

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Smt. Diva Singh, JM And Sh. N. K. Saini, AM**

**ITA No. 4904/Del/2014 : Asstt. Year : 2009-10**

M/s Hind Globe Links, 2717, Gali Arya Samaj, Bazar Sita Ram, New Delhi-110006	Vs	ITO, Ward-28(4), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAHPM9630R</b>		

**Assessee by : Sh. Salil Agarwal, Adv. & Shailesh Gupta, CA  
Revenue by : Sh. T. Vasanthan, Sr. DR**

<b>Date of Hearing : 22.07.2015</b>	<b>Date of Pronouncement : 30.09.2015</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the assessee against the order dated 06.06.2014 passed by the Id. CIT(A)-XXV, New Delhi.

2. Following grounds have been raised in this appeal:

*“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an addition of closing balance of creditors amounting to Rs. 3,57,17,506/-, made in the order of assessment passed under section 143(3) of the Act.*

*2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that the sum of Rs. 3,57,17,506/- represented closing balance of nine sundry creditors as per books of*

*accounts of the assessee, which was added by learned assessing officer, whereas, purchases made and payments made to the said creditors through account payee cheques were accepted as genuine by the learned assessing officer. Thus, the addition so made by learned assessing office and sustained by learned CIT(A) is completely misconceived and misplaced in law and should be deleted, as such.*

*1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate the basic fact that mere non production of creditors cannot be taken as a basis to make and sustain the addition, whereas, all the documentary evidences filed by the appellant company (which were arbitrarily brushed aside) established the genuineness of the transaction of purchase of goods from nine creditors and as such, the addition so sustained is based on suspicion and surmises and is liable to be deleted, as such.*

*1.3 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate the basic fact that transactions with the said nine creditors were also made in preceding assessment year and payments were also made to the said creditors in subsequent assessment year, which stood accepted by learned assessing officer and as such, the addition so made and sustained is based on wholly and completely extraneous and irrelevant considerations and should be deleted, as such.*

*1.4 That the learned Commissioner of Income Tax (Appeals) has further grossly erred in relying on the judgments totally inapplicable to the facts of the case of the appellant company.*

*1.5 That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition in the hands of assessee company, without giving any fair and proper opportunity of being heard to the appellant company. Thereby, violating the principles of natural justice.*

*2. That the learned Commissioner of Income Tax (Appeals) has further erred sustaining the levy of interest u/s 234A, 234B and 234C of the Act, which is not leviable on the facts of the appellant.”*

3. The grievance of the assessee vide Ground Nos. 1 to 1.5 relates to the sustenance of addition of Rs. 3,57,17,506/- made by the AO out of the closing balance of the sundry creditors.

4. Facts of the case in brief are that the assessee filed the return of income on 30.09.2009, declaring an income of Rs. 11,82,236/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 29.10.2010. Later on, the case was selected for scrutiny. During the course of assessment proceedings the AO noticed that the assessee was engaged in the manufacturing of readymade garments & export to Foreign Countries i.e. USA and UAE. He further observed that the assessee had made purchases of Rs. 52,28,52,754/- against the sale of Rs. 51,41,32,724/- alongwith export incentives of Rs. 1,19,60,203/-, machinery hiring charges of Rs. 1,20,000/-, foreign exchange fluctuation of Rs. 94,13,762/- showing total amount of sale consideration at Rs. 53,56,26,679/ and the net profit of Rs. 11,44,130/-

was shown. The AO also pointed out that the G.P rate declared by the assessee for the assessment year 2007-08 was at 12.21%, in the assessment year 2008-09 it was 5.63% and for the year under consideration it declined to 1.97%. He, therefore, asked the assessee to explain the reason for G.P. rate down fall, year to year. The AO also noticed that the assessee had shown trade creditors of Rs. 4,63,89,077/- which were almost 8% of the purchases made at Rs. 52,28,52,754/-. He asked the assessee to furnish the confirmed copies of account of those creditors. The AO pointed out that the assessee had not furnished the confirmation in the following cases:

<i>S. No.</i>	<i>Name</i>	<i>Amount(Rs.)</i>	<i>Remarks</i>	<i>Inspector Report</i>
1.	<i>M/s Amar Jyoti Enterprises, C-21, Shivaji Park, New Delhi-26</i>	<i>40,01,568/-</i>	<i>No such firm at this address</i>	<i>No whereabouts were found about the said firm.</i>
2.	<i>M/s ASV Garmets (P) Ltd., 405, ABC Complex, 20, Veer Savarkar Block, Shakarpur, Delhi-92</i>	<i>36,00,587/-</i>	<i>-do-</i>	<i>-do-</i>
3.	<i>M/s Bharat Mehta &amp; Co., CB-10, Ring Road, Naraina, New Delhi</i>	<i>45,03,945/-</i>	<i>-do-</i>	<i>-do-</i>
4.	<i>M/s Gopal Jee Fabrics, K-30, Udyog Nagar, Peeragari, New Delhi</i>	<i>5,94,990/-</i>	<i>-do-</i>	<i>-do-</i>
5.	<i>M/s Harish Enterprise, E-24, Jawahar Park, Laxmi Nagar, Delhi-92</i>	<i>35,13,854/-</i>	<i>Left without address</i>	<i>-do-</i>
6.	<i>M/s Meenakshi Textiles, C-107, ABC Complex, 20, Veer Sarvarkar Block, Shakarpur, Delhi-92</i>	<i>35,00,300/-</i>	<i>No such firm at this address</i>	<i>-do-</i>
7.	<i>M/s Ravel Apparels Inc., USB-107, Mandawali, Faizalpur, Delhi-92</i>	<i>40,01,050/-</i>	<i>-do-</i>	<i>-do-</i>
8.	<i>M/s Sangeeta Traders, E-25, 2<sup>nd</sup> Floor, Jawahar Park, Laxmi Nagar, Delhi-92</i>	<i>50,00,112/-</i>	<i>-do-</i>	<i>-do-</i>
9.	<i>M/s Surya Traders, 229/28, E-2, Street No. 20, Railway Colony, Mandawali, Delhi-92</i>	<i>70,01,100/-</i>	<i>No such firm at this address</i>	<i>-do-</i>
	<i>Total</i>	<i>3,57,17,506/-</i>		

5. The AO also mentioned that the notices issued u/s 133(6) of the Act to the aforesaid parties were received back unserved. He, therefore, asked the assessee to explain the reason for the notice received returned back and as to why the amount of Rs. 3,57,17,506/- should not be added back in its income. The assessee submitted that litigations were going on with those creditors, but they were confirming the balance. The AO deputed one Inspector to make local enquiries. The Inspector reported that the said parties did not exist at the given address, vide his reports dated 20.12.2011, 21.12.2011 & 23.12.2011. The AO observed that the liabilities were neither finally determined nor due and confirmed by the creditors, therefore, the same could not be accepted as liabilities. He accordingly made the addition of Rs. 3,57,17,506/-.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submissions dated 10.05.2012 which mentioned by the Id. CIT(A) at page nos. 4 to 12 and is reproduced verbatim as under:

**“Addition of Rs. 3,57,17,506/-**

*2. The Id. Income Tax Officer, Ward - 28(4), New Delhi (herein after the Id. ITO) vide order dated 29-12-2011 has made an addition of Rs.3,57,17,506 by adding the closings balances of nine creditors by observing at page 3 of the assessment order as under:*

*“As the assessee could not file the confirmations, notices u/s 133(6) were issued to these parties.....*

*. . Inspector was deputed of this ward to make local enquiries and get confirmations from these creditors .... The assessee was confronted with the inspector's report, ... Since the liabilities are neither finally determine nor due and confirmed by the creditors. The same cannot be accepted as liabilities."-*

*In this regard at the outset it is submitted that the aforesaid observations of the Id. ITO are factually incorrect, as explained below:*

*(1) The observation that the assessee could not file the confirmations, it is submitted, is against the facts on record; as the confirmations of the creditors were filed during the course of assessment proceedings vide letter dated 14-10-2011, which is available at page 113 of assessment record and the confirmations of the creditors are available at page 90 to 99 of the assessment record and this fact is verifiable from the assessment record, which has already been called for by your honour. Copy of all the confirmations are placed at pages 125-134 of the paper book.*

*(2) The observation of the Id. ITO that the Inspector was deputed to make local enquiries and get confirmations from the creditors, it is submitted, is against the facts of the case as the perusal of the order sheet as well as the assessment record clearly reveals that there are no such directions by the Id. ITO to the Inspector.*

*(3) The observation of the Id. ITO that the assessee was confronted with the inspector's report, it is submitted, is against the facts of the case as the purported inspector's report are dated 20-12-2011, 21-12-2011 and 23-12-2011 and -the perusal of the order sheet clearly reveals that the assessee was never confronted with the inspector's report.*

4. *It is, therefore, submitted that the material gathered at the back of the assessee without confronting the same to the assessee has to be excluded from the consideration or cannot be read in evidence and for this submission respectful reliance is placed on the judgments mentioned in Annexure A.*

5. *It is further submitted that the perusal of the Inspector's Reports placed on the assessment record clearly reveals that the same have been prepared in one go and not on the purported dates.*

6. *The observation of the Id. ITO that the' liabilities are neither finally determined nor due and confirmed by the creditors, it is submitted, is against the facts of the case as the Id. ITO failed to appreciate that the liabilities are finally determined and stands duly confirmed by the creditors, as:*

*(i) the confirmations of the creditors for the year under consideration mentioning their income tax PAN were filed during the course of assessment proceedings and are available at page 90 to 99 of the assessment record;*

*(ii) the closing balances were duly discharged by the assessee in the succeeding year and in support thereof the assessee during the course of assessment proceedings vide 'letter dated 05-12-2011 (page 470 of the assessment record) filed the copy of account of the creditors for the subsequent year i.e. financial years 2009-10 (relevant to assessment year 2010-11), which are available at pages 414 to 463 of the assessment record and copies are at page 135-160 of the paper book. It is submitted that perusal of the same clearly reveals that the majority amount of the liability has been discharged by the assessee by making payment through the banking channel and in support thereof bank statement for the subsequent year i.e. financial year 2009-10 (relevant to assessment year 2010-*

*11) is at page 161-196 of the paper book and the balance payment was adjusted by making sales to them. It is pertinent to mention that after the financial year 2009-10 (relevant to assessment year 2010-11), the assessee did not have any transactions with these creditors and therefore the assessee was not aware of their present address.*

*(iii) During the year under consideration, the assessee made purchases of Rs. 26 crores (page 2) from these nine creditors against which payment of Rs. 23 crores (page 2) was made through the banking channels during the year under consideration itself; and in support thereof bank statement for the year under consideration are at page 17-124 of the paper book and ledger account of the parties are at pages 3-16 of the paper book.*

*7. The Id. ITO has unqualifiedly accepted the trading account of the assessee, which includes the purchases made from these nine parties during the year under consideration, thereby clearly meaning that the purchases from these nine parties stands accepted by the Id. ITO.*

*8. The Id. ITO has not controverted, the fact available on assessment record that the major payments were made by the assessee during the year under consideration itself (page 2) through proper and regular banking channels and the closing balances i.e. balance which remained outstanding as on 31-03-2009 has also been discharged in the subsequent year, as explained herein above.*

*9. It is pertinent to mention that one creditor is an incorporated company, whose details are available on the official web-site of the Registrar of Companies.*

10. It is, therefore, submitted that the ld. ITO erred in adding the closing balances i.e. balance which remained outstanding as on 31-03-2009.

11. It is submitted that in case the trading results have been accepted or have not been disturbed or the purchases have been accepted, the creditors cannot be added and for this submission respectful reliance is placed on the following judgments:

(i) *CIT Vs. Ritu Anurag Agarwal (2010) 2 DTLONLINE 134 (Del) in ITA No. 325/2008 decided on 22.07.2009 (Delhi High Court)*

*"As there was no case for disallowance for corresponding purchases, no addition could be made under Section 68 in as much as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed."*

(ii) *Eland International (P.) Ltd. v. DCIT and Vice Versa, (2009) 26 DTR 113 (Del)*

*"In regard to ground NO. 1. It is mentioned in the assessment order that the assessee undertook transactions of purchase and sale with Allure Creations. Shashi Sales & Marketing (P) Ltd. M. V. Marketing (P) Ltd. and Ganesh Textile. Total purchase made from these parties aggregated to Rs.3,06,13,239 and total sales effected to these parties aggregated to Rs.3,04,82,152. These transactions were stated to be bogus in the TEP. The AO required the assessee to prove the genuineness of the purchase and sales. It was submitted that the purchase and sales were reflected in the sales-tax return, which was accented by the*

*STO. No documentary evidence was filed in support of these transactions in order to verify the genuineness of the transactions, the AO issued notices under s. 133(6). It was found that M/s Allure Creations and M/s Ganesh Textile did not exist at the address furnished by the assessee. Notices were served on M/s Shashi Sales & Marketing (P) Ltd., and M/s M. V Marketing (P) Ltd., but these parties did not confirm the transactions. Therefore, the transactions were held to be bogus. Consequently, addition of Rs. 6,10,95,391 was made, being the aggregate of purchase and sales from these parties.*

*\* \* \**

*We have considered the facts of the case and rival submissions. From the submissions made before us, it is clear that the transactions of purchase and sale were recorded in the books of account and these transactions led to profit to the assessee, which was brought to tax. If sales have been effected out of purchase made from these parties, then, it cannot be said that the purchase were bogus. The finding of bogus sale can only lead to the inference that the corresponding amount should be deleted from the turnover of the assessee. The AO has also not rejected the books of account to estimate profit on these transactions in case it was a firm finding that purchase and sales were bogus.... In absence of displacing the finding of the learned CIT(A) and the fact that the assessee showed profit from these transactions, it is held that there is no such error in the order of the learned CIT(A) which requires correction from us. Thus, this ground is dismissed."*

*(ii) Amritsar Trading Co. vs. ITO, ITA No. 586/Asr/1980 for the asst. yr. 1976-77, wherein the Hon'ble Tribunal, Amritsar Bench held that in a case where purchases of the skins and hides were not doubted by the AO, no addition could be made for the reason that the assessee failed to produce the suppliers who had sold the goods to the assessee.*

*(iii) DCIT vs. Swani Enterprises ITA No. 398/Asr/1999, asst. yr. 1994-95, where purchases made from the suppliers were not fully verifiable, the Tribunal., held that since no defects have been pointed out, trading addition was not called for. The most significant aspect considered by the Tribunal was that there could have no exports without there being purchases. This case related to trading addition and not addition under s. 68 of the Act.*

*12. It is therefore, most humbly and respectfully prayed that your honour may kindly be pleased to delete the addition.*

***Annexure 'A'***

*Without providing copy of Inspectors Report and cross examination, the same cannot be read in evidence.*

*Kishan Chand Chellaram Vs. CIT, (1980) 125 ITR 713 (SC) = 19 CTR 360 At ITR page 720*

*"It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the Punjab National Bank Ltd. to the ITO, no reliance could be placed upon it since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross-examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the IT authorities could rely upon it they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. . . The*

*revenue authorities could have very well called upon the manager of the bank to produce the documents and papers on the basis of which he made the statements contained in his letter and confronted the assessee with those documents and papers but instead of doing so, the revenue authorities chose to rely merely on the statements contained in the letter and that too, without showing the letter to the assessee. " "*

*State of Kerala Vs. K. T. Shaduili Yusuff (1977) 39 STC 478 (SC), At STC page 492*

*The Department taking the stand that the returns filed by the assessee are incorrect and incomplete, whereas the assessee contended that their returns were correct and accounts of the wholesale dealers which form the basis of the information of the sales tax authorities were wrong and incorrect. Such an issue can only be determined after examination of the accounts of both the parties and after affording the assessee the right to cross examine the wholesale dealers concerned,. . . ."*

*Shree Nirmal Commercial vs. CIT (2009) 308 ITR 406 (BOM)=(2008) 218 CTR 581*

*\*..... The Tribunal was also wrong in confirming the penalty levied by the ITO in the year 1985, relying upon the purported statements made by the depositors to some other proceedings before some other officers sometime in the year 1971-72 when admittedly the assessee was not given any opportunity to confront the said depositors by way of cross-examination."*

*ITA No. 1035/2009 decided on 22.10.2009 (Del HC)*

*""The additions made by the Assessing Officer (AO) in re-assessment proceedings carried out under Section 147 and 148 of the Income Tax Act were based on the statements of certain*

*villagers, who had sold the land in question to the assessee. However, neither the statements of these villagers were supplied to the assessee nor the assessee was given opportunity to cross-examine those villagers. On this ground, CIT(A) quashed the addition of Rs. 10,07,055/- made by the AO. The Income Tax Appellate Tribunal has upheld this order, in these circumstances, we are of the opinion that no substantial question of law arises and also the fact that the tax effect in this case is only Rs. 4,40,782/-, we are not inclined to interfere with the aforesaid orders- This appeal is accordingly dismissed."*

*CIT vs Rajesh Kumar (2008) 306 ITR 27 (Del) =218 CTR 691=(2008) 172 TAXMAN 74*

*The Tribunal has on these facts rightly come to the conclusion' that since the revenue relied upon the statement of Maheshwari, it should have been made available to the assessee with an opportunity of cross-examine him. This was not done by the Assessing Officer. It clearly shows that the principles of natural justice have been violated. We do not find any infirmity in the view taken by the Tribunal on the facts of the case."*

*Bansal Strips (P.) Ltd. V. ACIT, (2006) 99 ITD 177 (Del) = (2006) 100 ITJ 665*

*"6.....the earlier statement was recorded being the back of the assessee and, therefore, could not be utilized as evidence against the assessee. In support of those contentions, the learned counsel relied upon the judgments in P. S. Abdul Majeed v. Agrl. IT & STO (1994) 209 TR 821 (Ker.) , CIT v. Eastern Commercial Enterprises (1994) 210 ITR 103 (Cal.), Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (4 Taxman 29) (SC), Hirji Nagji & Co. v. CIT (1976) 105 ITR 286 (Ori.), J. K. Synthetics Ltd. v. ITO (1986) 19 ITD 102 (Delhi), 45 ITR 209 (sic) and CIT v. Biju Patnaik (1991) 190 ITR 396 (Ori.)."*

*"11. . . . it is well-settled legal position after the judgment of Hon'ble Supreme Court in the case of Kishinchand Chellaram v. CIT (1980)125 ITR 713-4 Taxman 29 that any material collected by the Assessing Officer behind the back of the assessee cannot be used against him unless the assessee has been allowed a chance to rebut the same. Furthermore, no reasons have been given as to why the statement of Shri V. P. Jain should be accepted to be true while the statement of the assessee well supported by regular books of account should be assumed to be false."*

*Badri Vishal Aggarwal V. DCIT, (2006) 105 TTJ 418 (Del)*  
*The Allahabad High Court in the case of Nathu Ram Premchand v. CIT (1963) 49 ITR 561 (All), observed that it is the duty of the AO to enforce the attendance of a witness, if the witness is material, in exercise of his powers under O, 16, r. 10 of Cr. P. C; where the officer does not do so, no inference can be drawn against the assessee. Hon'ble Supreme Court in case of Prakash Chand Nahta v. Union of India & Ors, (2000) 163 CTR (SC) 310 - (2001) 247 ITR 274 (SC) held that cross-examination of the witness is must before the Department relies on the statement of the witness for making addition.*

*Yamuna Synthetics (P) Ltd. V DOT, (2004) 3 SOT 35 (DEL) = (2004) 91 TTJ 69 - AY 1995-96 & 1996-97 - The assessee has received the impugned amounts through banking channels - during the course of search of a third party a statement was made to the effect that the impugned loan was an accommodation entry made against cash received - relying on the statement of a third party . Revenue contended that it is a sham transaction by way of which the assessee has introduced its own unaccounted money - statement has not been confronted to the assessee.*

**Held:**

*'it is discernible that the only material available with the AO to hold that it was accommodation entry was the statement made by a third party, i.e., Shri Praveen Khurana. The said statement, it is apparent, has not been confronted to the assessee as can be seen from the record of fee proceedings submitted before us in the paper book filed on behalf of the assessee. It is an accepted position in law that whenever the Revenue proposes to rely on a material found from a third party, which is adverse to the assessee, the principles of natural justice require the Revenue to confront the same to the assessee. . . . In fact in such circumstances, the veracity of the statements made by the third party comes in doubt and could not be said to be sacrosanct so as to clinch the issue against the assessee. . . . Therefore, we are of the firm view that the entire edifice' built by the Revenue to view the transaction as suspect is not on the basis of a credible evidence."*

*In view of the aforesaid discussion, we are of the considered view that the Revenue does not have enough material to justify the conclusion drawn to the effect that the impugned transaction was a sham transaction."*

*AN Dhyaneswaran Vs ACIT (2004) 3 SOT 299 (Chennai)  
Amarjit Singh Bakshi (HUF) V ACIT (2003) 263 ITR 75 (AT)  
(Del) = (2003) 86 ITD 13 = (2003) 81 TTJ 169*

*'The Hon'ble Supreme Court in the case of Kishanchand Chellaram (1980) 125 ITR 713 (SC) has categorically held that without affording opportunity, addition cannot be made in the hands of assessee."*

*"Similar view has been expressed by the Hon'ble Supreme Court in the case of R. B. Shreeram Durga Prasad & Fatehchand Narsing Das vs. Settlement Commission & Anr.*

*(1989) 176 ITR 169 (SC) = (1989) 75 CTR (SC) 187 wherein it is held that without affording an opportunity to the assessee, the order passed by the Settlement Commission was a nullity because it was made in violation of the principle of natural justice. Therefore, in view of the decision of the apex Court, the additions made by the AO are not justified."*

*". . . .I am not in agreement with the learned Departmental Representative when she contends that cross-examination is not part of the principles of natural justice. In my opinion, if this argument is accepted, then the statement recorded on which cross-examination is not allowed is also to be ignored. Anything used against an assessee has to be confronted."*

*Dhunjihoy Stud & Agricultural Farm V. DOT (2002) 82 ITD 18 (Pune)*

*"Before coming to the merits of the case, it would be useful to refer to the settled legal position that what is apparent is real state of affairs and the ones to prove the contrary lies on the person who alleges that apparent is not the real one. Reference can be made to the two decisions of the Hon'ble Supreme Court in the case of CIT v. Daulatram Rawatmull (1973) 87 ITR 349 and in the case of CIT v. Durga Prasad More (1971) 82 ITR 540."*

*"The xerox copy of the loose paper and part of the statement on the basis of which addition has been made are nothing but the mere information received by the Assessing Officer from his counterpart in Mumbai. Such information cannot be considered as admissible material/evidence, unless it is corroborated by direct evidence, i. e. by the person who made the statement or who made jottings on the loose paper. If the Assessing Officer wanted to use such information against the assessee, then he*

*must have examined Dr. Tanna and an opportunity to cross-examine should have been given to the assessee.*

*This is a bare minimum requirement of the principles of natural justice, which has not been complied with by the Assessing Officer. In my considered opinion, no information obtained from outside can be admitted as evidence against the assessee unless such information stands to the test of cross-examination. No doubt, the Assessing Officer is not fettered by technical rules of evidence, yet the basic principles of Evidence Act are applicable to the tax proceedings. Reference can be made to the Supreme Court judgment in the case of Chuharmal v. CIT (1988) 172 ITR 250 (38 Taxman 190). Since Dr. Tanna was neither examined by the Assessing Officer, nor the assessee was allowed an opportunity to cross-examine, in my opinion, the information used by the Assessing Officer suffers from serious infirmity and, therefore, in law cannot be used against the assessee as an evidence.*

*Non-compliance of the natural justice has weakened the case of the Revenue. The statement of Dr. Tanna under section 132(4) and the loose paper found from his possession might have evidentiary value in the assessment of Dr. Tanna, but as far as the assessment in the case of third party is concerned, it has no evidentiary value, unless such information stands to the test of cross-examination"*

*Smt. Neena Sayal vs. ACIT (1999) 70 ITD 62 (Chd) - (2000) 69 TTJ 516*

*CIT Vs. Eastern Commercial Ent., (1994) 210 ITR 103 (CAL)= 123 CTR 217 At CTR page 222*

*"As a matter of fact, the right to cross-examine a witness adverse to the assessee is an indispensable right and the*

*opportunity of such cross-examination is one of the cornerstones of natural justice. Here Shri Sukla is the witness of the Department. Therefore, the Department cannot cut short the process of taking oral evidence by merely having the examination-in-chief It is the necessary requirement of the process of taking evidence that the examination-in-chief is followed by cross-examination and re-examination, if necessary.*

*It is not just a question of form or a question of giving an adverse party its privilege but a necessity of the process of testing the truth of oral evidence of a witness. Without the truth being tested no oral evidence can be admissible evidence and could not form the inference against the adverse parties.”*

*At CTR page 223*

*"Learned counsel then cited a host of decisions to bring home the point that no evidence or document can be relied upon unless it is shown to the assessee. Kishan Chand Chellaram v. CIT (1980) 125 ITR 713 (SC). Similarly, the requirement of cross-examination as the requirement of the rules of natural justice has been underlined by the Bombay High Court in Vasanji Ghela and Co. v. CST [1977] 40 STC 544. It is trite law that cross-examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put .on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him."*

*ITO v. Cloth Distributor (1989) 34 TTJ (Ahd.) 115 - if there assessee has been unjustly denied an opportunity 10 cross-examine the witness whose testimony the ITO intended to rely*

*against the assessee such an evidence cannot be read against the assessee.*

*Chuharmal v. CIT (1988) 172 ITR 250 (38 Taxman 190)*

*Sana Electric Co. Vs. CIT, (1985) 152 ITR 507(Del) = 43 CTR 287 - In this case the Assessee received cash earlier and the buyer paid later.*

*At ITR page 511*

*"If seems -that the ITO recorded the statement in the absence of the assessee thus excluding cross-examination by the assessee. This shows that the statement of Shri Sardari Lai has to be excluded from consideration."*

*Chiranjilal Steel Rolling Mills v. CIT (1972) 84 ITR 222 (P & H) - the Assessing Officer has a power to collect evidence from any source but it is his duty to put it to the assessee before making it basis of assessment. If the assessee denies the information collected by him, it is the duty of the officer to satisfy himself by making independent enquiry from sources considered reliable by him so as to decide whether the information passed on him is true or not. If, as a result of his own independent enquiry he comes to the conclusion that the information received by him is true, he is at liberty to act thereupon after disclosing it to the assessee and affording to him a reasonable opportunity of rebutting it. But he has no right to burden the assessee with an extra amount of tax on a vague information given to him without verifying its truthfulness or reliability.*

*Nathu Ram Premchand v. CIT (1963) 49 ITR 561 (All)- it is the duty of the AO to enforce the attendance of a witness, if the witness is material, in exercise of his powers under O.16, r. 10*

*of Cr. P.C., where the officer does not do so, no inference can be drawn against the assessee.*

*M.O. Thomakutty v. CIT (1958) 34 ITR 501.*

*(ii) The bank statement of the appellant maintained with ICICI Bank Ltd, Delhi Janpath, A/c No. 1400301027971 for the period 02/04/2009 to 31/10/2009 to prove the fact that all the trade creditors had been paid back their dues in the immediately succeeding FY.*

*(iii) The copies of accounts of all the nine trade creditors as appearing in the books of the appellant for the FY 2009-10 to prove that the factum of purchase and payments to all such trader creditors was a reality.*

*(iv) The confirmations of account of all the nine parties to substantiate the claim that the parties were genuine, creditworthy and identifiable. The confirmations contained the PAN of all the confirmatories.*

*(v) The statement of the bank of Rajasthan Ltd Delhi Janpath Branch A/c No. 1400301027971 for the period 01/04/2008 to 31/03/2009 reflecting the payments to the said parties against cash purchases and credit repayments.*

*(vi) The copies of accounts of all the nine trade creditors as appearing in the books of the appellant for the impugned FY 2008-09 to prove that the factum of purchase and payments to all such trader creditors was a reality.*

*(vii) Trading and P&L account for the year assailed.*

*(viii) Summary of transactions with the trade creditors impugned by the AO.”*

7. On the basis of the aforesaid documentary evidences, the assessee sought to establish that the credit transactions with the current sundry creditors were genuine. It was also submitted that if an assessee took care to purchase material by way of account payee cheques from a third party and subsequently, three years after the purchase, the said third party did not appear before the AO for any reasons like cessation of business, change of place of business etc., pursuant to notices, the claim of the assessee could not be discarded merely on the ground of the disappearance of the sellers. It was further stated that the AO made no investigation from the bank from which the cheques were cleared before drawing adverse inference against the assessee for its inability to produce the creditors. It was argued that merely because the assessee was unable to produce the creditors, as it was not possible to exercise control over them especially when payments were already made to them, no adverse inference should have been drawn. It was further stated that the assessee could not be expected to keep track of addresses of all its creditors specially when payments had already been made. It was pointed out that no material was brought on record to show that purchases were actually made by the assessee by tendering cash which was taken back in cash in lieu of cheque given to the creditors during the immediately succeeding financial year. The Id. CIT(A) asked the remand report from the AO who submitted the interim remand report on

07.01.2013 and significant points mentioned in the said interim remand report were as under:

*“(i) Notice u/s 131 could not be served by the postal authority who returned the same with the remark ‘no such person/firm, left without address’.*

*(ii) The PANs mentioned by the trade creditors in their confirmatory letters turned out to be those of the Gupta Jain & Associates, RP Goel & Co., Randhir Solutions P. Ltd., Gopaljee Fabrics, ASV Garments P. Ltd. & Randhir IT Solutions P. Ltd., indicating addresses different from those shown by the confirming creditors in their confirmatory letters. Actually the PAN holders, who were claimed to be the trade creditors, were either employees of the CA firm or of the same concerns in which they were employed.*

*(iii) The eight sundry creditors, who were not traceable even by the time of remand proceedings, could not be produced by the appellant on the requirement of the AO till the termination of the remand proceedings.*

*(iv) The appellant succeeded in procuring the bank details of four creditors namely, 1) Harish Enterprises, 2) ASV Garments (P) Ltd. 3) Sangeeta Traders & 4) Bharat Mehta & Co.”*

8. Thereafter the AO furnished the final remand report and. The gist of the final remand report as narrated by the Id. CIT(A) in the impugned order at page nos. 19 to 21 was as under:

*“The gist of the final remand report is narrated hereunder:-*

(i) *The appellant failed to produce the parties and their latest addresses along with their bank accounts details and income tax records.*

(ii) *Summons could be served only on M/s Gopaljee Fabrics. In the cases of other persons the letters came back un-served with the remarks no such person/firm, left without address.*

(iii) *Personal visits to the addresses shown by the appellant of the creditors turned out to be futile as none of the persons were found to be in existence.*

(iv) *The law relating to necessity of documentary evidence for expenditure can be stated as follows:*

(v) *A person who claims that he has incurred certain expenditure is expected to have some, documentary evidence;*

(vi) *In the absence of the above he is expected to say how he has incurred the expenditure and why there is no documentary proof for such expenditure, and' if he has any satisfactory evidence to show that documentary evidence has been lost or destroyed, he may take recourse to secondary evidence, viz., certified copies or attested copies of such documents, or copies made from the original by the mechanical processes which in themselves ensure the accuracy of the copy; copies compared with such copies; copies made form or compared with the original; and the oral accounts of the contents of a document given by some person who has himself seen it;*

(vii) *It has been held in **CIT v. Korlay Trading Co. Ltd.** (1998) 232 ITR (Cal.) that "Where, without filing confirmation letter from the, creditor, the assessee merely mentioned the income-tax number of the creditor (which was also not supported by any affidavit from the creditor), the genuineness of the cash credit cannot be said to have been proved by the assessee."*

(viii) *It has also been established in CIT v. Precision Finance (P) Ltd. [1994] 208 ITR 465 (Cal.) that "It is for the assessee to prove identity of creditors, their creditworthiness and the genuineness of the transactions; mere furnishing of the particulars is not enough; mere payment by account-payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine."*

(ix) *It has also been held in CIT v. United Commercial & Industrial Co. (P) Ltd. [1991] 56 Taxman 304/187 ITR 596 (Cal.) that It is necessary to prove prima facie identity of his creditors, capacity of such creditors to advance money and lastly genuineness of transactions; it would be wrong to hold that transactions were genuine merely because they were made by cheques."*

(x) *After giving several opportunities, the identity and existence of so-called sundry creditors has not been established by the assessee. The production of confirmation letters, does not discharge the liability of the assessee to offer satisfactory explanation."*

9. The Id. CIT(A) after receiving the remand report of the AO asked the rejoinder from the assessee who filed the same on 15.11.2013 which is reproduced by the Id. CIT(A) at page nos. 21 to 36 of the impugned order and read as under:

**"Sub: Rejoinder in the case of M/s Hind Globe Links in appeal no.166/2011-12 AY 2009-10.**

*Before we submit our rejoinder on the remand report of the Ld.AO, we would like to revive the back ground of the case and the issue involved for your honour' s kind consideration.*

*Brief background of the case is that during the impugned assessment year under consideration, assessee (a partnership firm) was engaged in the business of manufacturing and trading of Export Garments. Assessee firm made a total sales of Rs. 51,41,32,724/- as per details given here under:-*

<i>Export Sales</i>	<i>Rs. 13,58,55,297/-</i>
<i>Fabric Sales A/c</i>	<i>Rs. 37,73,35,226/-</i>
<i>Local Sales</i>	<i>Rs. 9,42,201/-</i>
<i>Total sales:</i>	<i>Rs. 51,41,32,724/-</i>

*In order to execute the above sales assessee made following purchases:*

<i>Fabric Purchased</i>	<i>Rs. 52,20,22,518/-</i>
<i>Consumable Purchases</i>	<i>Rs. 8,30,236/-</i>
<i>Total Purchases</i>	<i>Rs. 52,28,52,754/-</i>

*Assessee firm made purchase of Fabrics from various concerns, and at the end of financial year i.e. as on 3.3.2009, total Sundry Trade creditors were outstanding for an amount of Rs. 4,63,89,077/-. Besides domestic sales, exports sale was made by the assessee firm (to countries. i.e. USA and UAE). Assessee firm also incurred expenses on Printing & Dyeing, fabrication, cutting, knitting etc.*

*For the impugned assessment year, Assessee firm filed its return of income declaring an income of Rs. 11,82,236/-. Purchases, sales, expenses incurred in manufacturing, amount received by the assessee as export incentives, foreign exchange fluctuation were not in dispute and the same have been accepted by the Ld. AO as can be seen from the impugned assessment order.*

*During the course of assessment proceedings Ld. AO asked the assessee to file confirmations of accounts from the sundry creditors. Ld. AO has alleged in the impugned assessment order that confirmations in respect of nine parties as per details given at page 2 of the impugned assessment order was not filed by the assessee, whereas the fact is that assessee filed confirmations from these nine parties as well during the course of assessment proceedings. The total outstanding payment to these trade creditors was Rs. 3,57,17,506/-.*

***PB-311** is copy of the reply dated 14.10.2011 with which assessee filed confirmations in respect of the sundry creditors, and is placed in the file of the Ld. AO.*

*These confirmations filed by the assessee were containing PAN of these sundry creditors and are also placed by the appellant in the paper book submitted before your Honour and are available at **PB 125 to 134**. Assessee again provided complete last known addresses of these parties to the ld. AO during the course of Remand proceedings, vide letter dated 30.7.2012, and also referred to the copies of the confirmations available on record, and the copies of accounts of these parties for the subsequent year, where the amount outstanding was paid by the assessee to these sundry creditors. It is submitted that none of the sundry creditors was paid in cash, and-their outstanding were cleared by the assessee through accounts payee cheques only.*

*Ld. AO alleged in the impugned assessment order that notices u/s 133(6) were issued to these sundry creditors, which according to Ld. AO were received back unserved. Ld. AO made an addition of Rs. 3,57,17,506/- alleging "since the liabilities are neither finally determine nor due and confirmed by the creditors, the same cannot be accepted as liabilities. No evidence regarding genuineness of these creditors, balances,*

*and various transactions entered into with these parties was furnished. Despite of counts on which the creditors can be established i.e. identity of creditors genuineness of transactions and genuineness of balances. Hence, circumstances; confirm that these are not genuine creditors.”*

*Aggrieved with the action of the Ld. AO in making addition of Rs. 3,57,17,506/- assessee filed an appeal before your goodself raising the following grounds of appeal:-*

*1. The order of the Ld. Assessing Officer is bad in law and on facts.*

*2. The addition of Rs. 3,57,17,506/- was made as income from undisclosed sources ignoring the fact that:*

*a) The individual confirmation from parties received by the Assessee were placed on record.*

*b) In certain cases, direct confirmation was' sent to the Assessing Officer u/s 133(6) which has been omitted to be recorded.*

*c) Subsequent payment to all such creditors in the month of April-June, 2010 through banking channels was also placed on record.*

*Thus it is submitted that the addition of Rs. 3,57,17,506 should be deleted.*

*3. The Appellant craves leave to add, alter, delete or modify the aforesaid grounds of appeal during the Appellate proceedings." In the impugned order Ld. AO alleged that assessee was, confronted with some Inspector's report. In this regard our respectful submissions are that as per information provided to*

*us by the appellant, no such report was confronted to the appellant. No opportunity of cross examination of the Inspector was allowed to the assessee during the course of assessment proceedings. Therefore, no cognizance can be taken of any such report which has been obtained by the Ld. AO at the back of the assessee.*

*Ld. AO made the impugned addition alleging that the liabilities were not finally determined and identity of creditors, genuineness of transactions and genuineness, of balances was not established.*

*Ld. AO relied on the following judgments in the remand report:-*

- *CIT vs. Korlay Trading Co. Ltd. (1998) 232 ITR (Cal).*
- *CIT vs. Precision Finance (P) Ltd. (1994) 208 ITR 465 (Cal)*
- *CIT Vs. United Commercial & Industrial Co. (P) Limited (1991) 187 ITR 596 (Cal)*

*Respectfully submitted that the above judgments relied on by the Ld. AO do not apply to the case of the assessee, as the impugned addition does not attract the provisions of section 68 of the Act, for the reasons assessee made purchases from these trade creditors, and the purchases made were sold subsequently, to various parties. Neither the purchases made nor the sales made are doubted, and the trading results have been accepted. Books of the assessee are duly audited by the statutory auditors, and, there is also no adverse observation of the statutory auditors.*

*Appellant relies on various pronouncements made by various High Courts, and Hon'ble Supreme Court, in this regard, and relied by the appellant in the written submissions placed before your Honour.*

*It is respectfully submitted that these sundry creditors are for purchases made by the assessee during the year. Out of nine sundry creditors for which Ld. AO made the impugned addition, four creditors are those from whom assessee did business even in the preceding assessment year as well. Five creditors were new from whom assessee made purchases during the year under appeal only.*

*It is submitted that all these sundry creditors are assessed to tax, and their PAN details were also provided by the assessee to the Ld. AO in order to establish the identity of these sundry creditors. Moreover, no payment was made to any of the sundry creditors in cash, and the payments were made only through banking channels. Ld. AO has alleged that identity of the sundry creditors has not been established by the appellant and the genuineness of the transactions have not been proved.*

*It is submitted, that no bank account can be opened by any party without establishing their identity to the bank. Therefore, it cannot be said that the genuineness of the transactions were not proved. Moreover, assessee made purchases from these parties, and the goods purchases from these parties was sold for which sales have not been disbelieved by the Ld. AO. It is not out of place to mention here that even the purchases made have not been disbelieved by the ld. AO. Accounts of the assessee are audited by the statutory auditors, and no defect was pointed out by the statutory auditors as well. Ld. AO has accepted the profit declared as per return. Ld. AO has doubted the identity of these sundry-creditors. It is submitted that when the purchases and sales have been accepted as genuine, where the question remains that these parties were not genuine? No sales can be made without purchase. If sales have been affected out of purchase made from these parties, then, it cannot be said that these parties were bogus. The AO has not rejected the*

*books of account of the assessee, and has accepted the sales and purchases declared by the appellant.*

*Hon'ble Delhi High Court in the case of **CIT Vs. Anurag Agarwal (2010) 2 DTLONLINE 134 (DEL)** IN ITA NO. 325/2008 decided on 22.7.2009 held as under:*

*"As there was no case for disallowance for corresponding purchases no addition could be made under section 68 in as much as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed."*

*Hon'ble Tribunal, Amritsar Bench held in the case of **Amritsar Trading Co. Vs. ITO in ITA No. 586/ASR/1980**, that in a case where purchases of the skins and hides were not doubted by the A O, no addition could be made for the reason that the assessee failed to produce the suppliers who had sold the goods to the assessee.*

*Where sales supported purchase and payment was made 'through banks, merely because suppliers had not appeared before Assessing Officer purchase could not be rejected as bogus ...*

- ***Commissioner of Income-tax-I, Mumbai v. Nikunj Eximp Enterprises (P.) Ltd.** (2013) 35 taxmann.com 384 (Bombay) December 17, 2012*

*Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Burden of proof] - Assessment year 2001-02 - Assessing Officer disallowed income of assessee alleging non-genuine purchases from different parties- Commissioner (Appeals) upheld order of Assessing Officer -*

*Assessee filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through account payee cheques to suppliers and stock reconciliation statements - Sales of purchased goods were not doubted and substantial amount of sales made by assessee was to Government department - Further, books of account of assessee had not been rejected - Tribunal deleted disallowance - Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee - Held yes [Para 7] [In favour of assessee]*

*In the above case issue before the Hon'ble High Court was "Whether on the facts and in the circumstances of the case and in law the Tribunal was right in deleting the addition made by the Assessing Officer of Rs.1,33,41,917/- towards bogus purchases even though the suppliers were non-existent and one of the parties had categorically denied having any business dealings with the Assessee Company?"*

*Hon'ble Tribunal allowed the appeal of the assessee holding that merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the assessee.*

● ***Commissioner of Income-tax v. JMD Computers & Communications (P.) Ltd.*** [2009] 180 TAXMAN 485 (DELHI) JANUARY 16, 2009

*Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income - Assessment year 1998-99 - Assessee was engaged in business of trading in computer parts - On basis of information received from Assessing Officer of one 'T', at whose premises a raid was conducted by department, that assessee had made bogus purchases from certain parties,*

*department had conducted enquiries at addresses of suppliers provided by assessee - Based on that enquiry, Assessing Officer made addition of certain amount to assessee's income on ground that assessee had made bogus purchases - On appeal, Commissioner (Appeals) deleted addition and his order was confirmed by Tribunal, which, after meticulously going through evidence on record, held that department having accepted purchases, it could not have been assumed that assessee had inflated its purchase by introducing fictitious purchases - Whether in view of findings of fact returned by Tribunal, no substantial question of law did arise from Tribunal's order - Held, yes*

### ***FACTS***

*The assessee was engaged in the business of trading in computer parts. The department had received information from the Assessing Officer of one 'T', at whose premises the department had carried out a raid, that the assessee had made bogus purchases from certain parties. During the assessment proceedings, the assessee was asked to identify and produce confirmation of parties from whom purchases of Rs. 1 lakh and above had been made during the relevant period. An inquiry was conducted by the revenue on the basis of addresses of suppliers provided by the assessee and, thereafter, the Assessing Officer made an addition of certain amount to the assessee's income on the ground that the assessee had made bogus purchase. On appeal, the Commissioner (Appeals) deleted the addition. On the revenue's appeal, the Tribunal meticulously went through the evidence on record and found, inter alia, that a complete quantitative analysis between purchases made and corresponding sales had been prepared and filed by the assessee before the Assessing Officer and the quantitative analysis made had not been called into question by the Assessing Officer. The Tribunal held that the department*

*having accepted the purchases, it could not have been assumed that the assessee had inflated its purchase by introducing fictitious purchases. The Tribunal also made a particular note of the fact that the statement of 'A' who was the brother of 'T', the source from which the revenue had received information about bogus purchases made by the assessee, had evidently made a statement admitting therein that he was carrying on the business of issuing bogus accommodation bills on commission basis with the assessee, and that statement was not put to the assessee for rebuttal or cross-examination. The Tribunal, therefore, upheld the order of the Commissioner (Appeals).*

● ***SYNTEXA V. ASSISTANT COMMISSIONER OF INCOME-TAX [2000] 111 TAXMAN 47 (CAL.) (MAG.) ITAT CALCUTTA BENCH 'E'***

*Section 37(1), read with section 131, of the Income-tax Act, 1961 - Business expenditure - Allowability of - Assessment year 1991-92 - Whether assessee by furnishing names and addresses and relevant particulars of brokers as well as suppliers could be said to have discharged primary onus and when no defect could be found in books of account, payment having been made by account payee cheques, then assessee could not be punished for non-appearance of brokers and supplier after issuance of notice under section 131; thus, entire amount paid as brokerage and entire purchases made could be allowed - Held, yes*

***Hon'ble Tribunal held***

*In the instant case, the assessee had furnished the names and addresses and other relevant particulars like details of payments, bills, etc. So, the assessee had discharged the primary onus. Moreover, the payments were made through account payee cheques which were duly shown in the books of*

*account. No defect was found in the books of account submitted by the assessee. On the brokers the assessee had no control and if they became hostile, then the assessee could not be punished. The Commissioner (Appeals) had in principle accepted the genuineness of the payment made to the brokers. The payment towards brokerage/commission was made for rendering the services through account payee cheques. Some brokers had appeared and for non-appearance of the remaining brokers, the assessee could not be punished. Therefore, the order of the Commissioner (Appeals) was set aside and the entire amount paid towards brokerage/commission was allowed.*

*As regards addition for bogus purchases from the material available on record, it appeared that the Tax Audit Report and books of account were accepted by the Assessing Officer without pointing out any defect, Accordingly, the sale was accepted by the department. The sale could not be made without making purchase, in other words, when there was a sale, certainly there was a purchase. Sale was accepted by the department but not the purchase: The payments were made through account payee cheques which were duly shown in the books of account and balance sheet, etc. In the subsequent assessment year, the purchase from the same parties were accepted by the department which proved that the parties were in existence during the assessment year under consideration. This was not the case of the department that there was suppression of profit by showing low gross profit rate. The disallowance was made for the reason only that the parties did not appear and were not produced before the Assessing Officer, for which the assessee could not be punished.*

- ***Eland International (P) Limited Vs. DCIT and Vice versa (2009) 26 DTR 113 (Del)***

*Hon'ble ITAT held that it was clear that the transactions of purchase and sale were recorded in the books of account and these transactions led to profit to the assessee, which was brought to tax. If sales had been effected out of purchases made from these parties, then it could not be said that the purchases were bogus. The finding of bogus sale can only lead to the inference that the corresponding amount should be deleted from the turnover of the assessee. The Assessing Officer had also not rejected the books of account to estimate profit on these transactions in case it was a firm finding that purchases and sales were bogus. As the assessee showed profit from these transactions, these transactions could not be treated as bogus and no addition could be made on account thereof*

- ***HI LUX AUTOMOTIVE (P.) LTD. V. INCOME-TAX OFFICER, WARD-12(2), NEW DELHI [2007] 163 TAXMAN 90 (DELHI) (MAG.) NOVEMBER 17, 2006***

*Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income - Assessment year 1996-97 - Assessee was engaged in business of manufacturing of tractor lights - Assessee incurred certain expenditure on purchase of raw material and towards payment of job work charges and claimed deduction of same - Assessing Officer denied deduction for reason that assessee claimed bogus purchase price and job work charges to evade tax and made addition of certain amount to income of assessee - Whether since assessee established its claim by furnishing relevant bills, bank statements and considering fact that without purchase of raw material and job work charges incurred, manufacture could not have been possible, addition was not justified and required to be deleted - Held, yes*

- ***Dy. CIT v. Kirtilal Kalidas Jewellers (P.) Ltd. (2012) 54 SOT 529 (Chennai)(Trib.)***

*During assessment proceedings, Assessing Officer found that for some of purchases effected by assessee, no details or address of vendors were available in, purchase vouchers. He, therefore considered such-purchases to be non-genuine and an addition was made on that account. Since purchases were recorded in books of account of assessee and were also shown in its stock, in such circumstances merely because those purchases did not carry full addresses of vendors, could not be a reason to treat said purchases as unexplained. Therefore, impugned addition made by Assessing Officer was to be deleted. (A.Y. 2008-09)*

*In view of the above legal position, no addition is attracted in the case of the appellant.*

*Appellant firm filed written submissions and the paper book during the course of appellate proceedings, on which a remand report was called from the Ld. AO. Assessee has been provided a copy of interim remand report dated 07.01.2013 and the other remand report dated 08.04.2013.*

***Our respectful submissions on the observations made by the Ld. AO in the Remand reports are as under:-***

*Ld. AO mentioned in the remand report dated 7.1.2013, that PAN details provided show that in most of cases PAN holder persons are employees of C.A. firms or of the same concerns. In this regard it is submitted that assessee purchased material from these parties, and made payments to these parties through account payees cheques only. Assessee has no mechanism with it, to first find the PAN details, and then to make purchases. Assessee made purchases from the parties in normal course of business, and goods purchased from these parties were subsequently sold, for which sales have been declared by the assessee which have duly been accepted by the Ld. AO. Even*

*the purchases have not been disputed. Ld. AO made addition of the outstanding balances as on 31.3.2009, which were also paid off in the subsequent year. It is submitted that in case there was any doubt to the Ld. AO that these persons have provided a wrong PAN, Id. AO could have called these parties to satisfy any of his doubt, but no adverse view can be taken in this regard, as assessee has no control On any party, as the assessee had made purchases from these parties and have made payments against purchases made to them.*

*Ld. AO further alleged that eight sundry creditors were not traceable. Ld. AO has confirmed in this remand report in para 9.2 that assessee vide reply dated 16.11.2012 has given the bank account details of following four parties:-*

- 1. M/s Harish Enterprises.*
- 2. M/s ASV Garments (P) Limited*
- 3. M/s Sangeeta Traders*
- 4. M/s Bharat Mehta & Co.*

*In the remand report dated 8.4.2013 ld. AO has confirmed that reply has been received from M/s Gopaljee Fabrics. Therefore, no adverse view may kindly be taken in respect of this party and the addition made in respect of this party may kindly be directed to be deleted.*

*With regard to other eight sundry creditors Ld. AO alleged that none of the creditor parties were existing at the addresses provided by the assessee, or worked there for the last 10-12 years. As the only issue involved in the present appeal is with regard to addition made by Ld. AO of the outstanding amount payable by the assessee in respect of nine. Trade creditors, our respectful submissions in respect of each party with reference to observations made by the Ld. AO in the remand report are as under:-*

**1. M/s Amar Jyoti Enterprises - Amount outstanding as on 31.3.2009 as payable Rs. 40,01,568/-**

*With regard to above party, it is respectfully submitted that during the year under consideration assessee made purchases for an amount of Rs. 4,26,82,061/- and made payment during the year for an amount of Rs. 4,13,58,173/-. There was an opening credit balance of Rs. 26,77,680/- as on 1.4.2008 and closing credit balance of Rs. 40,01,568/- payable by the assessee to the said party as on 31.3.2009. Ld. AO has accepted the entire purchases made by the assessee, and there is no dispute for making payment to the said party as no adverse view is taken in respect of payments made to this party during the impugned assessment year. It is submitted that no payment was made by the assessee in cash to the said party Ld. AO stated in the Remand report that party was not found at the address "C-21, Shivaji Park, New Delhi-26." and the PAN allotted is in the name of Shri Ranjit Singh, 213, Vardhman Tower, Preet Vihar Delhi-92. It is submitted that in case there was any doubt to the Ld. AO about this party, ld. AO could have verified these facts from the Bank of the assessee, as the payments made by the assessee to the said party were cleared from the bank of the assessee. Not only that the outstanding amount payable of Rs. 40,01,568/- was also paid by the assessee to the said sundry creditor in the subsequent year. Confirmation of outstanding balance of Rs. 40,01,568/- (**Refer PB 125**) was also filed by the assessee from the said party.*

*We are submitting again a copy of the ledger account of the above party for the subsequent period i.e. for the period 1.4.2009 to 31.3.2010 wherein assessee had transactions of sales to the said party and the amount outstanding by the assessee was also paid off. Copies of the sales bills for sales made to the said party are also enclosed for your kind perusal. Payments made and payments received from the said party are*

*also highlighted in the copy of bank statement being filed with this rejoinder. Thus the transactions entered into with this party are established with these evidences.*

**2. M/s ASV Garments (P) Limited - Amount outstanding as on 31.3.2009 as payable Rs. 36,00,587/-.**

*With regard to above party, Ld. AO confirmed in the remand report dated 8.4.2013 that the said party was existing at the address provided i.e. D-7, Maharani Bagh, New Delhi, and now the said party changed its address to 405, ABC Complex, 20, Veer Savarkar Block, Shakarpur Delhi. Ld. AO has also confirmed that the PAN has been allotted to this, party. Ld. AO has also confirmed that at address D-7, Maharani Bagh, New Delhi, the other director of the company Shri Ashok Bansal resides. However, the said director left the said company in the year 2009 or 2010. This confirms the existence of the company to whom assessee made payment against purchases made from them. In view of observations made by the Ld. AO it cannot be a reason to make addition for the outstanding balance payable to this party, just for the reason that after a gap of more than 2-3 years, party was not found at the given address, and when assessee also provided the bank details of the said party to the AO. Assessee had also provided to the Ld. AO details of bank account of the said party. In case there was any doubt about making the payment to the said party, Ld. AO could have conducted enquiries from their bank. In any case appellant cannot be expected to keep a track of the sundry creditors once the transactions entered into with the sundry creditor are executed. In any case just for the reason that the party was not found at the address available with the assessee, cannot be a reason to make addition in the case of the appellant.*

*During the impugned assessment year Assessee made purchases for an amount of Rs. 1,53,97,212/- from the said*

*party and made payment for an amount of Rs. 1,30,56,625/-. There was an opening credit balance of Rs. 12,60,000/- and closing credit balance of Rs. 36,00,587/- payable by the assessee to the said party. Ld. AO has accepted the entire purchases made by the assessee, and there is no dispute for making payment to the said party. The outstanding payment of Rs. 36,00,587/- was paid to the said party in the subsequent financial year.*

*We are submitting herewith copy of the ledger account of the above party for the subsequent period 1.4.2009 to 31.3.3010 wherein assessee had made payment of the outstanding balance payable to the said party. Payments made are also highlighted in the copy of bank statement being filed with this rejoinder. Thus the transactions entered into with this party are established with these evidences.*

**3. M/s Bharat Mehta & Co. – Amount outstanding as on 31.3.2009 as payable Rs. 45,03,945/-.**

*Ld. AO stated that this party was not found at the address provided by the assessee. It is stated that the PAN exists in the name of Shri Manoj Kumar, who has given his address to the Department as C-397, Chajjupur, Shahdara, Delhi. During the course of remand proceedings assessee provided the bank detail of this party to the Ld. AO, which has been confirmed by the Ld. AO in the remand report. Ld. AO has not disputed that payments made by the assessee were not credited in these parties accounts. Ld. AO obtained the bank statement of this party from Mahamedha Urban Cooperative Bank Ltd. Ld. AO stated that payments received by the above party were transferred to other accounts. In this regard our respectful submission is that assessee was obliged to make payment for the purchases made. Assessee had no concern as to what the creditor does of the payment received by him. It is not objected*

*by the Ld. AO that the payments made by the assessee to this party were not credited in the creditors account. In view of these reasons, when assessee cleared the outstanding of the sundry creditor, there remains no reason to sustain addition in the hands of the assessee firm. It is, therefore, prayed that the addition made may kindly be directed to be deleted.*

**4. M/s Gopaljee Fabrics - Amount outstanding as on 31.3.2009 as payable Rs. 5,94,990/-**

*Ld. AD has confirmed in para 3 of the Remand report that reply has been received from the above concern. Ld. AO has stated that incomplete information has been received from the said concern .. In any case the information provided by the said party is not in any manner a denial of any transaction with the assessee firm. In view of these reasons, the addition made in respect of this party may kindly be directed to be deleted.*

**5. M/s Harish Enterprises - Amount outstanding as on 31.3.2009 as payable Rs. 35,13,854/-**

*Ld. AO has confirmed in Para 9.2 of the Remand Report that Bank details were provided of the above party. In Para 9.4 of the Remand Report Ld. AO confirmed that Bank was also contacted and Copy of the bank statement of the said party was also obtained. Ld. AO conducted enquiries with the jurisdictional Assessing Officer of the sundry creditor. It is submitted that there is no adverse comments of the Ld. AO that the payments made by the assessee to this party either were not credited in their bank account, or assessee has not made payment to the said party against purchases made. We have placed in the paper book copies of the ledger accounts of the above party for the impugned assessment year and also for the subsequent assessment year, where in the outstanding payment of Rs. 35,13,854/- were made clear. It is submitted that in the*

*subsequent year, assessee made sales to this party, and also received payment against sales made to them. The Copies of the sales bills for sales made to the said party are enclosed, which confirm that the outstanding payment was adjusted against sales made to the said party. In view of these evidences placed on record, which substantially prove that the outstanding payment was cleared in the subsequent year, the addition made may kindly be directed to be deleted.*

***PB 242** is copy of ledger account of the above party for the period 1.4.2009 to 31.3.2010 in the books of the assessee.*

***PB 243-251** are copies of the sales bills raised against sales made to the above party for the period 1.4.2009 to 10.4.2009.*

***PB 273** is copy of the bank statement of the assessee showing the payment received from the above party for sales made to them in the subsequent year.*

**6. M/s Meenakshi Textiles - Amount outstanding as on 31.3.2009 as payable Rs. 35,00,300/-**

*Ld. AO has alleged in the remand report that he obtained copy of ITR of Shri Dharendra Pratap Singh who is proprietor of M/s Meenakshi Textiles. Ld. AO alleged that nature of business has been shown as "Legal Professional" under the Code 603 and the sundry debtors have been shown at Nil. In this regard it is submitted that first of all no such material was provided to the assessee, and if any such adverse observation is made by the AO, for which no cross examination has been provided to the assessee, that may kindly be excluded from consideration. Furthermore, it is submitted that it is not the case of the Ld. AO that the said party has denied the payment received from the assessee firm or have denied the sales made to the assessee firm. For the' assessment year under consideration assessee*

*made purchases from the said concern, and the purchases made were sold to various parties for which sales were also declared by the assessee. At the end of the assessment year an amount of Rs. 35,00,300/- was outstanding as payable to the said party against purchases made from them, which was subsequently cleared in the next financial year by the assessee. Assessee made sales in the subsequent assessment to the said party. Copies of the bills for material sold to the said party in the subsequent years are enclosed, which confirm that the outstanding balance payable to them was cleared in the subsequent year. In view of these evidences placed on record, which substantially prove that the outstanding payment was cleared in the subsequent year, the addition made may kindly be directed to be deleted.*

***PB-252** is copy of ledger account of the above party for the period 1.4.2009 to 31.3.2010 in the books of the assessee.*

***PB 253-257** are copies of the sales bills raised against sales made to the above party for the period 1.4.2009 to 10.4.2009.*

**7. M/s Ravel Apparels Inc. - Amount outstanding as on 31.3.2009 as payable Rs. 40,01,050/-.**

*Ld.AO has alleged in the remand report that he obtained copy of ITR of Shri Dhirendra Pratap Singh who is proprietor of M/s Ravel Apparels Inc. Ld. AO alleged that nature of business has been shown as "Legal Professional" under the code 603 and the sundry debtors have been shown at Nil. In this regard it is submitted that first of all no such material was provided to the assessee, and if any such adverse observation is made by the AO, for which no cross examination has been provided to the assessee that may kindly be excluded from consideration. Furthermore, it is submitted that it is not the case of the Ld. AO that the said party has denied the payment received from the*

*assessee firm or have denied the sales made to the assessee firm. For the assessment year under consideration assessee made purchases from the said concern, and the purchases made were sold to various parties for which sales were also declared by the assessee. At the end of the assessment year an amount of Rs. 40,01,050/- was outstanding payable to the said party against purchases made from them, which was subsequently cleared the next financial year by the assessee. Assessee made sales in the subsequent assessment to the said party. Copies of the bills for material sold to the said party in the subsequent years are enclosed, which confirm that the outstanding balance payable to them was cleared in the subsequent year. In view of these evidences placed on record, which substantially prove that the outstanding payment was cleared in the subsequent year, the addition made may kindly be directed to be deleted.*

***PB-258** is copy of ledger account of the above party for the period 1.4.2009 to 31.3.2010 in the books of the assessee.*

***PB 259-263** are copies of the sales bills raised against sales made to the above party for the period 1.4.2009 to 10.4.2009.*

**8. M/s Sangeeta Traders - Amount outstanding as on 31.3.2009 as payable Rs. 50,00,112/-**

*Ld. AO has confirmed in Para 9.2 of the Remand Report that Bank details were provided of the above party. In Para 9.4 of the Remand Report Ld. AO confirmed that Bank was also contacted and Copy of the bank statement of the said party was also obtained It is submitted that there is no adverse comments of the Ld. AO that the payments made by the assessee to this party either were not credited in their bank account, or assessee has not made payment to the said party against purchases made. We have placed in the paper book copies of the ledger accounts of the above party for the impugned*

*assessment year and also for the subsequent assessment year, where in the outstanding payment of Rs.50,00,112/- were made clear. It is submitted that in the subsequent year also, assessee made purchases from the above party, and payment was made of the above amount as well as of the subsequent purchase made. Assessee has also enclosed a copy of its bank statement for the subsequent year which confirms the payment made to the above party in the subsequent year. In view of these evidences placed on record, which substantially prove that the outstanding payment was cleared in the subsequent year, the addition made may kindly be directed to be deleted.*

***PB-264** is copy of ledger account of the above party for the period 1.4.2009 to 31.3.2010 in the books of the assessee.*

***PB-275, 286, 293** is copy of the bank statement of the assessee for the subsequent year.*

**9. M/s Surya Traders - Amount outstanding as on 31.3.2009 as payable Rs. 70,01,100/-**

*Ld. AO has alleged in the remand report that the said firm was not found at the address provided. On verification of PAN, Ld. AO observed that the same is in the name of Shri Rajesh Kumar R/o of 229128, E-2, Gali No. 20 Railway Colony, Mandawali, Delhi-92, but he found that the said address was not correct, It is submitted that it is not the case of the Ld. AO that the said party has denied the payment received from the assessee firm or have denied the sales made to the assessee firm. For the assessment year under consideration assessee made purchases from the said concern, and the purchases made were sold to various parties for which sales were also declared by the assessee. At the end of the assessment year an amount of Rs. 70,01,100/- was outstanding as payable to the said party against purchases made from them, which was subsequently*

*cleared in the next financial year by the assessee by making payment and sales made to them. Copies of the bills for material sold to the said party in the subsequent years are enclosed, which confirm that the outstanding balance payable to them was cleared in the subsequent year. In view of these evidences placed on record, which substantially prove that the outstanding payment was cleared in the subsequent year; the addition made may kindly be directed to be deleted.*

***PB 266** is copy of ledger account of the above party for the period 1.4.2009 to 31.3.2010 in the books of the assessee.*

***PB 267-271** are copies of the sales bills raised against sales made to the above party for the period 1.4.2009 to 10.4.2009.*

***PB-285** is copy of the bank statement of the assessee which confirms the payment made to the above party against purchases made from them.*

*A chart showing the opening purchases made, payment made and outstanding balance payable has been placed by the assessee at page 2 of the paper book. The AO made the addition for the reason that assessee could not file the confirmation and the notices u/s 133(6) were received back unserved.*

*Ld. AO also alleged that inspector was deputed at the address provided but these parties were not found at the address provided and therefore, the AO alleged that the genuineness of these creditors was not established.*

*It is submitted that assessee made purchases from these parties and the goods purchased were sold. Ld. AO has not disbelieved the purchases or sales as book results have been accepted by the Ld. AO. It was explained to the Ld. AO during the course of remand proceedings and as well that assessee not dealings with*

*these parties as on date and the amount payable to them was paid through banking channels in the subsequent years. Assessee furnished copies of the ledger account of these parties for the subsequent year as well to show that the payment to all these parties were cleared through banking channel only. All these parties are assessed to tax and this fact has also been confirmed by the Ld. AO in the remand report as well as, the Ld. AO himself have annexed PAN particulars of all these parties in RR3.*

*Ld. AO alleged that out of nine parties eight parties are not traceable, assessee provided the last known address as available with the assessee and requested the Ld. AO to use his ample powers to trace out these parties through banking channel and through Pan Numbers as all payments were made through banking channel. Assessee also provided the bank account details in respect of four creditors, which are:*

- Harish Enterprises.*
- M/s ASV Garments Pvt. Ltd.*
- Sangeeta Traders.*
- Bharat Mehta & Co.*

*And requested the AO to call details of bank account of these creditors from the bank of the assessee firm.*

*The Ld. AO has confirmed in para 9.4 of the remand report that the bank statement of four parties for financial year 2008-09 and 2009-10 along with copy of account opening form was called from the banks. Ld. AO has also confirmed that jurisdictional assessing officer of sundry creditors parties were requested to-provide the ITR details filed for Assessment Year 2009-10. Though, the Ld. AO made some adverse observation in the case of M/s Meenakshi Textiles but nothing contrary is brought on record that M/s Meenakshi Textiles and Ravels*

*Apparels INC have denied the transaction with the assessee firm.*

*It is submitted that the action taken by the AO to make enquiry with the banks and with assessing officers confirms the existence of these parties and their identity therefore, there is no logic to make addition in the hands of the assessee when assessee has made genuine payments to these parties against the purchases made from them and the purchases and the sales have been accepted by the Ld. AO.*

*It is submitted that assessee has purchased the material from these parties and was not under any obligation to keep track after the dealings were complete by making the payments for the purchases made.*

*The PAN numbers provided by these parties cannot be doubted by the assessee as assessee has no power to get confirm PAN number is provided by any party when the same is requested by the assessee from the party.*

*It is further submitted that assessee also cannot keep a track as to under which account the party is depositing their sales proceeds. In view of the above since, all these parties have been confirmed by the Ld. AO that these are assessed to tax and not even a single penny has been paid by the assessee to them against purchases made from them that additions made may kindly be directed to be deleted.*

*Assessee relies on the written submission made and various evidences placed on record.*

*Appellant relies on the following judgments and explains how the facts in these case laws are similar to the case of the appellant.*

**Judgments relied upon****Assessee's case**

*ACIT vs. Burlingtons, Hon'ble ITAT, Delhi Bench 'A' (2013) 35 CCH 074 Del Trib. - ITA No. 2170/Del/2010 - in Judgment dated 16<sup>th</sup> January, 2013 - Appeal filed by the Revenue was dismissed.*

*Hon'ble ITAT was pleased to delete the additions made in the above case and held as under:-*

*1. Assessee was engaged in the business of manufacturing readymade garments. Assessee made export sales. Assessee claimed purchases of Rs. 44,07,271/- and sales of Rs. 64,02,504/-.*

*2. There was no evidence to establish the bills represented bogus bills. Assessee furnished bill-wise, details of fabric and its utilization in manufacturing garments alongwith the corresponding invoices issued and money realized subsequently from the purchasers in the bank account of the assessee.*

*3. In the above case money realized subsequently from the purchasers in the bank account of the assessee.*

*4. No cross examination by assessee. Additions have been made solely based on statement of few parties.*

***CIT VS. JMD COMPUTERS & COMMUNICATIONS (P) LIMITED (2009) 180 TAXMAN 485 (DEL) - JUDGMENT DATED 16.01.2009***

*The AO made addition on the basis of information received from the AO of One 'T', that assessee made bogus*

*1. In the case of the, assessee, no purchases made are held as bogus by the Ld. AO.*

*2. Assessee also filed confirmations from the parties from whom purchases were made.*

*3. Purchases and sales made by the assessee have been accepted by the AO after examining the books of the assessee.*

*4. There is no finding of the AO that either the purchases have been inflated or the sales are not accounted or bogus.*

*5. Assessee is also maintaining complete books of accounts which were produced by the assessee before the AO and were examined by the AO during the course of assessment proceedings. Books of accounts of the assessee are duly audited by the Statutory chartered accountants.*

*6. Assessee has also made payments of all purchases through account payee cheques only.*

*purchases from certain parties.*

*AO asked the assessee to file confirmations from parties from whom purchases were made and also conducted enquiries, and made addition on account of bogus purchases.*

*3. Ld. CIT (A) deleted the addition, and order was confirmed by the Hon'ble ITAT.*

*4. Hon'ble High Court upheld the findings of the Hon'ble ITAT for the reason that Department accepted purchases, therefore it could not have been assumed that assessee had inflated its purchases by introducing fictitious purchases.*

*5. Hon'bel ITAT noted:*

*i) Assessee was maintaining complete accounts, including daily item-wise, stock register purchase book sales, sales book, purchase bills and sales books.*

*ii) All payments for purchases have been made by cheques*

*iii) Department has accepted the purchases.*

***CIT Vs. Nikunj Eximp Enterprises (P.) Ltd. [2013] 35 taxmann.com 384 (Bombay HC) dated 17.12.2012***

*Books of accounts of assessee have not been rejected.*

*Sales have not been doubted.*

*Confirmation letter has been filed by the supplier.*

*Copy of invoice for purchase and copy of bank statement indicate that*

*1. In assessee's case also AO doubted the veracity and, genuineness of outstanding trade sundry creditors to the extent the amount which was outstanding payable as on close of the year. However, there was no dispute about the transactions, or making payments to these sundry creditors for the purchases made from those creditors, corresponding sales made, and corresponding payments made by the assessee to these sundry creditors.*

*2. In assessee's case also no purchases were disallowed, and the sales made against purchases have been accepted by the AO.*

*3. Assessee produced complete books of accounts, which were duly examined by the AO. No trading results have been disturbed by the AO and the same have been accepted.*

*4. Assessee has also furnished copies of the corresponding sales bills.*

*Assessee draws parity from the judgment of Hon'ble ITAT.*

*AO disallowed the outstanding credit balances of the sundry creditors for purchases.*

*In support assessee produced complete books of accounts before the AO and the purchase and sales were accepted. NO adverse view was taken from the books of accounts produced.*

*Assessee also produced confirmation from parties, copies of their ledger accounts in the books of the assessee,*

*purchases were in fact made. Hon'ble High Court held that merely supplier has not appeared before Ld. AD and Ld. CIT(A), one cannot conclude that the purchases were not made by the assessee and therefore appeal filed by the department was dismissed.*

***CIT vs. Pancham Das (2006) 5 CTR (All.) 444 dated 21.08.2006***

*In the above judgment Hon.ble High Court of Allahabad upheld the finding of the Hon'ble Tribunal that when credits in the accounts of the persons on account of purchases made and if these purchases made are not bogus though the name of suppliers may be wrong but these supplies of goods were reality. For wrong names of supplies the reality of purchases cannot be negative.*

***Dy. CIT vs. Kirtilal Kalidas Jewellers Pvt. Ltd. (2012) 27 Taxmann.com 341 (Chennai), (2012) 54 SOT 529 dated 05.09.2012 (Chennai) (Trib.)***

*In the above judgment Hon'ble ITAT gave the finding that where purchases were duly recorded in the assessee's books of accounts, addition under section 69C could not be made, merely because assessee failed to provide complete address of vendors in respect of those purchases.*

*It is the case of Jewellers where purchases were being made by assessee and no address was kept on the ground that:*

*Nature of trade of assessee was as such where customers might not always be willing to give complete address.*

*All the purchases were recorded in the*

*copy of the bank statements of the assessee to confirm that all payments were made through A/c payee cheques only.*

*In the assessee's case purchases were made during the F.Y. 2008-09 wherein the enquiries were conducted by the AO in the F.Y. 2011-12.*

*As the sales made by the assessee has been accepted the purchases made stands proved as no sale can be made without purchases.*

*The assessee also provided details of the bank accounts of the 4 parties out of the 7 parties. However the AO was having ample power to call details of Bank Accounts of these suppliers.*

*Books of account of assessee not rejected.*

*Neither the purchase nor sales are doubted.*

*In the case of assessee also, confirmation letter of trade creditors were submitted by assessee (refer PB 125-134)*

*Assessee also submitted copy of the ledger a/c of these trade creditors as appearing in the book of assessee for the year under considering (PB 198-271).*

*Assessee also submitted copy of ledger a/c of these trade creditor for subsequent year showing either the payment made through a/c payee cheque or through sale made to them for which copies of sales bill are placed in the Paper Book.*

*Assessee also made export sales The addition has been made by AO for reason that these creditors did not complied the notice issued by AO or the notice sent by AO were returned back as unserved, therefore in the case of assessee also no addition can be made just for reason merely suppliers did not appear in response to notices issued.*

*stock register.*

*The AO made the addition for the reason that addresses of certain parties were not available.*

*Assessee produced the books of accounts which were verified by the AO. There is no means available to the assessee to ensure that such addresses were right.*

*Assessee cannot insist for identification process akin to Know Your Customer (KYC) Rules applied by Banks.*

*There is no mandatory requirement in the business of jewellery to maintain books of accounts in accordance with KYC rules of banks,*

*The appeal filed by the revenue was dismissed.*

*Parity is drawn from this judgment of High Court that in the case of assessee purchases/sales have been accepted by the Ld. AO, therefore, creditors appearing for purchases made cannot be added to the income of the assessee.*

*Assessee draws parity from this judgment of Hon'ble High Court.*

*(a) Purchases/Sales were duly recorded by assessee in his books of accounts which were verified by the AO as books of accounts were produced by assessee.*

*(b) The obtaining of address before making purchase/sales cannot be insisted by any prudent businessman as any businessman while making purchase is suppose to obtain a bill for the purchases made and to obtain a receipt in case cash payment is made or no receipt is required" if payment is made only through A/c payee cheque or bank draft only.*

*Once the possession or delivery of goods is taken and the payment is made no businessman can be expected to keep a track as to where the party goes once the transaction is over.*

*In case of assessee also AO made the addition because certain suppliers were not found at the address provided by the assessee.*

***JCIT vs. MATHURA DAS ASHOK KUMAR (2006) 101 TTJ 810 dated 21 May 2005 (All ITAT)***

*In the above judgment Hon'ble ITAT gave the finding that here the assessee has recorded name and addresses of the Karigars given by him, addition under section 69 could not be made, merely because the Karigar is not found at address given by him.*

*No discrepancies or defects were found in the book of account as has been maintained in regular course.*

*Assessee in this case also produced the books of accounts which were verified by the AO.*

*As held in the above judgment any assessee or businessman cannot insist for identification process akin to Know Your Customer (KYC) Rules applied by Banks*

*As held in this judgment that there is no mandatory requirement in the business of jewellery to maintain books of accounts in accordance with KYC rules of banks, the same-is applicable in every business until it is specifically*

*Purchase have been held to be genuine and accepted as such, the credits that remained outstanding in such account cannot be treated to have remained unexplained.*

*Purchase from Karigars are credited in this account and payments to them, as had been made, either in cash or through cheques are debited.*

*Sales which have been made out of such purchases only, has been accepted.*

*Payments made to these Karigars in the subsequent year(s) have not been adversely viewed in the assessment.*

*The appeal filed by the revenue was dismissed.*

***CIT Vs. Jain Exports (P) Lid. (2013) 217 Taxman 54 (Del HC) dated 24 May 2013***

*In the above judgment Hon'ble High Court gave the finding that credit amount outstanding for several years cannot be held as cessation of trading liability on ground that assessee could not prove genuineness of transaction, where assessee has acknowledge its liability successively over several years.*

*In this case AO has received confirmation only from one party.*

*AO has issued notices u/s 133(6) of the act to creditors, for verifying the credit balance outstanding against their names. The notice issued, unserved, and returned back.*

*Assessee has not able to trace or produce any evidence with regard to bank guarantees on account of which*

*provided by the statute.*

*In case of assessee also AO made the addition because certain suppliers were not found at the address provided by the assessee.*

*Assessee in this case also produced the books of accounts which were verified by the AO.*

*Neither, the purchases nor sales are doubted.*

*Payment has been made through a/c payee cheque or through sale made to them for which copies of sales bill are placed in the Paper Book.*

*As the sales made by the assessee has been accepted the purchases made stands proved as no sale can be made without purchases.*

*In the case of assessee also, confirmation letter of trade creditors were submitted by assessee.*

*The addition has been made by AO for reason that these creditors did not complied the notice issued by AO or the notice send by AO were returned back as was served, therefore in the case of assessee also no addition can be made just for reason nearly supplier did not appear in response to notice issued.*

*In the case, AO disallowed the outstanding credit balances of the sundry creditors for purchases.*

*Assessee also produced confirmation from parties, copies of their ledger accounts in the books of the assessee, copy of the bank statements of the assessee to confirm that all payments were made through A/c payee cheques only.*

*Same in the case AO has issued notice u/s 133(6) to creditors has unserved and received back.*

*In support assessee produced complete books of accounts before the AO and the purchase and sales were accepted*

*the liability to pay a sum.  
The appeal has decided in favour in  
assessee.*

*No adverse view was taken from the  
books of accounts produced.*

10. The Id. CIT(A) mentioned that the remand report dated 21.03.2014 was simply a reiteration of the earlier remand reports submitted by the AO and as handed over to the assessee for its fresh comments. The assessee in its comments stated as under:

*‘Appellant has been provided with a copy of the remand report dated 21.03.2014 submitted by Ld. AO to your good self to submit rejoinder on the same.*

*It is submitted that it is totally wrong on the part of Ld. AO to state that an opportunity on 05.03.2014 and 18.03.2014 were provided to the assessee, which the assessee failed to avail of.*

*In this regard we are enclosing here with a copy of letter issued by Ld. AO on 27.02.2014 wherein Ld. AO asked the assessee to appear before him on 05.03.2014. This letter was received by the assessee on 10.03.2014 which is evident from the copy of the envelope enclosed Thus, it was not possible for the assessee to appear before the Ld. AO on 5.3.2013 when the letter itself was received on 10.03.2014, i.e. after the date fixed for hearing.*

*There after assessee received another letter dated 11.03.2014 fixing the remand proceeding for 18.03.2014. AR of the assessee Shri Kailash Mittal, Advocate; attended before the Ld. AO and specifically asked to kindly inform as to what more details are required. However Ld. AO being busy in time barring matters stated that nothing specific is required by him and he will submit his report. He further informed the AR of the assessee (Shri Kailash Mittal, Advocate) that in case any*

*further information shall be required he will give a call before submitting his report. However, Ld. AO neither gave any further opportunity nor asked the AR for any further information. It is submitted that in response to letter dated 5.3.2014, Shri Kailash Mittal, AR of the appellant attended before the Ld. AO three times i.e. on 12<sup>th</sup>, 14<sup>th</sup>, and 18<sup>th</sup> of March, 2014, but neither any presence was marked by him, nor any specific information was asked by him. An affidavit of the AR in this regard is enclosed*

*It is submitted that in the remand report submitted Ld. AO relied on the remand report submitted by his predecessor on 08.04.2013 to which appellant has already submitted a rejoinder on 15.11.2013 before Your Honour, where in appellant has explained and discussed each and every evidence placed in paper book to justify the payments made by the assessee against the purchases made. It is again reiterated that all sundry creditors in respect of whom Ld. AO made the impugned addition were paid off in the subsequent year by making payment to' them, through banking channel or sales made to them. Therefore, it is wrong on the part of Ld. AO to state that the payments showed in the bank statement or the copies of the sale bills filed does not prove or lead to the conclusion that the business transactions had actually taken place. It is submitted that nothing contrary has been brought on record by the Ld. AO to controvert the payments appearing in the bank statement that these are not against the purchases made from these sundry creditors, when the Bank statement filed specifically shows the name of sundry creditor to whom the payment was made. In case there was any doubt the Ld. AO could have made inquiry from the banks of these parties to clear his doubts.*

*It is submitted that no sales can be made without purchases, therefore the opinion made by the Ld. AO is without any basis*

*and without bringing on record any contrary material to disprove any of the payments made or sales made to these parties. It is therefore prayed that these observations of the Ld. AO, therefore, may kindly be excluded from consideration. All sundry creditors in respect to whom Ld. AO made the impugned addition was paid in the subsequent year. It is also not out of place to mention here that Ld. AO has not doubted the payments made to these parties for the purchases made which were made during the year itself. However, for the same sundry creditors, Ld. AO doubts the outstanding balance payable as at the close of the year despite the fact that those balances for which the addition has been made were also paid off in the subsequent year.*

*In view of the above submissions it is prayed that the impugned addition may kindly be directed to be deleted.*

*Appellant relies on written submissions made in this regard, rejoinder submitted and various evidences placed in the paper book and also the judgments relied on as discussed in the written submission.”*

11. The ld. CIT(A) after considering the submissions of the assessee and remand reports of the AO observed that there was no doubt that the assessee succeeded in producing the vouchers and the sale bills, copies of accounts, confirmations and bank statements having relationship with nine of the trade creditors for the impugned assessment year as well as the immediately succeeding assessment year, but the glaring fact remained that the assessee miserably failed to produce trade creditors and satisfactorily explaining the reason for their non-production and

dispelling the doubts arising from their PANs which on enquiry were found to be pertaining to the employees of the CA firms or the companies in which they were allegedly employed. The Id. CIT(A) further observed that the language, the style, the format, the arrangement of the sentences and the words, the paper used and the design on the papers on which replies were furnished, were exactly the same, in the case of one and all of the confirming parties. The Id. CIT(A) also observed that the assessee did not produce stock register on demand also to substantiate the fact that goods i.e. fabrics received from the so called trade creditors were duly entered into the manufacturing account of the assessee, therefore, in the absence of the stock register it could not be demonstrated by the assessee whether the goods purchased on credit from the so called trade creditors were duly accounted for or not in the books of account. The Id. CIT(A) supported the findings of the AO for the following reasons:

*“(i) The appellant failed to produce the parties and their latest addresses.*

*(ii) Summons could be served only on M/s Gopaljee Fabrics. In the cases of other persons the letters came back un-served with the remarks no such person/firm, left without address.*

*(iii) Personal visits to the addresses shown by the appellant of the creditors turned out to be futile as none of the persons was found to be in existence.*

*(iv) The law relating to evidence for claiming expenditure says that a person who claims that he has incurred certain expenditure is expected to have some documentary evidence;*

*(v) In the absence of the above, it is incumbent upon him to explain as to how he incurred the expenditure and why there was no documentary proof for such expenditure. If he has any satisfactory evidence to show that documentary evidence was lost or destroyed, he may take recourse to secondary evidence.”*

12. The ld. CIT(A) held that the assessee failed to establish the identity, genuineness and the creditworthiness of the trade creditors. He also observed that the essential evidence in the form of the "person" of the trade creditors was starkly missing and the genuineness of the transactions remained a suspect till the last day of the enquiry carried out by the AO personally. Accordingly, the addition of Rs. 3,57,17,506/- was confirmed. Reliance was placed on the following case laws:

- *CIT Vs Korlay Trading Co. Ltd. (1998) 232 ITR (Cal)*
- *CIT Vs Precision Finance (P) Ltd. (1994) 208 ITR 465 (Cal)*
- *CIT Vs United Commercial & Industries Co. (P) Ltd. (1991) 187 ITR 596 (Cal)*

13. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the opening balance of the purchases, the payments made to the parties from whom purchases were made had been accepted by the AO. It was further stated that the books of account were audited which were accepted by the AO who only doubted the closing balance in the

accounts of the nine parties from whom purchase were made. Therefore, the AO was not justified in making the addition by doubting the balance outstanding in the name of the parties from whom the purchases were made. The reliance was placed on the following case laws:

- *ACIT Vs Bahri Bros. Pvt. Ltd. 154 ITR 244 (Pat.)*
- *Mather Platt (India) Ltd. Vs CIT 168 ITR 493 (Cal.)*
- *CIT, Agra Vs Pancham Das Jain 205 CTR 444 (All.)*
- *Shree Nashik Panchvati Panjarpole Vs DIT(Exemptions) 26 DTR 113 (Bom.)*
- *CIT Vs Ritu Anurag Aggarwal reported in (2012) DTLONLINE 134 (Del.)*
- *ITO Vs Zazsons Exports Ltd. reported in 153 ITD 1 (Lucknow 3<sup>rd</sup> Member)*
- *CIT Vs M/s Nikunj Exim Enterprises P. Ltd. 372 ITR 619(Bom)*

14. It was further stated that the assessee furnished the confirmations before the AO vide letter dated 05.12.2011 (a reference was made to page no. 443 of the assessee's paper book). The ld. Counsel for the assessee also referred to page nos. 502 & 503 of the assessee's paper book and submitted that the balance outstanding from 50 parties was to the extent of Rs. 52,28,52,754/- but the AO doubted only 9 parties to whom payments were made in the subsequent year. It was further submitted that the AO had the power to summon the parties but no such exercise was done. Therefore, the addition only on the basis of suspicion was not justified. The reliance was placed on the judgment of the Honøble Allahabad High Court in the case of Nathu Ram Premchand Vs

CIT 49 ITR 561. It was further stated that the assessee vide letter dated 22.12.2011 furnished party wise sales/purchases, expenses and the reason for fall in G.P rate which had been accepted by the AO. It was also stated that in the said letter dated 22.12.2011, the assessee stated that the assessee was engaged in prolonged litigation with the people who were having outstanding credit balance and were currently absconding, however, their individual confirmation had been received during audit and had been submitted. It was further stated that in the said letter vide para 7, the ledger accounts of the parties showing the subsequent payment through account payee cheques was already furnished and they confirmed that the outstanding balance had been paid. A reference was made to page no. 500 of the assessee's paper book. The ld. Counsel for the assessee also referred to page nos. 566 to 578 of the assessee's paper book which is the copy of the written submission furnished to the ld. CIT(A) and reiterated the contents of the said submission. It was further contended that the ld. CIT(A) asked the AO to furnish the remand report and the AO vide letter dated 18.05.2012 and 29.05.2012 (copy of which are placed at page nos. 579 & 580 of the assessee's paper book) asked the assessee to furnish the details of the sundry creditors and the assessee vide letter dated 04.06.2012 stated to the AO that the confirmation of the 9 parties for the year under consideration, closing balance of which had been added to the returned income, were filed during the course of assessment proceedings. It was

also submitted that a chart showing opening balance, purchases, payments, sales and closing balance in respect of the 9 parties for the year under consideration and subsequent assessment year was also furnished. Therefore, the assessee discharged the onus cast upon. In support of the aforesaid contention, a reference was made to page no. 581 of the assessee's paper book. The Id. Counsel for the assessee further submitted that the last known addresses and Income Tax PAN of the 9 parties were furnished vide letter dated 30.07.2012 (copy of which is placed at page nos. 583 & 584 of the assessee's paper book). It was also submitted that the AO although mentioned that he deputed one Inspector to make local enquiries and to get confirmation from the creditors but no such entry was there in the order sheet relating to the assessment proceedings and even the report of the Inspector was never confronted to the assessee. The Id. Counsel for the assessee referred to page no. 635 of the assessee's paper book which is the copy of letter dated 16.11.2012 written to the AO wherein it was mentioned that all the payments were made to the creditors through banking channel and the same could have been verified from their bank account. He also referred to page nos. 618 & 619 of the assessee's paper book which are the copies of letter dated 07.02.2013 and 20.02.2013 written to the AO during the Appellate Proceedings before the Id. CIT(A) and submitted that the name of the bank account number of the parties which were doubted by the AO were disclosed alongwith their addresses but no

further enquiry was made by the AO and all the purchases were accepted. Therefore, the addition made by the AO was rightly deleted by the ld. CIT(A). The reliance was placed on the following case laws:

- *CIT Vs Real Time Marketing (P) Ltd. 306 ITR 35 (Del)*
- *Kishinchand Chellaram Vs CIT 125 ITR 713 (SC)*
- *Kankaria Textiles Vs CIT 200 ITR 408 (Raj.)*

15. In his rival submissions the ld. DR strongly supported the orders of the authorities below and further submitted that the AO specifically asked the assessee to produce the creditors from whom purchases were made and also confronted the report of the Inspector regarding non-availability of the creditors on the addresses given by the assessee. It was further submitted that the addresses of the creditors were relating to the place where legal and professional work was done, then how the assessee purchased the goods was not clear. It was also submitted that the assessee did not produce the vouchers before the AO, therefore, the genuineness of the transactions was not proved. It was stated that only on this basis that purchases were accepted the creditworthiness of the parties cannot be established. It was further stated that the AO gave ample opportunities to the assessee to produce the parties, however the assessee never produced the parties and the notices issued u/s 131 of the Act were returned by the postal authority stating that the parties mentioned in those notices "left the premises". Therefore, the parties in the name of whom credit balances were shown by the assessee were not

genuine, the AO rightly made the addition for the balances shown in the name of bogus parties and the ld. CIT(A) was fully justified in confirming the addition made by the AO. The reliance was placed on the following case laws:

- *CIT Vs Durga Prasad More 82 ITR 540 (SC)*
- *DCIT Vs KDA Enterprises (P.) Ltd. 204 ITR 801 (Mum. Trib.)*
- *CIT Vs Precision Finance (P.) Ltd. 208 ITR 465 (Cal.)*
- *Mc Dowell & Co. Ltd. 154 ITR 148 (SC)*
- *Jugglilal Kamapat Vs CIT 73 ITR 702 (SC)*
- *Natco Pharma Ltd. Vs DCIT 263 ITR 701 (Hyd.)*

16. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that a sum of Rs. 52,28,52,754/- was outstanding in the name of 50 parties against the purchases made by the assessee. The details of those parties is placed at page nos. 501 to 503 of the assessee's paper book. The AO doubted the balance outstanding in the name of 9 parties. The assessee furnished the details of their name, addresses, PAN No. (copy of which is placed at page no. 631 of the assessee's paper book). The assessee also informed the AO vide letter dated 30.07.2012 about the names, addresses and PAN of the 9 parties, copy of which is placed at page no. 583 as per following details:

<i>S. No.</i>	<i>Name of Party</i>	<i>Address</i>
<i>1.</i>	<i>Amar Jyoti Enterprises BQOPS6137H</i>	<i>C-21, Shivaji Park, New Delhi-26</i>

2.	<i>ASV Garments (P) Ltd. AADCA4442Q</i>	<i>405, ABC Complex, 20, Veer Savarkar Block, Shakarpur, Delhi-110092</i>
3.	<i>Bharta Mehta &amp; Co. ATEPK1882B</i>	<i>CB-10, Ring Road, Naraina, New Delhi</i>
4.	<i>Gopal Jee Fabrics AGGPK2523C</i>	<i>Plot No. 650, Near Mundka Mod, Metro Pillar No. 504, (Nasha Mukti Kender Wali Gali), Mundka, New Delhi-110041</i>
5.	<i>Harish Enterprises ATEPK1882B</i>	<i>E-24, Jawahar Park, Laxmi Nagar, Delhi- 110092</i>
6.	<i>Meenakshi Textiles BDBPS4815A</i>	<i>Shop No. 12, Sharda Market, Subhash Road, Gandhi Nagar, Delhi-110031</i>
7.	<i>Ravels Apparels INC BDBPS4815A</i>	<i>USB 107, Mandawali, Faizalpur, Delhi- 110092</i>
8.	<i>Sangeeta Traders BQOPS6137H</i>	<i>E-25, 2<sup>nd</sup> Floor, Jawahar Park, Laxmi Nagar, Delhi-110092</i>
9.	<i>Surya Traders ATFPXXXx</i>	<i>36, 3<sup>rd</sup> Floor, Deepak Building, 13, Nehru Place, New Delhi-110019</i>

17. The assessee also disclosed the bank account nos., name of the bank of the parties vide letter dated 07.02.2013 and 20.02.2013 (copies of which are placed at page nos. 618 & 619 of the assessee's paper book). The assessee during the course of assessment proceedings furnished the confirmation of outstanding balance obtained from the said parties but those parties could not be produced for the reason that a prolonged litigation was going on and the parties were absconding. However, the assessee furnished the details of their bank account wherein the payment made by the assessee in the subsequent year was credited. The assessee also furnished copy of its bank Account No.

27971 with Bank of Rajasthan to substantiate that the payments were made to the parties in question, through account payee cheques. In the present case, it is an admitted fact that the purchases made from the parties in whose names, balances were outstanding have been accepted but the AO only doubted the genuineness the outstanding balance at the year end in the name of those parties for the reason that those were not produced before him. However, the assessee vide letter dated 30.07.2012 written to the AO during the course of remand proceedings informed as under:

*“That the confirmation of the said nine parties are placed at pages 125-134 of the paper book filed before the Hon’ble CIT(A) and bank statement of the assessee for the year under consideration are at pages 17-124 of the paper book filed before the Hon’ble CIT(A), perusal of which clearly reveals that all the payments were made to the parties through regular banking channel.*

*It is further submitted that copy of account of the said nine parties for assessment year 2010-11, are placed at pages 135-160 of the paper book filed before the Hon’ble CIT(A), perusal of which shows that substantial payments were made through regular banking channel and in support the bank statement for assessment year 2010-11 are at page 161-196 of the paper book filed before the Hon’ble CIT(A).*

*It is pertinent to mention that not even a single payment to the said nine parties has been made in cash. It is further submitted that the addresses mentioned on the said confirmations and as stated herein above are the last known addresses as per the records of the Assessee, as the Assessee did not had any*

*business transactions with these parties after the financial year 2009-10, except M/s Gopal Jee Fabrics.*

*Your honour are therefore requested to kindly accept the closing balance of the said nine parties as genuine and in case your honour are unable to accede to the request of the assessee, the reasons and basis for the same may kindly be communicated to the assessee to enable the assessee to make further submissions.”*

18. The aforesaid explanation was not rebutted by bringing any cogent material on record. In the present case, when the purchases from the parties were accepted and the sales made out of those purchases were not doubted, the payments outstanding in the name of those parties were accepted in the subsequent year than there was no reason to doubt the genuineness of the outstanding balance. Moreover, in the present case, the books of account were duly audited by the independent Auditor, those books were accepted by the AO and all the trading results except the outstanding balance in the name of 9 parties to the extent of Rs. 3,57,17,506/- were accepted. In our opinion, the AO at the same time cannot blow hot and cold from the same wind pipe. In the instant case, the AO accepted the trading results and the explanation for fall in the G.P rate furnished by the assessee, so there was no reason for doubting the outstanding balance in the name of sundry creditors when the purchases made from them were duly accepted as genuine. In our opinion, the Id. CIT(A) was not justified in confirming the addition made by the AO.

19. On an identical issue, the Honøble Allahabad High Court in the case of CIT Vs Pancham Dass Jain (2006) 205 CTR 440 (supra) held as under:

*“The Tribunal has recorded a categorical finding of fact based on appreciation of materials and evidence on record that the AO had accepted the purchases, sales as also the trading result disclosed by the assessee. It had recorded a finding that the two amounts represented the purchases made by the assessee on credit and, therefore, the provisions of Sec. 68 could not be attracted in the present case. The view taken by the Tribunal on this issue is sustainable inasmuch as, on the basis of the findings recorded by it that these two amounts represented purchases made by the assessee on credit and the purchases and sales having been accepted by the Department, the question of addition of the said two amounts under Sec. 68 did not arise inasmuch as the provisions of Sec. 68 would not be attracted on the purchases made on credit.”*

20. On a similar issue their lordships of the Honøble Bombay High Court in the case of CIT-1, Mumbai Vs Nikunj Eximp Enterprises (P.) Ltd. (2013) 216 Taxman 171 observed in para 7 as under:

*“7. We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30-04-2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government*

*Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is a well reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30-04-2010 of the Tribunal.”*

21. In the present case also the assessee made the purchases of Rs. 52,28,52,754/-. Against the said purchases an amount of Rs. 4,63,08,977/- was outstanding in the name of 50 creditors. The AO doubted outstanding balance of Rs. 3,57,17,506/- in the name of 9 parties. In the instant case the gross profit rate for the year under consideration of the assessee was at 1.97% in comparision to 5.63% in the preceding year. The AO accepted the fall in G.P rate after considering the explanation of the assessee. However, he did not accept the outstanding balances in the name of 9 creditors for a sum of Rs. 3,57,17,506/- and made the addition u/s 68 of the Act. In our opinion, the said addition was not justified because the provisions of Section 68 of the Act relates to the òcash creditö, however, the amount in question

was on account of outstanding balance of the creditors and the purchases from the said creditors had been accepted by the AO. In the present case, there was no cessation of the liability and even the payment made to the creditors in the subsequent year was not doubted, so there was no occasion to make the addition by considering the creditors as bogus for the year under consideration particularly when the purchases from the same creditors were considered by the AO as genuine and even the payments made to them for the amount outstanding at the end of the year under consideration was not doubted in the subsequent year. We, therefore, are of the confirmed view that the addition made by the AO and sustained by the Id. CIT(A) was not justified. For the aforesaid view, we are also fortified by the decision of the ITAT Lucknow Bench -Aø (Third Member) in the case of ITO, ward-29(4), New Delhi Vs Zazsons Exports Ltd. (supra) wherein the third member concurred with the view taken by the AM who confirmed the order of the Id. CIT(A) for deleting the similar addition for the following reasons:

- "(a) AO doubted the creditors against the purchases and made the addition of the entire amount outstanding against the purchases, however, he did not point out any mistake in the books of account maintained by the assessee in regular course of business and also not doubted method of accounting employed regularly.*
- (b) The AO did not point out any suppressed sale and inflated purchase. Gross profit rate which was at 12.09% in comparison to the gross profit rate of 9.92% in the preceding year had not been doubted.*

- (c) *The AO did not rebut the contention of assessee that liability against the purchase had been paid in the succeeding year.*
- (d) *The ld. CIT(A) categorically stated that during the assessment proceedings for the A.Y. 2006-07, the assessee filed the confirmation from 8,478 vendors of 11 mandies, so there was no occasion to doubt the supplier/creditor against the purchases when the trading results had not been disturbed*
- (e) *When the AO did not doubt the purchases and the gross profit rate, there was no occasion to doubt the corresponding characters of the purchases."*

22. Considering the totality of the facts as discussed hereinabove, the impugned addition sustained by the ld. CIT(A) is deleted.

23. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 30/09/2015)

**Sd/-**  
**(Diva Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 30/09/2015**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**