

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. No.367/Asr/2023
Assessment Year: 2012-13**

Aggarwal Construction Company H. No. 613, Sector 36B, Chandigarh, [PAN:-AAMFA7129G] (Appellant)	Vs.	DCIT, Circle-I, Bathinda. (Respondent)
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**I.T.A. No.354/Asr/2023
Assessment Year: 2012-13**

DCIT, Circle-I, Bathinda. (Appellant)	Vs.	Aggarwal Construction Company H. No. 613, Sector 36B, Chandigarh, [PAN:-AAMFA7129G] (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Smt. Balvinder Kaur, CIT DR.

Date of Hearing	22.07.2024
Date of Pronouncement	19.09.2024

ORDER

Per: Udayan Dasgupta, J.M.:

These are the appeals filed by the assessee and the cross appeals by the Department having identical facts in both the appeals and the assessee is in appeal with regard to the reopening of the case u/s 148 and also on account of the sustaining of the addition by the CIT(A) by applying the profit rate of 25% on the alleged bogus purchases and whereas the department is in appeal against the order of CIT(A) restricting the addition only to the extent of 25% of the bogus purchases against the entire alleged bogus purchases, for which, addition was made by the Assessing Officer.

2. The Grounds of Appeal as taken by the assessee in ITA No. 367/Asr/2023 for Assessment Year 2012-13 are as under: -

1.	<i>On the facts and circumstances of the case as well as in law, the Learned CTT(A) has erred by dismissing the ground No.2 of the appeal wherein issuance of notice u/s 148 of the Income Tax Act has been challenged as issued beyond limitation period prescribed under the Act i.e. after four years on the basis of change of opinion and without jurisdiction and valid reasons. Therefore, the assessment made in response to such notice is void ab-initio and liable to be cancelled.</i>
2.	<i>On the facts and circumstances of the case as well as in law, the Learned CTT(J) has erred by upholding the reassessment proceedings on the ground that the payments made to sellers i.e. M/s Hitesh Industries and Akansha Enterprises through a/c payee cheques have been withdrawn by the sellers in cash on the same day merely on surmises and conjectures without any evidence in their possession that the purchases made are bogus</i>
3.	<i>On the facts and circumstances of the case as well as in law, the</i>

	<p><i>Learned CIT(A) has erred by upholding that the purchases of Rs. 9,19,04,587/- (instead of Rs. 5,60,33,277/- as per Para- 5.4 of the appellate order) as bogus purchases whereas all the purchases have duly been declared and accepted by the Assessing Officer at the time of original assessment after examining all the relevant record including return of VAT, bills/vouchers, purchase/sale bills, expenses bills etc. alongwith books of account. The payments against purchases have been made through account payee cheques</i></p>
4.	<p><i>On the facts and circumstances of the case as well as in law, the Learned CJT(A) has erred by upholding addition @25% on the alleged bogus purchases of Rs. 9, 19,04,587/- (instead of Rs. 5,60,33,277/- as per Para-5.4 of the appellate order) whereas all the payments have duly been recorded in the books of account and profit on the sales of these purchases has already been declared as per profit & loss account and accepted by the department during the original assessment proceedings. As such, addition upheld at Rs.2,29,76,147/- is illegal, unjustified and uncalled for. The same be deleted.</i></p>
5.	<p><i>On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred by upholding the decision of the A.O. regarding alleged bogus purchases of Rs. 9,19,04,587/- whereas the actual purchases made amounting to Rs. 5,60,33,277/- from these concerns and admitted by the worthy CIT(A) in Para-5.4 of his order. As such notice issued on mis- stated facts u/s 148 is illegal, invalid and assessment framed in response thereto be cancelled.</i></p>
6.	<p><i>On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred by upholding the findings of the A.O. that the alleged purchases made from Hitesh industries and Akansha Enterprises are bogus without appreciating that the sales could not be made in the absence of purchases whereas sales are not in dispute especially when the purchases of Rs. 9,19,04,587/- (instead of Rs. 5,60,33,277/- as per Para- 5.4 of the appellate order) made from Hitesh Industries and Akansha Enterprises are ultimately used in the construction of Talwandi Sabo Thermal Plant. Therefore, the addition upheld at Rs. 2,29,76,147/- is unjustified and uncalled, be deleted.</i></p>
7.	<p><i>On the facts and circumstances of the case as well as in the law, the Ld. CIT(A) has erred by holding that the sales made to M/s AVM Construction Co., Mansa are under doubt on the ground that the sales could have been made directly to the customers by the asscssec</i></p>

	<i>appellant to whom the sales have been made by M/s AVM Construction, Mansa .</i>
8.	<i>On the facts and circumstances of the case, the Ld. CIT(A) and A.O. have erred in holding that the alleged purchases of Rs.9,19,04,587/- (instead of Rs. 5,60,33,277/- as per Para-5.4 of the appellate order) are bogus whereas as per material placed on record, the purchases so made are quite genuine. Hence, the addition made at Rs. 2,29,76,147/- is unjustified and uncalled for. The same be deleted.</i>
9.	<i>Without prejudice to above, the Ld. CIT(A) has erred in applying the profit rate of 25% on the alleged purchase of Rs.9,19,04,587/- (instead of Rs. 5,60,33,277/- as per Para-5.4 of the appellate order) when the material sold has been admitted to have been used for construction of Talwandi Sabo Thermal Plant and against such type of transactions, the gross profit is not more than 1 % of the turnover.</i>
10.	<i>That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.</i>

3. The grounds of Appeal as taken by the Department in ITA No.354/Asr/2023 for Asstt. Year 2012-13 are as under: -

“1. The Ld. CIT(A) has erred in limiting the addition only to the extent of 25% of bogus purchases as against 100% made by the AO u/s 69C of the Act by not appreciating the judgement of the Hon'ble Hon'ble Supreme Court in the case of N.K. Proteins Ltd. v. DCIT [2017] 84 taxmann.com 195 (SC) in which the Hon'ble Apex Court has dismissed the SLP of the assessee against the decision of the Gujarat High Court [N.K. Industries Ltd. v. DCIT (2016) 72 taxmann.com 289 (Gujarat)] wherein 100% of bogus purchases were added to the total income of the assessee.

2. *The Ld. CIT(A) has erred in limiting the addition only to the extent of 25% of bogus purchases as against 100% made by the AO though he himself arrived at the conclusion that the alleged bogus purchases are bogus purchase and not inflated purchases and taxing only 25% of these bogus purchases goes against the principles of Section 68,69A and 69C of the Income Tax Act.*
3. *The Ld. CIT(A) has erred in limiting the addition only to the extent of 25% of bogus purchases by arriving at the conclusion that since the corresponding sales have been accepted and so entire alleged purchases cannot be disallowed by not taking into considerations the business type of the assessee. The corresponding sales cannot be doubted in case of a pure trading firm but the assessee firm was also a colonizer and contractor and so the entire purchases were not traded by the firm and some purchases were used for in-house consumption. Hence corresponding sales made by the assessee were also in doubt.*
4. *The Ld. CIT(A) has erred in limiting the addition only to the extent of 25% of bogus purchases on the basis that since the corresponding sales have been accepted by the AO and so entire alleged purchases cannot be disallowed by ignoring the facts that the AO has rejected the books of account of the assessee firm u/s 145 of the I.T. Act while passing the assessment order and thus sales made were also not accepted by the AO.*
5. *The Appellant craves leave to add, amend, alter, vary any or all the above grounds of appeal.*
6. *It is prayed that the order passed by the Ld. CIT(A) may be set aside and that of the AO may be restored.”.*

4. The facts in brief are that the regular assessment in this case was framed u/s 143(3) vide order dated 27.05.2015 at an income of Rs. 37,67,220/- by making certain addition on account of gross profit to the tune of Rs 23,50,207/-.

5. Certain information was received from the ADIT Investigation to the effect that the assessee had made bogus purchases, amounting to Rs. 9,19,04,587 and it was stated to be from M/s Hitesh Industries, Sunam to the tune of Rs. 95,04,582/- and M/s Akansha Enterprises to the tune of Rs. 8,24,00,000/- had escaped assessment and to which, the notice u/s 148, dated 18.03.2019 was issued. The assessee failed to file the return in response to notice u/s 148 and, thereafter, the notices were u/s 142(1) asking the assessee to file certified copies of accounts of M/s Hitesh Industries and M/s Akansha Enterprises and since the assessee did not comply with the notices, the Assessing Officer after reproducing the statement of one Sh. Rajinder Kumar Prop. of M/s Hitesh Industries at the back of assessee at pages 4 to 6 of the order and then, further, it has been mentioned in para 5.1, page 5 of the order that the assessee had made purchases of Rs. 8,24,00,000/- from M/s Akansha Enterprises and according to the Assessing Officer, these are bogus purchases and he made the addition of the entire purchases of Rs. 9,24,04,587/-

6. The assessee carried the matter to the CIT(A) raising grounds of appeal with regard to the reopening of the case u/s 148 and also on merits, about the alleged bogus purchases of Rs. 9,24,04,587/- and the Ld. CIT(A) in para 5.3 of the order referred to the order of assessee for Asstt. Year 2011-12 and held as under: -

“5.3. The grievance of the appellant against issuance of notice u/s 148 and addition on account of bogus purchase have been decided by me in the appellant's own case for the A.Y.2011-12 in Appeal No. CIT (A), Bhatinda/10360/2018-19 dated 17.1.2019 vide DIN & Order No : DIN & Order No :ITBA/NFAC/S/250/2023-24/1057063921(1) dated 14.10.2023 wherein, after relying on the decision of various courts, I have allowed partly the grounds of appeal against the issues No. (1) and (2) above.

5.4 Having identical facts and in the same circumstances, I decide the present appeal in the same manner. However, regarding the appellant's objection that there was no purchase from M/s Hitesh Industries, Sunam and purchase from M/s Akansha Enterprises, Sunam is Rs. 5,60,33,277/- and not of Rs. 8,24,00,000/-, the AO is directed to verify the said claim of the appellant and calculate the profit @ 25% on bogus purchase from these two concerns accordingly and while doing so the appellant should be given sufficient opportunity of being heard and consequently the appellant is also requested to co-operate with the AO in compliance to the notices so issued in this effect. The grounds of appeal involving the first two issues as enumerated above in para-5.1 above are, thus, partly allowed.”

7. Thus, the CIT(A) dismissed the appeal of the assessee on the reopening of the case u/s 148 and on merits, he restricted the addition of bogus purchases from 'Akansha Enterprises, which was to the tune of Rs. 5,60,33,277/-, instead of Rs. 8,24,00,000/-, as per reasons recorded and also the Ld.CIT(A) held that there are no purchases from M/s Hitesh Industries, which has been mentioned in the reasons at Rs. 95,04,587/- and sustained the addition of 25% of Rs. 5,60,33,277/-, which are the purchases from M/s Akansha Enterprises. Thus, the CIT(A) relied upon his finding as given in Asstt. Year 2011-12.

8. During the course of hearing before us, the Ld. Counsel at the very outset relied upon his arguments for Assessment Year 2011-12, both with regard to the reopening and on merits and invited our attention to the audited balance sheet placed in the Paper Book and referred to the questionnaire, dated 24.09.2014, (placed at Paper Book pages 36 to 37) and he referred to (Para 8 - at page 36) , wherein the detail of purchases, item wise and party wise purchases more than Rs. Five lakhs was asked for, and such detail of purchases were submitted at pages 38 to 39 of PB and at page 39 of PB, the total purchases from M/s Akansha Enterprises were submitted to the tune of Rs. 5,60,33,277/-, which has been taken note off by the CIT(A) and the sale detail have been given at pages 40 to 42 of PB, which were made to AVM Construction Co., Mansa and, in turn, the said concern have made the sales to 'Talwandi Sabo Tharmal Plant' and these sales were made

out of the purchases from 'M/s Akansha Enterprises' and other parties, detail of bank accounts have been filed during the course of original assessment proceedings as contained in *pages 43 to 52 of the Paper Book* and the order u/s 143(3) was passed by the Assessing Officer , dated 27.03.2015 , which was passed after due application of mind and, thus, it was merely a change of opinion.

9. The Ld. Counsel of the assessee filed his 'Brief Synopsis' for the present year and for the sake of brevity, they are being reproduced as under: -

"It is submitted that the facts and circumstances of the case are same as in the case of assessment year 2011-12 and all arguments as given in our brief synopsis for A. Y 2011-12 are being relied upon here, and the facts are as under:

1. Original assessment was framed u/s 143(3) vide order dated 27.05.2015 copy placed at page 54 to 57.

2. In the order at page 55, there is a complete discussion in paragraph 2,3,3.1 and at page 56 regarding the total application of mind, with regard to the books of accounts and their documents produced before the Assessing Officer.

3. The issue again the same regarding the alleged bogus purchases from M/s Hitesh Industries, and Akansha Industries, as per order of the Assessing Officer.

4. There were no purchases from M/s Hitesh Industries, which is evident from page 67 of the paper book and old balance has been cleared and only outstanding balance, which were there as on

31.03.2011, thus, the whole allegation of the Assessing Officer is totally wrong in the reasons.

5. Then again, purchases from M/s Akansha Industries are 5,60,33,270/- and there was certain outstanding, with regard to the earlier years and even the CIT(A) has mentioned that the figure of purchases are at Rs. 5,60,33,270/- further, the details of purchases from the party was filed during original assessment proceedings as per page 39 of the Paper Book and copy of Account also.

6. All our submissions, with regard to the factually wrong reasons, wrong facts, and no nexus of reasons recorded with the conclusion sought to be drawn, change of opinion as per A.Y 2011-12 are applicable and, the notice u/s 148 deserves to be quashed. We rely both on the legal and merits of the submission as per our arguments for the A. Y 2011-12.”

10. The Ld. Counsel on the strength of above said arguments relied upon his arguments with regard to change of opinion, borrowed satisfaction, wrong reason to believe on the basis of incorrect facts of the figures of bogus purchases and on same set of judgments on wrong reasons, change of opinion, borrowed satisfaction, have been reiterated as in Asstt. Year 2011-12.

11. Further, attention has been drawn to the cash account of M/s Hitesh Industries at page 67 of the Paper Book, which proves that no purchases have been made during the year under consideration from M/s Hitesh Industries and the old

balance of Rs. 96,04,587/- was paid off during the year under consideration through banking channel. Further, copy of account of M/s Akansha Enterprises have been filed before us, during the course of hearing, which proves that the total purchases were only to the tune of Rs. 5,60,33,270/- and not the figure as mentioned in the reasons to the tune of Rs. 8,24,00,000/- as per para 4, page 3 of the reasons, copy of which has been filed during the course of hearing.

12. On merits, the Ld. Counsel relied upon the arguments as advanced before us for Asstt. Year 2011-12, both on the reopening and on the merits of the addition and vehemently argued that sustaining of addition by the CIT(A) was not justified and also proceedings u/s 148 are liable to be quashed on wrong reasons to believe.

13. The Ld. CIT (DR) relied upon his arguments on written submissions as advanced by her in Asstt. Year 2011-12 since the facts and circumstances both with regard to the reopening and on merits are the same.

14. We have considered the rival submissions and also the order of the Assessing Officer, CIT(A) and the brief synopsis as filed by the Ld. Counsel of the assessee and written arguments as filed by both the parties. The facts are not disputed in the sense that original assessment was then framed u/s 143(3) vide order dated 27.03.2015 and it is on record that accounts of both the parties, namely M/s. Hitesh Industries and M/s. Akansha Enterprises, along with the copies of invoices and of bank account statements of the assessee were filed during original

assessment proceedings, showing remittance made to two parties and it is also a fact that incorrect reasons have been recorded by citing, incorrect figure of alleged bogus purchases.

15. Further, reliance by the Ld. Counsel of the assessee on the judgment of 'Kissan Fats Ltd.' and Sh. Darshan Garg as per arguments for Asstt. Year 2011-12 are applicable to the facts and circumstances of the case and, thus, the reassessment proceedings by issue of notice u/s 148 of the Act 61, as framed by the Assessing Officer are quashed as per finding given by us in appeal for Asstt. Year 2011-12.

15.1 As regards the merits of the addition are concerned, the facts and circumstances are the same as in the appeal of assessee and department for Asstt. Year 2011-12 and by relying upon our finding as given Asstt. Year 2011-12 in ITA No. 366/Asr/2023 in appeal and on ITA No. 352/Asr/2023 of the department, we hold that there was no justification in sustaining such addition.

16. Our observations and findings in respect of the same assessee in appeal numbers ITA 352/ ASR / 2023 and ITA 366/ ASR / 2023, for the Asst year 2011-12, are mutatis mutandis applicable to the instant appeals numbers ITA No.354/Asr/2023 and ITA No. 367/Asr/2023, respectively, for the Asst year 2012-13.

17. In the result, the appeal of the and the assessee ITA No. 367/Asr/2023, is allowed and Cross appeal of the revenue in ITA No 354/Asr/2023, is dismissed being as devoid of merits.

Order pronounced in the open court on 19.09.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(UDAYAN DASGUPTA)
Judicial Member

True Copy
By order