

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.5024/Del./2012
ASSESSMENT YEAR : 2006-07**

ITO, Ward 2 (4),
New Delhi.

vs.

M/s. Bhadana Housing & Construction Pvt. Ltd.,
C – 710, New Friends Colony,
New Delhi – 110 065.

(PAN : AAACB6467F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri M.G. Arora, CA
REVENUE by : Shri K.K. Jaiswal, Senior DR

ORDER

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the revenue, is directed against the order of the CIT (Appeals)-V, New Delhi dated 05.07.2012 for the assessment year 2006-07.

2. The revenue has filed the amended grounds of appeal which read as under:-

“1. The Ld. CIT (A) has erred on fact and in law in deleting the addition of Rs.97,85,383/- made on account of disallowance of loss suffered in trading of foam and fabrics.

2. The Ld. CIT (A) has ignored the fact that the assessee did not produce the necessary books of accounts and vouchers for verification despite having been provided ample opportunities by the AO.

3. The appellant craves leave or reserving the right to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. Brief facts of the case are that the assessee filed the return on 30.10.2006 declaring income of Rs.85,833/-. The case was processed u/s 143 (1) of the Income Tax Act, 1961 (hereinafter ‘the Act’) on 11.07.2007 and the assessment u/s 143 (3) of the Act was completed on 29.12.2008 at an income of Rs.98,71,216/- after making an addition of Rs.97,85,383/-. The addition of Rs.97,85,383/- was made on account of disallowance of loss claimed on account of sale and purchase of foam and fabric. On appeal, the Id. CIT (A) allowed the appeal of the assessee vide order dated 27.11.2009. Being aggrieved, the revenue filed an appeal before the ITAT and the ITAT in its order dated 12.11.2010 passed in ITA No.463&464/Del/2010 restored the assessment back to AO for de novo assessment after providing the reasonable opportunity of being heard to the assessee.

3.1 Following the directions of the Tribunal, the AO issued notice/letter to the assessee to file necessary details. After going through the submissions of the Id. AR of the assessee, the AO observed that during the course of assessment proceedings, the assessee was asked vide note-sheet entry dated 24.08.2011 to provide the latest addresses of the buyers & suppliers and also to

produce complete books of accounts with vouchers. The AO observed that vide its reply dated 08.09.2011, the assessee submitted the papers which were produced before AO during the course of original assessment proceeding. The AO provided another opportunity to the assessee to file the qualitative and quantitative details of sales and purchases with the addresses of the buyers and sellers but no reply was filed. Further, the AO asked the assessee to file the necessary details and also to produce stock register and rates of different items and complete ledger accounts of the parties from whom sales and purchases had been made. The AO observed that the assessee only filed chart containing of sales and purchases. Accordingly, the assessee was provided final opportunity vide note-sheet entry dated 21.12.2011 to produce complete books of accounts including stock register and all the supporting vouchers for verification. The AO observed that again, no new evidence was produced and even books of accounts were not produced. The AO observed that in the original assessment order u/s 143 (3) dated 29.12.2008, the assessee company had shown purchases of Rs.3,37,29,782/- and had been adjusted against sale of Rs.2,39,24,400/- thereby claiming loss of Rs.97,87,382/- on sale and purchase. According to AO, there was no such business activity conducted during the year under consideration. The AO further observed that the assessee company had shown purchases of Rs.1,39,80,200/- from M/s Allied Foams and sale of Rs.1,34,80,200/- to the same party; and purchase of Rs.14,58,207/- and sale of Rs.5,10,335/- to M/s R.S.M. Enterprises. The AO also noted that assessee had no opening and

closing stock. The AO held that since the assessee company had not discharged the onus of proving the genuineness of the sales and purchases made during the year, as discussed in the earlier order u/s 143 (3) dated 29.12.2008 which was restored by the Tribunal, and as no fresh evidence had been brought on record by the assessee to prove the genuineness of the sales and purchases, it led to the conclusion that in fact no purchases and sales were made by the assessee during the year. According to AO no funds were available with the assessee for making the purchases; and losses claimed was on account of bogus/sham sales and purchases. Accordingly, the AO made an addition of Rs.97,87,382/- made on account of disallowance of loss suffered in trading of foam and fabrics and completed the assessment on total income of Rs.98,71,216/-, as was assessed in the original assessment order dated 29.12.2008.

4. Aggrieved, the assessee went in appeal before the Id. CIT (A) and the Id.

CIT (A) deleted the addition by observing as under :-

“ The issue involved and submissions made by the appellant have been considered.:

(a) It is not clear what the AO has to do with the latest addresses of the buyers and suppliers; if he has to examine the genuineness of the same, he could have called them on the old addresses as per the record and in case of any discrepancy/lack of response could have formed an adverse view and could have confronted the appellant with the same. The AO has not discharged its onus and neither has shifted the burden of the same to the appellant.

(b) It is not possible to disagree with the appellant that it cannot compel the AO to write in its note sheet that the books of a/cs were produced before him.

(c) The same issue was before the CIT(A) in the first round and the submissions were made on similar lines before him. The CIT(A) after discussing in detail in para 3.4 to 3.6 of his order has allowed the claim of the appellant after considering the version of the appellant submitted before him. The para 3.4 to 3.6 are reproduced as under:-

3.4 The submissions of the assessee which AO has accepted in asst. order are as under :-

1. Assessee filed various details asked for;
2. Assessee filed audited final Accounts;
3. Details of all the expenses/sales/purchases were produced; and
4. Confirmations were also produced.

The AO did not mention even a single discrepancy or mistake or wrong facts. Regarding non production of books of etc's the argument of the assessee's counsel seemed valid that AO was under pressure and time was not given to the assessee, whenever counsel tried to produce the books of accounts. AO has fixed the case for 30.12.08 and completed the asst. on 29.12.08 shows the pressure on AO to complete the assessment. Counsel of the assessee also argued that if the evidence/ confirmation/ books of accounts were not to be considered by the AO then why case was fixed for 30.12.08.

3.5 I have gone through the documents filed by the assessee before AO. Reference of the documents mentioned in asst. order verified. Books of á/cs were produced before me and test checked. Confirmations from the 100% suppliers and 90% of the buyers who are all assessees, are being filed by the assessee.

3.6 In view of the above I give a relief to the assessee and addition of Rs.97,85,383/- has been deleted.”

In view of the above discussion, the undersigned does not find any reason to deviate from the finding given by the CIT(A) in his order dated 27.11.2009. Addition of Rs.97,85,383/- is therefore deleted and the grounds of appeal are allowed.”

5. The revenue, being aggrieved, is in appeal before us against the deletion of addition of Rs.97,85,383/- made on account of disallowance of loss suffered in trading of foam and fabrics and not producing the necessary books of accounts and vouchers for verification despite having been provided ample opportunities by the AO.

6. Ld. DR submitted that the assessee has two types of income i.e. commission and sales/purchase income. The ITAT restored the matter to conduct de novo in the original assessment. He submitted that the assessee did not produce the books of accounts and stock register. He submitted that the assessee claimed loss of about Rs.97 lakhs. Ld. DR drew our attention to details of sale and purchase at pages 63 & 62 of the paper book. He submitted that a perusal of the page 62 reveals that there are only four parties to whom the sale were made and the purchases were also made from these parties. According to the DR, bogus purchase and sales were claimed and set off the profit. He submitted that this is the modus operandi of buy and sale and all these things did not take place physically. He submitted that no parties were produced and there is no real transaction. He pleaded to reverse the order of the Id. CIT (A) and restore the order of the AO.

7. On the other hand, Id. AR reiterated the submissions made before the Id. CIT (A) and submitted that the books of account were not rejected and no ground has been raised by the Department in this regard. As regards the AO's objection that the latest addresses of the buyers and suppliers of fabric were not

given during the assessment proceedings, Id. AR submitted that the addresses given by the assessee were the latest and there was no change, whereas the AO insisted for giving the latest addresses. He further submitted that the AO never tried to communicate with the buyer and supplier either through mail or through inspector of the ward; and also the AO had not mentioned any discrepancy in the assessment order as far as addresses of the buyer and suppliers are concerned. He further submitted that the confirmation from 90% of the buyers and suppliers were available which was also confirmed by the Id. CIT (A) in the earlier appellate order. With regard to books of accounts and vouchers were not produced, the Id. AR submitted that detailed statement of qualitative and quantitative details of sales and purchase with price made from bills was filed before the AO and the AO had given a reference in para 3 of his assessment order but he never tried to match the details which were filed. He submitted that the assessee produced books of accounts number of times, but those were not checked by the AO. He submitted that the assessee is engaged in the business of construction and was getting good income. He submitted that the assessee went for the fabric industry for the first time this year and tried into this new business but suffered heavy loss and took our attention to pages 2, 5, 3 & 89 of the paper book. He submitted that according to the AO, the assessee did not produce books but the AO was not looking into it, however, details were produced. He drew our attention to pages 64 to 71 wherein the details were given and specifically page 67 of the paper book. The Id. AR submitted that there were

movements of the goods, godown was there and actual buying and selling took place. Since the assessee was in the initial year or fabric business suffered heavy loss, therefore, wants us not to interfere in the order of Id. CIT (A).

8. Having considered the rival submissions, we notice that in the first round, the CIT (A) had deleted the said addition on the basis that complete books of accounts were produced, examined and verified on test-check basis. Further, all the transactions of purchases were duly confirmed and 90% of the sales are also confirmed. However, the plea of the DR which was accepted by the Tribunal was that the evidences accepted had not been considered by the AO, thus the AO in the second round, ought to have examined the aforesaid evidence and arrived at a conclusion. However, it is noticed that the AO has simply borrowed the conclusion from the original order of assessment. This approach is in blatant disregard of the own stand of the Revenue before the Tribunal in the first round. Thus, to this extent, the approach of the AO is patently erroneous. Now, coming to the merits of the matter, it is seen that assessee has declared sales of Rs.2,39,24,400/- and purchase of Rs.3,37,29,782/-. The transactions are duly recorded in the books of accounts which have been examined and accepted in the first round by CIT (A) and no specific observation vis-à-vis the said books of accounts by the AO in the second round. Moreover, these are audited books of accounts. The case of the AO is that new addresses of the parties have not been furnished. In our opinion, without carrying out any investigation in respect of evidences on record, such a conclusion is perverse. Further, non-

production of stock-register or rates by itself cannot be a ground to reject the confirmations furnished by the assessee in which PAN number/Ward number, address of parties, details of the transactions have been mentioned. No doubt claiming a loss on purchase and sale to the same party may result into a doubt, but such a doubt without any verification or investigation vis-à-vis the evidence tendered does not acquire the character of evidence so as to hold that the trading transactions are bogus or sham. More-so, when the Revenue had requested for examination of the evidence and such request was accepted by the Tribunal in the first round and yet AO failed to carry out investigation. Thus, this is a case of lack of investigation which vitiates the adverse conclusion drawn by the AO. We, therefore, see no reason to deviate from the conclusion of the first appellate authority. Accordingly, we find no infirmity in the order of the Id. CIT (A) and the same is upheld.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in open court on this day of 15th January, 2016.

**Sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER**

**sd/-
(A.T. VARKEY)
JUDICIAL MEMBER**

Dated the 15th day of January, 2016/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Noida.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**