

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And  
Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 514/Ahd/2018  
Assessment Year 2011-12**

M/s Accra Pac(India) Pvt. Ltd., Plot No.1105, Phase-III, G.I.D.C, Vapi-396195.  <b>PAN: AABCA7876N</b>  (Appellant)	Vs	D.C.I.T, Circle-1, Ahmedabad.      (Respondent)
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**Assessee by: Shri Mohit Balani, A.R.**  
**Revenue by: Shri Shramdeep Sinha, Sr. D.R.**

Date of hearing : 08-08-2022  
Date of pronouncement : 07-11-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Ahmedabad in Appeal no. CIT(A)-1/DCIT Circle-1/395/2014-15 vide order dated 22/12/2017 passed for the assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:

*This Appeal is against the Order of the Commissioner of Income-tax (Appeals)-I, Ahmedabad and relates to the Assessment year 2011-2012.*

1) *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 77,12,502/- in respect of purchases from M/s. Virat Enterprises.*

2) *Both the lower authorities erred in confirming the disallowance under section 69C of the Act.*

3) *The learned Commissioner of Income Tax (Appeals) erred in ignoring the material placed before the Assessing Officer and himself in this regard.*

4) *Having regard to the facts and circumstances of the case and the provisions of law, the appellant submits that the disallowance u/s.69C is unjustified and requires to be deleted.*

5) *The Commissioner of Income Tax (Appeals) erred in confirming the addition of unexplained deposit of Rs. 10,30,500/- on the basis of AIR information.*

6) *The Commissioner of Income Tax (Appeals) erred in ignoring the clarification from the Bank about the error in uploading their data.*

7) *Having regard to the facts and circumstances of the case and the provisions of law, the appellant submits that the addition of unexplained deposit is unjustified and requires to be deleted.*

*The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to*

3. We are primarily concerned with two grounds of appeal in the instant case.

**Ground 1 to 4: Disallowance of ₹ 77,12,502/- in respect of purchases from M/s Virat Enterprises:**

4. The brief facts in relation to this grounds of appeal is that the assessee is a manufacturer of perfumes and other beauty products. During the year under consideration, the assessee purchased chemicals amounting to ₹ 77,12,502/- from M/s Virat Enterprises. During the course of assessment, the AO observed that the assessee has not furnished PAN number of the party from whom the purchase have been made and the assessee had also not produced confirmation of the party. The assessee submitted that the party M/s Virat Enterprises had shut down its business and hence it was not possible for the assessee to produce a confirmation from the party in respect of the purchases made. However, the assessee submitted that the purchases were backed by delivery challans and also the fact that the purchases were made through banking channels. However, the AO held that the purchases were not genuine and added back the same as bogus purchases on the ground that the assessee has not been able to prove the identity, genuineness and creditworthiness of the party.

5. In appeal, Ld. CIT(Appeals) confirmed the additions made by the assessing officer primary on the ground that the assessee has not been able to establish the identity of the party (M/s Virat Enterprises), the assessee is unable to produce the party, the assessee does not have the PAN number of the party and accordingly, since the party's identity itself is not established, the Ld. Assessing Officer has correctly held that the purchases are bogus. The Ld. CIT(Appeals) while confirming the additions, made the following observations in the appellate order:

*5.6 I have carefully considered the Assessment Order and submission filed by the Appellant. The Assessing Officer has observed that Appellant had claimed purchases made from one Virat Enterprise. However, the Appellant could not*

*produce confirmation of accounts not produce the creditor. In turn, the Appellant contested that it had produced all the invoices and the payments have been made through the banking channel. Having considered the facts on record and the settled legal position, I do not agree with the Appellant's contention for the following reasons:-*

*a) Even though proper procedure 'was followed and the taxpayer proved the genuineness of the expenditure, the taxpayer failed to produce Mr C before the revenue authorities per its directions and no proper reasons were submitted for such failure.*

*b) Mere fact that payments have been made through the banking channel doesn't make a transaction genuine.*

*c) The genuineness of the transaction should have been proved beyond doubt, and there must have been a live link between the business of the taxpayer and the expenditure incurred. The Appellant should have also been in a position to prove the expenditure with proper records beyond doubt. The Appellant has not furnished any manufacturing process or the product mix that could establish that the said item has been used in its business manufacturing.*

*d) The high value of the transactions and nonavailability of creditor as also PAN raise eyebrows, and it was for the taxpayer to prove the existence of the payee. In Remand Report, the A.O. has also stated that AH the documents/bills/vouchers have carefully been perused but in absence of PAN No. contra confirmation of the Virat Enterprises the identity and the genuineness of the said party/ transactions remains unproved. As there is clear provision that it's the onus of assessee to prove the identity, creditworthiness and genuineness of the transaction but the assessee failed to discharge its onus and hence the identity, creditworthiness and genuineness of the said party/purchase remain unproved.*

*5.7. In view of the above discussions and findings of the Assessing Officer, I disagree with the arguments put forth by the Appellant in view of the following decisions of higher authorities:*

- a. CIT vs. Precision Finance Co. Pvt Ltd. (1994) 208 ITR 465, 470, 471 (Cal)*
- b. Cf. Nizam Wool Agency vs. CIT (1992) 193 ITR 318, 320 (All).*
- c. CIT vs. United Commercial & Industrial Co. (P) Ltd- 187 ITR 596 (Cat.)*

*In all the above decisions it has been held that it is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. Mere furnishing of the particulars is not enough. The enquiry of the Income-tax Officer revealed that either the assessee was not traceable or there*

*was no such file and, accordingly, the first ingredient as to the identity by the creditors had not been established. If the identity of the creditors had not been established, consequently the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. It was not for the Income-tax Officer to find out by making investigation from the bank accounts unless the assessee proves the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. Accordingly, the disallowance made by the AO is upheld and these grounds of appeal are **dismissed**.*

6. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(Appeals) in the appellate order. The primary contention of the assessee is that the assessee had placed before the Ld. CIT(Appeals) copies of invoices issued by such party, Lorry receipts in support of proof of delivery of material to the assessee and bank statement of the assessee showing that the payment to such party was made by way of account payee cheques. Further, the assessee submitted that the Department has failed to appreciate that the invoices furnished by the assessee had mentioned the CST as well as the VAT Tin number of the supplier. In the alternative, the counsel for the assessee submitted that purchases made from such party has been used in the manufacturing activity of the assessee (coupled with the fact that the books of the assessee are subject to tax audit as well as excise audit and no adverse opinion has been made by the auditors) and since the sales of the assessee has been subject to tax and the assessee has declared gross profit @ 7.63% on a turnover of ₹ 76 crores approximately, the disallowance on account of bogus purchases may be restricted to a reasonable amount. The assessee has placed reliance on the decision of **Jagadish H Patel 84 taxmann.com 259 (Gujarat High Court)** in support of its contention. In response, the Ld. DR placed reliance upon the

observations made by the assessing officer and Ld. CIT(Appeals) in their orders.

7. We have heard the rival contentions and perused the material on record. We observe that in the instant case, the assessee is in the business of manufacture of perfumes and other beauty products. The assessee made purchases of certain chemicals from M/s Virat Enterprises, which formed the ingredient in the product sold by the assessee. The argument of the assessee is that once the tax has been imposed on the sales made by the assessee, and the sales itself has not been doubted, then the entire purchase cannot be disallowed for the simple reason that it would not have been possible for the assessee to make sales in absence of the necessary raw materials, which facilitated the sales.

7.1 We observe that in the case of **Synbiotics Ltd [2019] 106 taxmann.com 316 (Gujarat)**, the Gujarat High Court held that where Assessing Officer made addition on account of bogus purchase of raw material by assessee company, since Commissioner (Appeals) and Tribunal concurrently found that assessee had yielded huge profits during year from sales which would not be possible without utilising huge raw material, Tribunal was wholly justified in restricting impugned additions on account of bogus purchased to 25 per cent. However, in the case of **Sanjay Oilcake Industries [2009] 316 ITR 274 (Gujarat)**, the Gujarat High Court held that where certain additions were made on account of inflated purchase price and alleged sellers were not traceable and though payments had been made by account-payee cheques, entire amounts so deposited had been withdrawn by bearer cheques, Tribunal was justified in sustaining addition. In the case of

**Premkumar B. Rathi [2015] 59 taxmann.com 203 (Gujarat)**, the Assessing Officer opined that assessee failed to discharge onus of proving genuineness of aforesaid purchase; he, thus, made addition of 25 per cent of total purchases taking it as 'unexplained purchase'. The Commissioner (Appeals) reduced addition to 20 per cent on account of unexplained purchases. The Tribunal further reduced said disallowance to 10 per cent of purchases relying on decision of coordinate bench of Tribunal. The Gujarat High Court upheld the order of Tribunal and held that the same did not require any interference and confirmed the disallowance @10% of bogus purchases. In the case of **Jagdish H Patel [2017] 84 taxmann.com 259 (Gujarat)**, the Gujarat High Court held that where AO having found that during year assessee had made bogus purchases of certain amount added said amount to his income and Tribunal having found that assessee's GP for year under consideration was 7 per cent, adopted GP rate of 8 per cent on purchase and reduced addition, Tribunal was justified. In the case of **Simit P. Sheth [2013] 38 taxmann.com 385 (Gujarat)**, the assessee was engaged in business of trading in steel on wholesale basis. The Assessing Officer having found that some of alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus. He, accordingly, added entire amount of purchases to gross profit of assessee. The Commissioner (Appeals) having found that assessee had indeed made purchases, though not from named parties but other parties from grey market, sustained addition to extent of 30 per cent of purchase cost as probable profit of assessee. The Tribunal however, sustained addition to extent of 12.5 per cent. The High Court held that since purchases were not bogus but were made from parties

other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income. Accordingly, the High Court sustained the addition to the extent of 12.5% of the bogus purchases. The case of **Bholanath Poly Fab (P.) Ltd. [2013] 40 taxmann.com 494 (Gujarat)**, the Gujarat High Court held that where assessee did purchase cloth and sell finished goods, but purchasers were not traceable, profit element embedded in purchases would be subjected to tax and not entire amount.

7.2 In our view, there is always an element of guesswork on the quantum of disallowance that should be made in case in the case of purchases made from parties whom the assessee is unable to identify. However, we also note that it would not be justifiable to disallow the entire purchases when the corresponding sale of finished product (in which such which the purchases so made were utilised for making the final finished product) have been subject to tax. Accordingly, in light of the judicial precedents cited above, a certain percentage of such alleged bogus purchases may be disallowed, keeping into consideration the profit offered to tax by the assessee. Accordingly, in the interest of justice, we are of the view that in the instant set of facts 10% of the above purchases may be disallowed and added back to the income of the assessee.

7.3 In the result, Ground Number 1 to 4 of the assessee's appeal are partly allowed.

**Ground number 5 to 7: addition of unexplained deposit of ₹ 10,30,500/- on the basis of a AIR information:**



8. The brief facts in relation to this ground of appeal are that during the course of assessment proceedings, the AO observed that from Schedule-7 of the balance sheet, the assessee has shown fixed deposit of ₹ 94,47,000/-, however from the AIR information, the assessee had made investments in fixed deposits of ₹ 1,04, 77,500/-. The AO held that despite having been granted sufficient opportunity, the assessee has not been able to explain/reconcile the difference highlighted above, and accordingly, the AO added an amount of ₹ 10,30,500/- as unexplained deposits in the hands of the assessee.

9. In appeal, Ld. CIT(Appeals) confirmed addition with the following observations:

*9.3. I have carefully considered 'the Assessment Order and submission filed by the Appellant. The Appellant has not provided or brought any evidences on record before the AO. However, the Appellant has explained that balance sheet figures contain only the closing balance of FDRs but has failed to support the same with any independent documentary evidences. After carefully considering the facts brought on record, I am of the view that explanation appears to be logical but is unsubstantiated. The Appellant ought to have provided a reconciliation statement explaining the difference between AIR information and Balance sheet figures, supported by FOR statement from the bank. However, in absence of any evidences to support the contention, the said fact could not be established. Hence this ground is **confirmed**.*

10. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(Appeals). Before us, the counsel for the assessee drew our attention to pages 163-197 of the Paper-Book and submitted that the balances standing at the end of the year in the balance sheet of the assessee were correct. The counsel for the assessee submitted that the bankers of the assessee, Bank of India, have confirmed the year end balances which tallies with the balances as per the books of the assessee.

Accordingly, the counsel for the assessee submitted that there is no unexplained deposits made by the assessee and since the confirmation from the bankers of the assessee, Bank of India, has been filed, there is no further requirement of placing another reconciliation in support of its claim. In this connection, the assessee drew our attention to page 176 of the paper book and submitted that Bank of India itself has confirmed that the balances as per the assessee's books of accounts are correct and tallies with the records of the banker of the assessee. In response, the Ld. DR relied upon the observations made by Ld. CIT(Appeals) in the appellate order.

11. We have heard the rival contentions and perused the material on record. In light of the facts placed before us, in the interests of justice, the matter is being restored to the file of the Ld. Assessing Officer to verify the correctness of the claim made by the assessee. The assessee may file the necessary confirmation given by the Bank of India, the assessee's banker, to the effect that the deposits made with the bank are duly tallying with the assessee's books of accounts.

12. In the result, ground numbers 5 to 7 of the assessee's appeal are allowed for statistical purposes.

Order pronounced in the open court on 07-11-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**(True Copy)**

**Ahmedabad : Dated 07/11/2022**