	23.12.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 01.03.2019 of the Ld. CIT(A)-18, New Delhi, relevant to the A.Y. 2007-08.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31.10.2007 declaring total income of Rs.92,636/-. The return was processed under section 143(1) of the I.T. Act, 1961.

Subsequently, information was received that assessee was indulged in bogus purchases/accommodation entries provided by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain. Therefore, the A.O. after recording the reasons reopened the assessment under section 147 of the I.T. Act, 1961. Subsequently, the A.O. issued notice under section 148. The assessee in response to the notice under section 148 of the I.T. Act, 1961, filed letter dated 15.05.2014 enclosing there with copy of bank statement and purchase bills. The A.O. thereafter asked the assessee to file details and also produce books of account. The assessee subsequently filed all the details as asked for by the A.O. In the meantime, the A.O. obtained certain details and statements of Shri Rakesh Gupta and Shri Vishesh Gupta recorded at the time of their assessment proceedings before the ACIT, Central Circle-10. Similarly, statements of Shri Navneet Jain and Shri Vaibhav Jain was also obtained by the A.O. who had admitted that they are engaged in issue of bogus purchase bills/accommodation entries on Commission of 0.25% to 0.5%. After considering

the statement of Shri Vishesh Gupta recorded on oath by the ACIT, CC-10 and statements of Shri Rakesh Gupta and Shri Vishesh Gupta that they are engaged in issuing bogus purchase bills/accommodation entry bills through the companies controlled by them, the A.O. issued a show cause notice to the assessee to explain as to why the said bogus purchase bills shall not be added to the total income of the assessee. Since the assessee did not appear before the A.O. nor produced any books of account, the A.O. issued summons under section 131 of the I.T. Act, 1961 to Nayar Metal Co. And Karshini Metal of Shri Vishesh Gupta and Shri Rakesh Gupta and their statements were recorded on oath on 10.03.2015 in which they again confirmed that all the statements and affidavits given by them before ACIT, CC-10, New Delhi are true and they were providing bills of bogus purchases. Since there was no proper compliance from the side of the assessee to substantiate with evidence to the satisfaction regarding the genuineness of the purchases to the tune of Rs.5,44,392/- made from Shree

Shyam Trading Co. & Vishu Trading Co., the A.O. made addition of the same to the total income of the assessee.

2.1. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the re-assessment proceedings. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. So far as the validity of re-assessment proceedings are concerned, the Ld. CIT(A) upheld the same by following the decision of the Coordinate Bench of the Tribunal in the case of Shri Virendra Kumar Gupta, Proprietor of Sanjay Metal Udyog vs., ACIT in ITA.No.2721/Del./2016 order dated 13.12.2017 wherein the case was reopened on the basis of information received from the Investigation Wing that the assessee has received accommodation entries by booking bogus purchases through various concerns operated by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain. He also relied on the decision of Hon'ble Delhi High Court in the case of DCIT vs., Paramount Communication Pvt. Ltd., 382 ITR 444 (Del.) and the decision of Hon'ble Gujarat High Court in the case of

Gujarat Ambuja Export Ltd., DCIT in SCA.No.10745/2016 dated 11.09.2017. So far as the merit of the case is concerned, the Ld. CIT(A) restricted the addition to 25% of the total bogus purchases of Rs.5,44,392/- i.e., Rs.1,36,093/- and deleted the addition of Rs.4,08,294/-.

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eyes of law and on facts.*
2. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order are bad, both on the facts and in law and liable to be quashed, as the statutory*

conditions and procedure prescribed under the statute have not been complied with.

3. (i) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the AO are bad in the eyes of law, as the reasons recorded for the issue of notice under section 148 are bad in the eyes of law and are contrary to the facts.*

(ii) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and have been recorded without application of mind on the part of the AO.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law*

in confirming the addition of an amount of Rs.1,36,093/- on account of purchases made by the assessee treating the same as bogus invoking section 69C of the Income Tax Act.

5. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming that the firm M/s Vishu Trading Co. and Shree Shyam Trading Co. are not engaged in actual business, ignoring the fact that during the course of search on these firms substantial inventory in respect of the material being purchased by the assessee was found, which confirms the fact that these firms were doing actual business.*

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting that the inference drawn by the AO merely on the basis of a statement that these firms are not in actual business is baseless and contrary to the facts on record.

6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee in ignoring the fact that the quantity purchased and sold being completely tallying, the allegation that the assessee has not made purchases cannot be sustained.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition on account of bogus purchases, despite their being adequate material and evidences brought on record by the assessee before the AO to show that the purchases and sales were made in the regular course of business.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the addition so made on the basis of material collected at the back of the assessee, is bad in law and liable to be deleted.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the addition made by the AO is untenable in the eyes of law, having been made without providing opportunity to cross examine the person on the basis of whose statement the allegations have been made against the assessee and without following the principles of natural justice.*

10. *The appellant craves the leave to add, amend or alter any of the grounds of appeal.”*

4. So far as the grounds challenging the validity of re-assessment proceedings, the Learned Counsel for the Assessee did not press the grounds, for which, the Ld. D.R. has no objection. Accordingly, the grounds raised by the assessee challenging the validity of re-assessment proceedings are dismissed as not pressed.

5. So far as the merits of the case is concerned i.e., sustenance of 25% of the bogus purchases, the Learned

Counsel for the Assessee referring to various decisions submitted that the addition of 25% of the bogus purchases is too high under the facts and circumstances of the case. He submitted that once purchases are held to be bogus, then the trading results declared by the assessee cannot be accepted and right course in such cases is to reject the books of account and profit has to be estimated by applying a comparative profit rate in the same trade. He submitted that though there can be a little guess work in estimating the profit rate, but, such profit cannot be punitive. Relying on various decisions placed in the synopsis, the Learned Counsel for the Assessee submitted that the addition sustained by the Ld. CIT(A) should be deleted.

6. The Ld. D.R. on the other hand heavily relied on the order of the Ld. CIT(A). He submitted that since the assessee is involved in bogus purchases which is confirmed by the parties who has issued the bills to the assessee, the addition sustained by the Ld. CIT(A) being very reasonable under the facts and circumstances of the case the same

should be upheld and the grounds raised by the assessee should be dismissed.

7. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the A.O. in the instant case reopened the assessment of the assessee on the basis of the information obtained by him that assessee was indulged in accepting bogus purchases/accommodation entries. Since the assessee during the instant year has obtained bogus bills / accommodation entries provided by Vishu Trading Co. Rs.3,25,586/- and Shree Shyam Trading Co. Rs.2,18,806/-, the A.O. made addition of the same totalling to Rs.5,44,392/- to the total income of the assessee. I find the Ld. CIT(A) restricted such addition of bogus purchases / accommodation entries to 25% of such bogus purchases. It is the submission of the Learned Counsel for the Assessee that if the purchases are held to be bogus, then, the trading results declared by the assessee cannot be accepted and

right course in such cases is to reject the books of account and profit to be estimated by applying a comparative profit rate. It is also his alternate contention that the percentage of profit adopted by the Ld. CIT(A) at 25% for the bogus purchases is very high and the same should be suitably reduced.

7.1. After considering the totality of the facts and circumstances of the case and considering the fact that assessee was indulged in obtaining accommodation entries/ bogus purchases and had not cooperated before the A.O. by providing the relevant details, some addition has to be made. However, 25% of the bogus purchases estimated by the Ld. CIT(A) under the facts and circumstances of this case appears to be on higher side. Considering the totality of the facts and circumstances of the case, I, restrict the same to 12.5% of the bogus purchases made by the assessee which is to be added to the total income of the assessee. Thus, the order of the Ld. CIT(A) is modified and addition is restricted to Rs.68,049/- i.e., 12.5% of the bogus purchases of Rs.5,44,392/-. Thus, the addition is restricted to

Rs.68,049/-. I hold and direct accordingly. Grounds raised by the assessee are partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 23.12.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 23rd December, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.