

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI `E' BENCH, NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 1505/Del/2011  
Assessment Year : 2006-07

M/s Minda Industries Ltd  
B-64/1, Wazirpur Industrial Area  
Delhi - 110 052.  
(PAN: AAACM 1152 C)

Vs. The Addl. C.I.T,  
Range -6  
New Delhi 52.

I.T.A.No. 1664/Del/2011  
Assessment Year : 2006-07

The D.C.I.T  
Circle - 6(1)  
New Delhi

Vs. M/s Minda Industries Ltd  
B-64/1, Wazirpur Industrial Area  
New Delhi 52.  
(PAN: AAACM 1152 C)

(Appellant)

(Respondent)

Assessee by : Shri Pradeep Dinodia, CA  
Shri R.K. Kapoor, CA  
Deparment by : Shri P. DAM Kanunjna, Sr-DR

Date of Hearing : 15.02.2016  
Date of pronouncement : 13.04.2016

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

The above captioned cross appeals by the revenue as well as the assessee have been directed against the order of CIT(A)-IX, New Delhi dated 15.12.2010 in Appeal No. 122/08-09 for assessment year 2006-07.

REVENUE'S APPEAL IN ITA NO. 1664/DEL/2011

2. First of all, the ld. DR submitted that the Revenue does not want to press Ground Nos. 3 and 3.1. Therefore, the same are dismissed as not pressed.

3. Ground no.1 and 4 of the revenue's appeal i.e. I.T.A. No. 1664/Del/2011 are general in nature, which require no adjudication.

3. Remaining sole effective Ground 2 of the Revenue's appeal reads as under:-

*"2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,81,20,360/- made u/s 35 of the Act being the amount spent for purchase of plant and machinery*

*2. The ld. CIT(A) ignored the finding recorded by the AO and the fact that the assessee could not file any document during the assessment proceedings to substantiate the claim".*

4. We have heard the rival submissions and have perused the relevant material on record. Supporting the action of the AO, the ld. DR submitted that no trust-worthy evidence of any nature was submitted by the assessee during the assessment proceedings to

substantiate the claim regarding purchase of plant and machinery from three vendors viz. Krishna Machine Tools, Ghaziabad, Shree Krishna Machine Tools, Ghaziabad and Vas Techno Engg. Ghaziabad. Hence the so called machinery purchased from these vendors was rightly held to be only an entry in the books of accounts of the assessee. The ld. DR vehemently contended that since no such plant and machinery has been purchased by the assessee, therefore, the claim of deduction u/s 35 of the Income tax Act, 1961 [for short, 'the Act'] was correctly disallowed by the AO. The ld. DR further pointed out that in respect of Shree Ganesh Corpn, Thane, the assessee was informed by the AO and vide note sheet entry dated 16.12.2008 that summons issued to this party had come back with the postal remarks "no such person exists". The ld. DR further contended that no evidence of any nature has been provided by the assessee during the assessment proceedings to substantiate the claim of purchase of machinery from these vendors. Therefore, it was also rightly and correctly disallowed u/s 35 of the Act. The ld. DR strenuously contended that the ld. CIT(A) granted relief to the assessee without any reasonable and justified reasoning. Therefore, the impugned order may be set aside by restoring that of the AO on this issue.

5. Replying to the above, the ld. AR reiterated its written submissions placed before the authorities below which has been reproduced by the ld. CIT(A) in para 4.10 of the impugned order. The ld. AR also took us through paras 4.11 to para 4.16 of the impugned order and submitted that the ld. CIT(A) granted relief to the assessee by considering additional evidence, remand report of the AO and rejoinder of the assessee and rightly reached to a conclusion that purchase of plant and machinery from the said vendor was actually made by the assessee and thus, the action of the AO disallowing the claim of the assessee should not be upheld. The ld. AR further contended that the assessee is having an in-house Research and Development Centre, duly recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India and approval of the Government recognizing in house R & D Centre for the period 31.3.2003 to 31.3.2008 has been placed on the assessee's paper book pages 36 and 37. The ld. AR also drew our attention towards assessee's paper book No. 16 and 17 and submitted that reply to the query of the AO vide letter dated 20.11.2008, the assessee submitted that it has purchased certain plant and machinery for its R & D centre.

6. The ld. AR has also drawn our attention towards assessee's paper book page 219 and submitted that in the Director's Reports for the relevant F.Y. at internal page 9 of the balance sheet [PB page 291] it was clearly mentioned about R & D undertaken by the assessee alongwith future plan and expenditure incurred on R & D. Therefore, the claim of the assessee cannot be rejected at the threshold. The ld. AR has also drawn our attention towards assessee's paper book pages 68 to 73 and submitted that the assessee vide letter dated 11.12.2000 submitted copies of bills, receipts, vouchers, inspection report and copy of account of two parties i.e Exim Trading Company and Ganesh Corporation with the AO but the same was not considered in a proper and judicious manner which clearly supports the claim of the assessee and said evidence was rightly considered and accepted by the ld. CIT(A) while granting relief to the assessee. The ld. AR further submitted that the AO further required the assessee to file certain documents on machinery supplied and accordingly the assessee filed copy of Central Excise Registration Certification, copy of Sales Tax Challans in respect of two vendors i.e. Krishna Machine Tools and Vas Techno Engineers and copy of confirmation of account from Exim Trading Company and Ganesh Corporation was also filed before the AO vide letter dated 22.12.2008 which has been placed and available at

assessee's paper book pages 74 to 87. The ld. AR also contended that the assessee vide its reply dated 24.12.2008 clarified the inconsistency noticed by the AO which is placed at assessee's paper book pages 88 and 89.

7. The ld. AR vehemently pointed out that despite of all relevant and sustainable and reliable evidences and explanation, the AO wrongly held that purchases made by the assessee of plant and machinery from the said four parties/vendors were bogus and this finding was set aside by the ld. CIT(A) by properly appreciating the facts and circumstances of the case. The ld. AR also pointed out that during the first appellate proceedings the assessee filed an application dated 25.8.2009 u/r 46A of the I.T. Rules, 1962 alongwith various relevant documentary evidence to substantiate the submissions originally made to the AO. The ld. AR also contended that the ld. CIT(A) forwarded these document, viz transportation bills, invoices of loading and unloading of machines, repair bills of truck which was carrying goods, etc. alongwith application of the assessee filed u/r 46A of the Rules and the AO had occasion to examine these documents and filed remand report which is available at assessee's paper book pages 116 to 119.

8. The ld. AR further pointed out that at the instance of the ld. CIT(A), the AO initially examined all the additional evidences/ documents and submitted remand report on merits and the AO requested that additional documents should not be admitted to delete the addition. The ld. AR supporting the impugned order submitted that the ld. CIT(A) after passing speaking order admitted and consider the additional evidence of the assessee. Lastly, the ld. AR contended that the AO had been greatly influenced by non-appearance of the suppliers/machine vendors to whom he issued notice u/s 131 of the Act, but recently the Hon'ble High Court of Delhi in the case of CIT Vs Exports Pvt. Ltd reported at 2010-TIOL-583-Hon'ble High Court-DEL-IT has held that inability of assessee to produce the supplier could not lead to the inference that the supplier was bogus. The ld. AR further placed reliance on the decision of the Hon'ble High Court of Bombay in the case of CIT Vs. M/s Nikunj Eximp Enterprises Pvt. Ltd reported at 2013-TIOL-04-IC-MUMBAI-IT and submitted that mere non appearance of suppliers cannot be inferred to hold that the purchases were bogus. The ld. AR finally submitted that the conclusion of the ld. CIT(A) is quite justified and correct and the same may kindly be upheld.

9. On careful consideration of the above rival submissions, we note that the ld. CIT(A) has granted relief to the assessee with the following conclusion and findings:

*“4.11 I have carefully gone through the reasons of disallowance in the assessment order and the written submissions and oral arguments of the Authorised Representative of the appellant. I feel that the additional evidence filed by the appellant needs to be admitted especially on account of the facts that in the remand report, the learned Assessing Officer has not commented upon the para 1 of appellant’s letter dated 25<sup>th</sup> August, 2009 in which it has been claimed that sufficient opportunity of being heard was not granted to the appellant. I, therefore, hold that the additional evidence/papers would be relevant to examine the issue, and hence I admit the same.*

*4.11 Now coming to the merits of the addition made, I am of the considered opinion that the learned Assessing Officer has not viewed the matter in the right perspective. The learned Assessing Officer has simply been influenced too much by certain dates. The learned Assessing Officer has imagined a very ideal situation about the flow of documents that the same should have taken place from one stage to another. In the facts and circumstances of the case, and upon careful consideration of the appliance submission, in the sequence of dates, I do not find any serious issue arising out of such dates. I feel that, the facts and practical aspects are got to be considered. It is not the case of*

*the Assessing Officer that goods were received first and documents were of later date. In such a scenario, a possible inference could be made against the appellant. But such is not the case here. As pointed out by the appellant, I find that in all the cases the date of purchase invoice on all documents such as Form 38, Goods Receipt Note etc. is the same, the Invoice Number is the same. The suppliers have a valid Sales Tax and Excise Registration, and most importantly the payments were made through proper banking channels. It is not the case of learned Assessing Officer that the suppliers were in any way related to the appellant. There is no other evidence on record to prove that actual purchases were not made. On the contrary, the appellant has proved and furnished every possible details pertaining to these transactions including the bills of payment of freight to the transporters, it is seem that the bills of loading and unloading charges have been duly recorded in the books of the appellant. Such books of account and other documents were produced before the Assessing Officer during the assessment proceedings as noted in the assessment order itself. In any case, the appellant had filed copies of ledger accounts of suppliers, freight account, loading and unloading account etc. no of the accounts suggest that the subject purchases were only paper entry but all the documents filed suggest a natural flow of events leading to a conclusion that purchase of the machinery actually took place. The delay in receiving the goods have been duly explained by the breakdown of the truck in one case and a reduction in the freight payment in another case. No doubt such delay in receiving goods did create a doubt in the mind of the*

*A.O. but doubts and suspicions cannot be made the basis of assessment as has been held by the Hon'ble Supreme Court in the case of Chandu Lai Keshav Lai in 38 ITR 601. This judgment has been followed in many subsequent cases. The learned A.O. should have investigated the matter further about the delay. It is here that the evidence filed by the appellant about freight bills, loading and unloading charges etc. become important piece of evidences to substantiate its claim. All such details leave no doubt in anybody's mind that the purchases made by the appellant were genuine and duly supported by all the evidences and the inferences drawn by the A.O. are not justified and cannot be upheld as the same are based on certain suspicions and doubts only.*

*4.12 The most important and clinching evidence which has been filed by the appellant is that the payments for the purchases of the plants and machinery were all made through the banking channels and the same have not doubted by the Ld AO have not been doubted as to how the purchase/acquisition of the goods can be doubted.*

*4.13 the non availability of the suppliers rightly raised a serious doubt in the mind of the AO, who instead of stopping there and making the same as one of reasons for disbelieving the purchase, should have carried on the investigation to its logical conclusion. I am afraid that non availability of the suppliers at the addresses after delay in the receipt delivery of goods are not the purchase in view of the documentary evidences filed by the appellant.*

4.14 *It is also relevant to point out that the R&D programme of the appellant is approved by the appropriate authorities. These authorities also act as a watch and ward for the programmes. The appellant's efforts on R&D have also been acknowledged by a National Award in 2007 and other appreciations by ACMA. The appellant's books of accounts are audited and subject to public scrutiny and by other statutory bodies such as Registrar of Companies and SEBI etc.*

4.15 *Thus, a cumulative appreciation of all the facts and circumstances and all the evidences filed would lead to a natural conclusion that the purchases of plant and machinery from these parties were actually made by the appellant and the A.O's action of disallowing the same cannot be upheld. The disallowance of Rs. 1,81,28,360/- is, therefore, deleted and the appellant succeeds in respect of ground no."*

10. First of all, we may point out that the ld. CIT(A) has admitted and considered additional evidences u/r 46A of the Rules by following a prescribed procedure and the Revenue has not raised any allegation or ground regarding admission and consideration of additional evidence by the first appellate authority.

11. Now we proceed to logically analyze the conclusion of the ld. CIT(A) in the relevant paras as reproduced hereinabove. As we have noted above, the AO was merely influenced by certain dates mentioned in the bills/vouchers/delivery challans and other documents

and the AO himself created an ideal situation about flow of documents and physical movement of plant and machinery that the same should have taken from one stage to another. We are in agreement with the observations of the Id. CIT(A) that the AO ignored not only the facts and circumstances of the case in which the documents were moved from one stage to another but also ignored the practical aspects and situation in which physical movement and transportation of plant and machinery took place from the premises of the vendors/suppliers to the premise of the assessee. The AO has not brought out any allegation to controvert this fact that all the suppliers have valid Central Sales Tax and Excise Duty registration and payments have been made by the assessee to the suppliers through banking channels. It is not the allegation of the AO that the suppliers/vendors were in any way related to the assessee company and he could not bring out any other evidence on record to substantiate or prove that the actual purchase of plant and machinery were not made by the assessee.

12. Per contra, from the documentary evidence and explanation of the assessee, we are in agreement with the conclusion of the Id. CIT(A) that the assessee has proved and furnished every possible details pertaining to the purchase of transaction of plant and machinery including bills of payments of freight to the transporters and bills of

loading and unloading charges have also been duly recorded in the books of account. From the assessment order, it is vivid that the assessee produced books of accounts and other relevant documents before the AO during the assessment proceedings but he AO made additions ignoring the vital piece of evidence which was correctly considered by the first appellate authority while granting relief to the assessee. We further note that there was doubt in the mind of the AO about the delay in receiving goods but it was properly explained by the assessee by showing that there was break down of the truck in one case and reduction of freight payment in another case. Obviously, such delay in receiving goods did create a doubt in the mind of the AO but doubts and suspicions cannot be made to substantiate the allegation of bogus purchases against the assessee. It was open to the AO to investigate further about the cause of delay shown by the assessee but without making such exercise the AO proceeded to conclude that the claim of purchase of plant and machinery was bogus, which is not a justified and proper approach for a quasi-judicial authority.

13. On careful consideration of all relevant evidence, queries of the AO written submissions of the assessee and relevant documentary evidence and explanations, we have no hesitation to hold that the

explanation and documentary evidence submitted by the assessee clears all the doubts which may take place in the mind of a man of ordinary prudence and in this situation, we are inclined to agree with the conclusion of the Id. CIT(A) that the purchases made by the assessee were genuine and duly supported by reliable evidence and explanations. Consequently, we hold that the inferences drawn by the AO on the basis of doubts and surmises and conjectures are not sustainable and justified and the same cannot be upheld being baseless and contrary to the totality of the facts and circumstances of the case established by the assessee.

14. At the cost of repetition, we may point out that mere non appearance before the AO raised serious doubt in the mind of the AO but instead of making further investigation to clear the doubt, the AO proceeded to make disallowance and additions only on this premise which is not a proper approach. The AO should have carried on further investigation to reach to a logical conclusion but this exercise has not been undertaken by the AO. Merely non availability of suppliers and delay in delivery of goods cannot be taken as basis for disbelieving the claim of the assessee and the AO ought to have considered the relevant documentary evidence and explanation of the assessee in this regard which was properly considered at the first appellate stage. The

AO or the ld. DR has also not controverted this fact that the R & D program of the assessee has been approved by the Government of India and other relevant appropriate authorities and efforts of the assessee on R & D were awarded by National Award in 2007 and other appreciations by ACMA. We cannot ignore this fact that the assessee's books of account are properly audited and subject to public scrutiny by other statutory bodies such as Registrar of Companies and SEBI etc. which fact cannot be ignored or rejected at the threshold which conclusively supports the claim of the assessee towards purchase of plant and machinery for R & D purpose. On the basis of foregoing discussion, we are unable to see any ambiguity or perversity or any other valid reason to interfere with the impugned order of the ld. CIT(A) and thus we uphold the same. Accordingly, we approve the conclusion of the ld. CIT(A) who deleted the baseless addition and disallowance made by the AO and hence the sole ground of the Revenue being devoid of merits is dismissed.

15. In the result, the appeal of the Revenue stands dismissed.

ASSESSEE'S APPEAL IN ITA NO. 1505/DEL/2011

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

*“1. That the learned CIT (Appeals) has grossly erred in law and on facts and in the circumstances of the case in upholding the action of the Assessing Officer in disallowing a sum of Rs.28,17,360/- out of the software purchase made by the appellant for the purposes of its R&D.*

*2. That the learned CIT (Appeals) grossly erred in holding that the purchases of software for Rs.28,17,360/- remained unproved in spite of various details about the supplier and the other relevant documents having been filed before him/Assessing Officer.*

*3. That the order passed by the learned CIT (Appeals) in disallowing a sum of Rs.28,17,360/- for purchase of software is bad in law.*

*4. That each ground of appeal is independent of and without prejudice to other grounds of appeal raised herein.”*

Ground Nos. 1 to 3

17. Apropos these grounds we have heard arguments of both the sides and have carefully perused the relevant material on record of the Tribunal. The ld. AR submitted that the assessee ld. CIT(A) has grossly erred in law and on facts and in the circumstances of the case in

upholding the action of the AO in disallowing a sum of Rs. 28,17,360/- out of the software purchases made by the assessee for the purposes of R & D Centre. The ld. AR vehemently contended that the first appellate authority was factually incorrect in holding that the purchases of software upto said amount remained unproved in spite of various details filed by the assessee about the supplier and other relevant documents having been filed before him. The ld. AR also pointed out that the assessee filed confirmed copy of account of assessee in the books of M/s Exim Trading Company before the AO as well as before the ld. CIT(A) which has been placed at assessee's paper book page 19. The ld. AR strenuously contended that the assessee purchased software of Rs. 43,38,864/- from M/s Exim Trading Company during the relevant period and out of the said purchase the AO allowed part purchases from 3.10.2005 to 29.1.2006 but an impugned amount of Rs. 28.17 lakhs was disallowed by the AO by holding that the supplier does not exist and the ld. CIT(A) also upheld the addition upto the extent of the said amount by holding that there is no confirmation available. The ld. AR strongly supporting the claim of the assessee contended that how come it is acceptable that the supplier M/s Exim exists for supply of purchases of Rs. 14.85 lakhs but does not exist for purchase of Rs. 28.17 lakhs merely because

confirmation could not be filed which was actually filed by the assessee during the assessment proceedings. The ld. AR finally prayed that the ld. CIT(A) upheld the addition on erroneous findings therefore, order of the AO as well as of the first appellate authority may be set aside and claim of the assessee may be directed to be allowed. The ld. AR placed his reliance on the decision of the Hon'ble High Court of Delhi in the case of CIT Vs. Rice India Exports Pvt. Ltd [supra].

18. Replying to the above, the ld. DR strongly supported the impugned order and submitted that the initial burden to prove was on the assessee and the assessee could not discharge its burden, hence addition was correct and sustainable. The ld. DR also contended that the assessee could not file confirmation of the supplier, hence the AO and the ld. CIT(A) were quite justified in making and upholding the addition.

19. On careful consideration of the above rival submissions, firstly we observe that the ld. DR has not disputed this contention of the ld. AR that the AO allowed and accepted purchase amounting to Rs. 14.85 from M/s Exim Trading Company. From the assessee's paper book page 19 it is amply clear that a per accounts confirmation given by the

supplier/vendor M/s Exim Trading Co. from 3.10.2005 to 31.3.2006 [FY 2005-06/2006-07] there was total purchases of Rs. 43,31,864/- whereas the AO disputed only two purchases of 12.1.2006 Bill No. 330 and 14.1.2006 Bill No. 539 totalling to Rs. 28,17,360/- and made disallowance and addition by holding that no summons could be served upon the said supplier M/s Exim and the assessee did not make any efforts for producing the party. The ld. CIT(A) in para 5.8 of the impugned order noted that except copy of invoices and store receipts the assessee has not filed any other evidence confirming the transaction.

20. At this stage, it is relevant to note that the AO has allowed part purchase from M/s Exim, then other purchases cannot be held as bogus merely because the summons could not be served upon the supplier, i.e. M/s Exim so far as the conclusion of the ld. CIT(A) is concerned it is also factually incorrect as when the assessee has filed copies of the invoices and store receipts alongwith confirmation from the supplier, as available at page 19 of the assessee's paper book then it cannot be alleged that the assessee did not file any confirmation or any other supporting evidence. At this stage, it is relevant to consider the ratio of the decision of the Hon'ble Jurisdictional High Court at Delhi in the

case of CIT Vs. Rice India Exports Pvt. Ltd [supra] wherein speaking for the Hon'ble Jurisdictional High Court their Lordships held that though the initial burden of proof lies on the assessee yet when it files bills and affidavits the onus shifts to the Revenue. Their Lordships explained that one must not forget that the Revenue, which has powers regarding discovery, inspection, production and calling for evidence as well as survey, search and seizure and requisition of books of accounts and the inability of assessee to produce the supplier could not lead to an adverse inference against the assessee that the supplier was bogus or non-existent. In the present case, the AO has not made any further investigations or enquiry about the supplier and that too he accepted existence of M/s Exim for other purchases which was effected through the same period. The ld. CIT(A), despite confirmation of accounts placed before AO, incorrectly held that there is no confirmation. Per contra, the assessee has discharged the onus cast upon it to establish the genuineness and purchases and onus was shifted to the Revenue but not properly discharge by the AO for making the addition. Thus, conclusion of the AO as well as the ld. CIT(A) is not sustainable. Hence we demolish the same and Ground Nos. 1 to 3 of the assessee are allowed.

21. To sum up, in the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

**The decision is pronounced in the open court on 13 .04.2015.**

**Sd/-**

**(P. MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 13<sup>th</sup> April, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**

**(C.M. GARG)  
JUDICIAL MEMBER**

Asst. Registrar  
ITAT, New Delhi