IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri Waseem Ahmed, AM]

I.T.A Nos.157 & 167/Kol/2008
Assessment Years: 1993-94 & 1994-95

M/s. Prakash Engineering Works (PAN:AAHFP2018A)	Vs.	Income-tax Officer, Wd-47(2), Kolkata
(Appellant)		(Respondent)

Date of hearing: 22.01.2016
Date of pronouncement: 24.02.2016

For the Revenue: Shri S. M. Surana, Advocate
For the Assessee: Shri Sanjay Mukherjee, JCIT

ORDER

Per Shri Mahavir Singh, JM:

Both these appeals filed by assessee are arising out of separate orders of CIT(A)-XXX, Kolkata vide Appeal Nos. 29 & 17/CIT(A)-XXX/Ware-47(2)/2006-07/Kol dated 20.09.2007 and 21.09.2007 respectively. Assessments were framed by ITO, Wd-47(2), Kolkata u/s. 143(3)/147/254 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Years 1993-94 and 1994-95 vide his separate orders dated 15.11.2006 and 31.03.2005.

2. First we take up ITA No. 157/K/2008. The only issue in this appeal of assessee is against the order of CIT(A) confirming the addition made by AO on account of unexplained cash credits. For this, assessee has raised following ground no.1:

> *"For that in the fact and in the circumstances of the case, the advance/loan appeared in the name of Kona Udyog, Steel Corporation and Metal Trading Corporation are genuine, but for the lapse of more than 15 years and due to the internal quarrel in the family, the proper accounts/documents could not be produced. Hence, the Ld. CIT(A) erred in confirming the addition made by the AO and the same may kindly be deleted."*

At the time of hearing, ld. Counsel for the assessee stated that this unexplained credits are actually the credits raised by partners in their capital account and for this, he requested for reframing the issue as under:

> *"The issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in adding the partners' capital in the firm's hand as unexplained cash credits appearing in the name of Kona Udyog Steel Corporation and Metal Trading Corporation."*

3. Briefly stated facts are that the original assessment was completed by the AO u/s. 143(3)/147 of the Act on 04.01.1999 which was set aside by CIT(A) vide his order dated

16.02.2001. Subsequently, the AO made assessment in response to the order of CIT(A) u/s. 144/251 on 22.03.2002, which was confirmed by CIT(A) vide his order dated 07.01.2005. Subsequently, ITAT vide its order dated 30.08.2005 set aside the order of CIT(A) dated 07.01.2005 and again the AO gave appeal effect to the order of ITAT and framed fresh assessment u/s. 143(3)/147/251 of the Act vide dated 15.11.2006 (the impugned order now). The CIT(A) passed appellate order vide dated 20.09.2007 which is the impugned order before us now. The AO on the setting aside assessment has made addition of advance/unsecured loans from the below mentioned three parties:

"(i) M/s. Kona Udyog, 65, G. T. Road, North Howrah,
(ii) Steel Corporation, 65, G.T. Road (N), Howrah
(iii) Metal Trading Corporation , 65, G.T. Road, (N), Howrah"

4. At the outset, ld. Counsel for the assessee took us to para 3 and 4 of the set aside assessment order passed by AO u/s. 143(3)/147/254 of the Act dated 15.11.2006, which reads as under:

"3. It has also been submitted by you that the creditors were not co- operating. Therefore, they cannot be produced for examination. Vide letter dt.19-7-04, Jaiprakash Jaiswal, one of the partners stated that the transactions occurred more than 10 years back and accidentally the loan creditors are not at present in touch with the assessee. This statement is also not correct because based on some enquiries from the Central Bank of India; it is revealed that following cheques were issued as below by these partners of the firm and members of Jaiswal family:

Sl. No.	*Name of the party issuing the cheque*	*Amount of cheque with date (in Rs.)*	*Name of the person who signed the cheque as partner*
1.	*Steel Corporation*	*250000/28-4-92*	*Omprakash Jaiswal & Sanjeev Jaiswal*
2.	*Kona Udyog*	*250000/28-4-92*	*Jaiprakash Jaiswal & R.P. Jaiswal*
3.	*Kona Iron & Steel Co.*	*200000/29-4-92*	*Shri Prakash Jaiswal & R.P. Jaiswal*
4.	*Kona Udyog*	*475000/29-4-92*	*Omprakash Jaiswal, R.P.Jaiswal & another person*
5.	*Metal Trading Corpn.*	*750000/29-4-92*	*Kiran Jaiswal & Jaiprakash Jaiswal*
6.	*Steel Corporation*	*800000/29-4-92*	*Omprakash Jaiswal & Sanjeev Jaiswal*
7.	*Kona Udyog*	*600000/29-4-92*	*Jaiprakash Jaiswal & R.P. Jaiswal*
8.	*Kona Udyog*	*500000/15-5-92*	*Jaiprakash Jaiswal & R.P. Jaiswal*
9.	*Metal Trading Corpn.*	*300000/15-5-92*	*Jaiprakash Jaiswal*
10.	*Steel Corporation*	*558000/15-5-92*	*Omprakash Jaiswal & Sanjiv Jaiswal*
11.	*Metal Trading Corpn.*	*650000/15-5-92*	*Vibha Jaiswal & Kiran Jaiswal*
12.	*Steel Corporation*	*650000/27-5-92*	*Omprakash Jaiswal & Sanjiv Jaiswal*
13.	*Metal Trading Corpn.*	*30000/12-6-92*	*Jaiprakash Jaiswal & Kiran Jaiswal*
14.	*Kona Udyog*	*70000/27-6-92*	*Jaiprakash Jaiswal & R. P. Jaiswal*
15.	*Metal Trading Corpn.*	*936000/27-6-92*	*Jaiprakash Jaiswal & Vibha Jaiswal*
16.	*Kona Udyog*	*44000/2-7-92*	*Jaiprakash Jaiswal & R. P. Jaiswal*
17.	*Metal Trading Corpn.*	*165000/20-7-92*	*Vibha Jaiswal*
18.	*Steel Corporation*	*90000/20-7-92*	*Omprakash Jaiswal, Sanjiv Jaiswal & RP Jaiswal*
19.	*Kona Udyog*	*634000/28-7-92*	*Jaiprakash Jaiswal & R. P. Jaiswal*
20.	*Metal Trading Corpn.*	*1890000/29-7-92*	*Jaiprakash Jaiswal & Prakash Jaiswal*
21.	*Steel Corporation*	*440000/12-11-92*	*Vibha Jaiswal & Omprakash Jaiswal*

From the above details, it is found that the partners of the three alleged creditors were none other than the combination of partners of the firm viz. Prakash Engg. Works. The signatures, which appear on the cheques, are similar to the signatures made by the partners in the partnership deed dated February '88 entered into by Shri Jaiprakash Jaiswal, Shri Prakash Jaiswal, Smt. Kiran Jaiswal, Shri Sanjiv Jaiswal of 65 G.T. Road, Salkia, Howrah and Smt. Vibha Jaiswal of 4A Palm Avenue, Kolkata. Omprakash Jaiswal is the husband of Smt. Kiran jaiswal and first cousin of Shri Jaiprakash J aiswal and Sanjiv Jaiswal. Similarly, Shri Prakash Jaiswal and R.P. Jaiswal are brothers of J.P. Jaiswal and Sanjiv Jaiswal. Thus, the persons behind the huge deposits in the name of Kona Udyog, Steel Corporation and Metal Trading Corporation are none other than the partners of the firm itself.

It is found that from the very beginning either they were evading to reply regarding the genuineness of the credit or the partners were claiming that they were not able to produce these parties after a lapse of so many years and were misguiding the AO. Had credits been genuine? The partners of the firm would have come forward and would have offered the explanation regarding genuineness of the credits. Thus, the facts and circumstances prove that these deposits were, in fact, unexplained money of the partners of the firm. In view of the above facts of the case, please explain as to why the credits introduced by the partners of the firm should not be treated as unexplained cash credit and added to the income of the firm u/s.68 of the I.T Act.

4. It is a well known fact that all the partners of the firm were misguiding the Department and giving false statement about the three creditors and were willfully evading the tax payable on the alleged credits. Therefore, it may please be explained as to why prosecution proceedings should not be initiated against the firm and the partners of the firm U/s.276C and 277 of the I.T. Act.

Your reply should reach the undersigned by 4th of October 2006.

The assessee was required to send his reply by 4-10-06. No compliance was however made. On 28-9-06, a letter was received from the assessee requesting for minimum 30 days of time for replying the letter. Thereafter, on 4-10-06, a letter was written to the assessee to make compliance by 11-10-06. Again, there was no compliance. On 27-10-06, a letter was again written to the assessee giving one more opportunity to submit reply by 13-11-06. On 13-11-2006 the assessee submitted a letter for extending the date of hearing by a month. In my opinion, enough opportunity has been allowed to the assessee for submitting reply to the show-cause notice dt.13-9-06. It is about two months since the assessee was served with show-cause notice and the assessee was to either confirm or deny the fact that the partners of M/s. Prakash Engineering Works were also partners of the alleged three creditors namely, M/s. Kona Udyog, M/s. Steel Corporation and M/s. Metal Trading Corporation and that the signature appearing on the different cheques issued by the alleged creditors were signed by the partners of the assessee. This fact was very well in the knowledge of the partners of the assessee firm that they were the partners in the three alleged creditors firm and the signature on the cheques was also the signature of one or the other partner of the assessee firm. From the facts mentioned in this order, it is also apparent that the assessee has been trying to avoid the compliance at every level and, therefore, I do not consider it necessary to allow any more time to the assessee. The assessment is being completed based on the enquiry made from the Bank and also the other materials available on record.

(i) The enquiry made from the Bank as mentioned in para - 3 of the show-cause notice dt.13-09-2006 makes it amply clear that the money in fact belonged to the partners of the assessee firm and their very near family members. The partners of the assessee firm deposited their unaccounted money in the name of M/s. Kona Udyog, M/s. Steel Corporation and M/s. Metal Trading Corporation. This fact was certainly in the knowledge of all the partners of the assessee firm since they had put their signature on the different cheques which were credited in the A/c. of the assessee firm.

(ii) The assessee always claimed that the alleged creditors had given advances against supply of goods. The assessee could not give any proof of supply of any goods. From the facts on record and

also from the Balance Sheet of the firm from assessment year 1994-95 onwards and at least till assessment year 2003-04, it is found that the liability of the sundry creditors remains almost the same or a little more right from assessment year 1993-94 onwards. Therefore, it can be concluded that the assessee never supplied any good to the alleged creditors. It is a fact that no creditor will like not to recover the credit for such a long time. If these creditors were other than the partners of the assessee themselves they would have certainly tried to recover the advances or at least would have filed suit for recovery of the same: In fact, as mentioned above, since the unaccounted money of the firm and its partners was credited in the name of three alleged creditors, the claim for recovering the advance given was never made. On this fact also, it is established that the money deposited in the firm belonged to the firm and the partners acting on behalf of the firm. The source of these deposits remain unexplained, therefore, it is presumed to be unexplained income of the assessee firm for the year under consideration in terms of Sec.68 of the LT. Act.

(iii) The assessee had given confirmatory letters along with the GIR No. in respect of the three alleged creditors before the Ld. CIT(A). The Ld. CIT(A) had forwarded these GIR Nos. to the ITO who submitted his remand report stating that GIR Nos. quoted in respect of the alleged creditors were false and bogus. The assessee also could not furnish any Xerox copy of the proof of filing of return of income by the three alleged creditors. Therefore, primary responsibility of submitting the confirmatory letters in respect of the three alleged creditors was also not discharged properly by the assessee."

5. In view of the above facts, Ld. Counsel for the assessee stated that these three firms are partners in the assessee firm M/s. Prakash Engineering Works from whom the amount of cheque was received and this fact has been noted by the AO in his assessment order at para 3, reproduced above, stating that, *"this statement is also not correct because based on some enquiries from the Central Bank of India, it is revealed that following cheques were issued as below by these persons of the firm and members of the Jaiswal family."* We find that in the chart given above and also in the assessment order clearly reveals that the three creditors as mentioned above are the only parties and these are the partners in the assessee firm. Ld. Counsel for the assessee in view of the above made argument that once the partners' capital is introduced in the firm that cannot be added as unexplained cash credit and this can be added only in the hands of the partners and not in the firm's hand. For this, Ld. Counsel for the assessee relied on the decision of Hon'ble P&H High Court in the case of CIT Vs. Rameswar Das Suresh Pal Cheeka (2007) 163 taxman 0270 (P&H) wherein it is held as under:

"5. We are also in agreement with the view taken by the Tribunal that no case was made out for addition to the income of the firm even if deposits made with the firm by the partners were unexplained income of the partners. This view has been taken by us in our recent order passed on 6th Nov., 2006 in IT Appeal No. 370 of 2006, CIT v. Metal & Metals of India reported at (2007) 208 CTR (P & H) 457 - Ed., wherein it was observed as under:

In the present case, the firm has given explanation about the source namely Suresh Bhandari, partner, who himself is an assessee. The said partner has admitted having made deposit with the firm. Thus, as far as the firm is concerned, even if the gift

claimed to have been received by Suresh Bhandari is to be rejected, the said Suresh Bhandari may be liable to be taxed by treating the said amount as undisclosed income, but the firm cannot be subjected to tax on that ground.

6. We may also refer to the judgments relied upon by the Tribunal. In CIT v. Jaiswal Motoi Finance (supra), it was observed as under:

...It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners, then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm.

7. In Narayandas Kedamath v. CIT (supra), it was observed as under:

There may be a genuine case where a partner or a stranger may bring in moneys to the credit of the firm and the partner or the stranger may have come into those moneys by thoroughly dishonest means, but it is not for the firm which is being assessed to satisfy the Department that the moneys which it received from the partner or the stranger were moneys which the partner or the stranger obtained by honest means. In my opinion that would be throwing too heavy a burden upon the assessee. We do not wish to lay down any general law which should apply to all cases. In most cases it would depend upon the facts actually found. On the facts actually found and strictly confining our decision to the facts of this case we are of opinion that there were no materials on which the Department could have come to the conclusion that these credits represented undisclosed profits of the firm.

8. In CIT v. Orissa Corporation (P) Ltd. (supra), the Hon'ble Supreme Court observed as under:

In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.

9. In CIT v. Ram Narain Goel (supra), this Court held as under:

...The Tribunal correctly took the view that the assessee was not supposed to prove the source of the loans. Suspicion, howsoever, strong, cannot take the place of evidence or proof.

10. We may also refer to the judgment of the Supreme Court on this issue in Girdhari Lal Nannelal v. CST , wherein the Supreme Court observed as under:

Further, where, as in a case like the present, a credit entry in respect of Rs. 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact

that neither the assessee firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of firm accruing from undisclosed sale transactions."

6. Further, ld. Counsel for the assessee also relied on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Jaiswal Motor Finance (1983) 141 ITR 706 (All), wherein the similar proposition was that no addition of unexplained cash credit can be made wherein the partners have introduced capital in the hands of the firm and in that eventuality addition cannot be made in the hands of the firm.

7. We have heard rival contentions and gone through facts and circumstances of the case. We find from the facts of the case that AO while making enquiry from the Bank, he made it clear in the remand report and as mentioned in para - 3 of the show-cause notice dt.13-09-2006, that the money in fact belonged to the partners of the assessee firm. The partners of the assessee firm deposited their unaccounted money in the name of M/s. Kona Udyog, M/s. Steel Corporation and M/s. Metal Trading Corporation. This fact was certainly in the knowledge of all the partners of the assessee firm since they had put their signature on the different cheques which were credited in the A/c. of the assessee firm. The assessee always claimed that the creditors had given advances against supply of goods. The assessee could not give any proof of supply of any goods. From the facts on record and also from the Balance Sheet of the firm from assessment year 1994-95 onwards and at least till assessment year 2003-04, it is found that the liability of the sundry creditors remains almost the same or a little more right from assessment year 1993-94 onwards. Therefore, it can be concluded that the assessee never supplied any good to the alleged creditors. It is a fact that no creditor will like not to recover the credit for such a long time. If these creditors were other than the partners of the assessee themselves they would have certainly tried to recover the advances or at least would have filed suit for recovery of the same: In fact, as mentioned above, since the unaccounted money of the partners was credited in the name of three alleged creditors, the claim for recovering the advance given was never made. In view of the fact that the alleged cash credit entries are partner's capital introduction in the firm as admitted by AO in his assessment order, the issue is covered in favour of assessee by the decision of Hon'ble Allahabad High Court in the case of Jaiswal Motor Finance, supra and by the decision of Hon'ble P&H High Court in the case of Rameswar Das Suresh Pal Cheeka, supra, wherein it is held that if there are cash credit entries in the books of the firm in which the

accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners, then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. In the present case before us also there is no finding that the cash introduction is on account of the profit of the firm but actually these are partners' money. Respectfully following the precedents and in the given facts of the case, we delete the addition and allow this issue of assessee's appeal.

8. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in charging interest u/s. 220(2) of the Act. For this, assessee has raised additional ground as under:

> *"1. For that the ld. AO erred in charging interest under sec. 220(2) from the date of the Regular Assessment being assessment made in the first round on 27.3.1997 when the said assessment set aside and the assessee cannot be treated to be a defaulter from the said date."*

9. We have heard rival contentions and gone through facts and circumstances of the case. We have perused the case records and find that brief facts relating to this issue are that the original assessment was completed by the AO u/s. 143(3)/147 of the Act on 04.01.1999 which was set aside by CIT(A) vide his order dated 16.02.2001. Subsequently, the AO made assessment in response to the order of CIT(A) u/s. 144/251 on 22.03.2002, which was confirmed by CIT(A) vide his order dated 07.01.2005. Subsequently, ITAT vide its order dated 30.08.2005 set aside the order of CIT(A) dated 07.01.2005 and again the AO gave appeal effect to the order of ITAT and framed fresh assessment u/s. 143(3)/147/251 of the Act vide dated 15.11.2006 (the impugned order now). The CIT(A) passed appellate order vide dated 20.09.2007 which is the impugned order before us now. In such circumstances, when the interest u/s. 220(2) of the Act has been charged by AO from the date of original assessment framed u/s. 143(3)/147 of the Act on 04.01.1999 is as per the provisions of the Act or not. Ld. Counsel for the assessee before us relied on a CBDT Circular No. 334 dated 03.04.1982, wherein the legal position taking into consideration the decision of Hon'ble Kerala High Court , Hon'ble Delhi High Court and Hon'ble Karnataka High Court's view explained the position. The dispute is regarding levy of interest u/s. 220(2) of the Act. Under the said section, interest at a specified rate is chargeable in case the demand raised on the assessee as per the demand notice is not paid within the time allowed in the notice. The issue raised in this ground is as to when the original assessment has been set aside by Tribunal and fresh assessment has been made by the A.O., the period for levy

of interest u/s.220(2) should be reckoned from the date of default as per the original assessment order or as per the fresh assessment order. We find that this issue has already been examined by the CBDT who had clarified the issue vide Circle No.334 Dt.3.4.1982, the relevant portion of which is reproduced below for ready reference:

> *" (2) These issues were comprehensively examined in consultation with the Ministry of Law and the Board has been advised :*
>
> *(i) Where an assessment order is cancelled under section 146 or cancelled / set aside by an appellate / revisional authority and the cancellation / setting aside becomes final (i.e. it is not varied as a result of further appeals / revisions), no interest under section 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of 35 days from the date of service of demand notice pursuant to such fresh assessment order.*
>
> *(ii) (ii) Where the assessment made originally by the Income Tax Officer is either varied or even set aside by one appellate authority but, on further Download Source- www.taxguru.in 9 ITA No.3360/Mum/2010 appeal, the original order of the Income Tax Officer is restored either in part or wholly, the interest payable under section 220(2) will be computed with reference to the due date reckoned from the original demand notice and with reference to the tax finally determined. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position.*
>
> *(3) The foregoing legal position will apply mutatis mutandis to the proceedings under other direct taxes also."*

In view of the Circular No.334 Dt.3.4.1982 of CBDT, in case, the assessment is set aside by CIT(A) and setting aside become final, interest under section 220(2) of the Act has to be charged only after expiry of 35 days from the date of service of demand notice pursuant to the fresh assessment order. But in case the order of CIT(A) is subject matter of further appeal and the Tribunal has restored the order of Assessing Officer either in part or wholly, the interest payable under section 220(2) of the Act will be computed with reference to the due date reckoned from original demand notice and with reference to the tax finally determined in the assessment. In the present case, the original order of assessment was confirmed by CIT(A) but on further appeal, the Tribunal set aside the order of CIT(A) and the issue restored to the Assessing Officer. Therefore in terms of the Circular of CBDT, the interest under section 220(2) of the Act has to be charged only in respect of demand raised as per the fresh assessment order. In the facts of the present case in which the original assessment order has been set aside by the Tribunal and matter restored to the Assessing Officer for fresh assessment and therefore in view of the circular of CBDT (supra), the interest can be levied only from the date of default of the demand notice issued in pursuance of the fresh assessment order. The order of CIT(A) holding that interest under section 220(2) has to be levied from the date of default as per the original assessment

order therefore cannot be sustained. The same is set aside and the claim of the assessee is allowed.

10. Now, we are coming to ITA No. 167/K/2008. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making the addition of bogus purchases.

11. Briefly stated facts are that the assessment was framed u/s. 143(3) of the Act by the AO vide his order dated 27.03.1997 which was set aside by ITAT vide its order dated 18.09.2003 with a direction to adjudicate the issue of undisclosed/bogus purchases. The AO fixed the case to examine the purchases and in support of the same assessee could not produce bills of the relevant parties and bank accounts including original purchase register and stock register by the reason that the same are lying with Hon'ble Calcutta High court. But the assessee produced photo copy of purchase and stock register along with the copy of letter and affidavit evidencing that the originals are lying with Hon'ble Calcutta High court. The AO has not gone into the details of purchase bills, bank account, purchase register and stock register and efforts were made by assessee to explain the bank transaction. Further, even the bank refused to give details and vide letter dated 11.03.2005 stating that relevant records were very old and not traceable. Accordingly, the AO again added the same purchases as bogus to the tune of Rs.16,15,532/-. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO by observing as under:

> *"The appellant claimed that the purchases of materials worth Rs.16,15,532/- from two parties. Before the A.O the original purchase and stock registers were not produced, only copies were produced. The appellant produced copies of the bills claimed to be raised by these persons. However, the appellant has hot furnished satisfactory evidence to prove the identity of these parties from whom it is claimed that materials are purchased. The appellant failed to produce Banker's certificate confirming the payment to these parties out of the Bank A/c of the appellant. In the absence of the satisfactory evidence proving the identity of the parties, genuineness of the transaction of the purchases claimed by the appellant is not satisfactorily explained. In the absence of confirmation from the Banker regarding the payment of consideration to these parties, the genuineness of the transaction is not established. The appellant has not produced the purchase, sale and stock register in original to prove that these purchases are properly recorded in the books of accounts. In the absence of evidence, the appellant failed to prove the identity of the parties from whom the purchases were claimed and the genuineness of the transaction. The A.O is correct as per law in treating the purchases as not genuine and bogus. The A.O's action is correct as per law and is upheld. Therefore, grounds of appeal fail and hence rejected."*

Aggrieved, now assessee is in second appeal before Tribunal.

12. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee has produced purchase bills, bank account, statement pertaining to

purchase price and issuance of cheques. The assessee also produced photo copy of stock register and purchase register maintained by him, which were not verified by the AO properly. These were produced before us also by the assessee in its paper book and stating the reason that all the entries are tallying. Since this is a very old matter pertaining to AY 1994-95 i.e. almost 22 years old and the assessee is able to produce copy of purchase register and copy of stock registers along with purchase bills and bank statement pertaining to purchases, the purchases cannot be held to be bogus and the same are accepted as genuine. We accordingly delete the addition and allow the appeal of the assessee.

13. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 24/02/2016

Sd/-	Sd/-
(Waseem Ahmed)	(Mahavir Singh)
Accountant Member	Judicial Member

Dated : 24th February, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – Prakash Engineering Works, 65, G.T. Road (N), Salkia, Howrah-711106.
2. Respondent – ITO, Ward-47(2), Kolkata.
3. CIT(A) , Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Asstt. Registrar.