

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH `A' NEW DELHI

SHRI CHANDRAMOHAN GARG, JUDICIAL MEMBER  
AND

BEFORE SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.A.No.3723/Del/2012  
Assessment Year: 2008-09

ACIT,  
Circle 20(1),  
Room NO. F-308,  
Vikas Bhawan,  
New Delhi.  
(Appellant)

vs Advert Communication,  
B-9, Model Town-II,  
Delhi.  
(PAN: AAAFA7245F)

(Respondent)

Appellant by: Shri Jaiswal, DR

Respondent by : S/Shri K. Sampath, Raja Kumar, Advocates

Date of Hearing: 28.08.2015

Date of pronouncement:

**ORDER**

**PER C.M. GARG, J.M.**

This appeal by the revenue has been preferred against the order of CIT(A), New Delhi dated 30.3.2012 in Appeal No.135/2011-12 or 208/2010-11 for Assessment Year 2008-09. The Revenue has raised following three grounds in this appeal:-

*“1. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in law and on facts by allowing the bogus purchases, as they were not found genuine, and the onus to prove these purchases wholly lies on the assessee.*

2. *Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in law and on facts by deleting the addition u/s 41 (1) of the IT Act of the disputed creditors, the PANs of Creditors differs in different year, which apparently showed that these parties are bogus.*
3. *Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in law and on facts by giving the benefit of net profit estimation in such line of business, when there is no relation of goods purchased with the actual receipts, which are of Hoarding/display charges.”*

2. Briefly stated the facts giving rise to this appeal are that the Assessing Officer completed assessment proceedings u/s 143(3) of the Income Tax Act, 1961 at total income of Rs.3,15,05,980 as against the returned income of Rs. 15,74,431 by making certain disallowances. The aggrieved assessee preferred an appeal before the CIT(A) which was partly allowed on certain grounds. Now the revenue is before this Tribunal in the second appeal mainly alleging three issues viz. deletion of addition made by the Assessing Officer in regard to bogus purchases, deletion of addition u/s 41(1) of the Act regarding alleged bogus creditors and disputing the benefit of net profit estimation granted by the first appellate authority to the assessee.

### **Ground No.1 & 2 of the Revenue**

3. Apropos ground no.1 & 2, We have heard the rival submissions and carefully perused the relevant material placed on record. Ld. DR supported the action of the Assessing Officer and submitted that the Assessing Officer noticed from the profit and loss account that an expenditure of Rs.1,86,96,742 was

debited as “display charges” which, on examination of the details, the Assessing Officer held that the same cannot be found to represent purchase of pipes, angle and sheets from several parties. Ld. DR further pointed out that the Assessing Officer examined the claim of “display charges” and found some discrepancies in respect of payments claimed to have been made to some of them. Ld. DR also pointed out that these discrepancies were mainly that in some cases, PAN number did not match the record of the income tax department and there were some more discrepancies in the confirmation letters, no service or lack of responsibility of the notice issued to them u/s 133(6) of the Act. Ld. DR further submitted that on this count, the Assessing Officer made an addition of Rs.1,68,09,186 invoking the provisions of section 69C of the Act which was wrongly deleted by the CIT(A) without any basis. Ld. DR also pointed out that the Assessing Officer correctly made addition of Rs.1,31,22,361 u/s 41(1) of the Act as the assessee failed to file confirmation to prove purchases from M/s Paras Enterprises, the second so-called creditor Shri Tribhuvan Singh has given statement that no amount on any account has been due on the assessee and the assessee had shown fake liability on Shiva Enterprises. Hence, the ld. DR submitted that these liabilities were false and ceased to exist, thus the Assessing Officer rightly made additions in this regard. The ld. DR vehemently contended that the ld. CIT(A) granted relief to the assessee on these two issues without any basis or justified reason, therefore, the impugned order may be set aside by restoring that of the Assessing Officer.

4. Replying to the above, learned counsel of the assessee supporting the impugned first appellate order submitted that the assessee filed detailed written submissions which were taken into consideration by proper appreciation of facts, therefore, the appeal of the revenue on this count has no merit and the same should be dismissed. Ld. counsel also contended that when the book results of the assessee have been rejected by the Assessing Officer, then no addition on the statement of accounts and financial statements can be made and in this situation, when net profit is estimated on higher side than earlier/preceding two years, then no other addition is warranted except addition, if any, on the basis of estimated net profit as rightly held by the first appellate authority.

5. On careful consideration of rival submissions, we are of the view that the CIT(A) granted relief to the assessee deleting the first addition made u/s 69C of the Act by recording following observations and findings:-

- i) Copies of the bills for the purchases were filed and payments were found to have been made through account payee cheque.
- ii) Discrepancy in PAN number is not relevant or decisive because the purchases are made depending on the demand, price quoted, quality of the goods etc. and the purchaser is not expected to verify at the time of purchase the PAN number furnished by the seller;

- iii) Purchases were made from the same sellers in the earlier or subsequent year which were not questioned by the Assessing Officer
- iv) there was no discrepancy in the PAN number, because the number belonged to the seller in her name and she was the proprietor of the business which was run under a different name and style;\
- v) the assessment was completed after a scrutiny under section 143(3) for the assessment year 2009-10 and no disallowance was made on this count. The CIT(A) further noted that the only reason for making the disallowance/addition under Section 69C was that some of the notices issued under Section 133(6) came back unserved and its written submissions also found that the assessing authority was influenced by the fact that in one seller's case, a statement was recorded by him in which he could not tell the precise figure of sales made to the assessee for the year ended 31-3-2008.

6. The operative part of the impugned order of the CIT(A) on this issue reveals that the CIT(A) noted the following observations and conclusion on this issue in favour of the assessee:-

*“3.2 I have gone through the discussion in the assessment order as well as the submissions of the AR of the appellant. In all the cases where the AO has made the addition u/s 69 C, purchases are submitted to have been*

*made by the appellant, in support of which the appellant furnished copies of the bills. Payments to all these parties have been made by account payee cheques. In the case of two such parties i.e. M/s. Adplast Sales Corporation and M/s. Rupsy Enterprises, discrepancy was found by the AO in the permanent account numbers (PANs) of the parties. However, as submitted by the appellant's AR, when an assessee enters into a business transaction for purchase of material or services, his primary concern is that the material or services are available as per the need and choice to the assessee, are reasonable in terms of the rate and are available as per the requirement of the quantity and quality. Verification of the IT PAN number of the supplier of goods/services is not required as per law or commercial practice. In case of M/s. Rupsy Enterprises, the balance has been carried forward from earlier years, besides purchases having been made during the year under appeal, meaning thereby that the appellant made purchases from this party in the earlier year as well. It is observed that no adverse inference has been drawn by the Assessing Officer in respect of the purchases made from M/s. Rupsy Enterprises in the earlier assessment year. In the case of another party i.e. M/s. B.R Enterprises, the Assessing Officer has discussed in the assessment order that the PAN was found to be belonging to one Mrs. Rita Mishra. The AR of the appellant has explained that Mrs. Rita Mishra is actually the proprietress of M/s. B.R. Enterprises, and as such, there is no discrepancy. Purchases from the party have been made by the appellant in the following year and accepted by the AO in his order u/s 143 (3) for A.Y. 2009-10. As far as transactions with M/s. White Space are concerned, it has been submitted that, the appellant continued to have transactions with the party in the succeeding year also and in fact in the succeeding years, tax has been deducted at source from these payments. Not only this no such disallowance/addition to income has been made by the AO in the succeeding years i.e. A.Y. 2009-10 while completing the*

*case u/s 143 (3). The only reason for the AO to disallow the purchase made from this party was that notice u/s 133 (6) issued to the party came back unserved, but the AO has overlooked the fact that bills were produced by the AR of the appellant, payments were made by cheque, and transactions took place with this party in the succeeding year, which were accepted by the AO. Similar is the case in respect of purchases made from M/s. Shamsar Khan Fabricators. Purchases/transactions with this party were effected by the appellant in the succeeding two assessment years and tax was deducted at source. Copies of bills and proof of payment by account payee cheque was furnished by the appellant but the AO made the addition for the reason that notice issued to the party came back unserved. As regards the purchases from Sh. Tribhuvan Singh, the AO has relied upon the statement of the person. On going through the statement recorded by the Assessing Officer of Sh. Tribhuvan Singh, it is seen that Sh. Singh has stated that for the year ending 31<sup>st</sup> March 2008, he had done work for the appellant to the tune of Rs. 10-12 lacs and about Rs.3-4lacs remained payable by the appellant to him. If the figures slated by the person appear to be on estimate basis.”*

7. The second operative part of the first appellate authority further reveals that the CIT(A) granted relief to the assessee on ground no. 2 and 3 deleting the addition u/s 41(1) of the Act pertaining to alleged bogus creditors and by estimating the net profit on the basis of net profit rate of immediately preceding two Assessment Years with following observations and conclusion:-

*“As far as additions to income made by the AO u/s 41 (1) are concerned, since the appellant has not written off the amounts outstanding to these parties in its books of account and neither have those parties acknowledged the cessation of liabilities in their books, the AO could not have drawn the conclusion that the liabilities no longer existed, especially when the appellant produced copies of the bills as well as details of payments made to the parties, being payments through account payee cheques.*

*Perusal of the assessment records of the appellant for the immediately two preceding years reveals that the appellant was having the following turnover and net profit :-*

Assessment Year	Turnover (Rs.)	Net Profit	Net Profit Rate
2006-07	2,26,67,849	8,75,619/-	3.86%
2007-08	3,77,25,877/-	15,37,634/-	4.07%

*On a consideration of totality of the facts, it emerges that in respect of parties as specifically named by the Assessing Officer, there does exist one deficiency or the other. If the parties had indeed transacted with the appellant either in the year preceding the subject year or in the year succeeding the subject year, then the persistent non-compliance of such parties to the notices u/s 133 (6) of the Act and also their obdurate refusal to confirm the transactions cannot be easily countenanced or understood. While it is true that without the purchase appellant could not have made the sales, yet it also equally true that the quantum of purchases can be appreciated and attested only when the party supplying the same confirms it as authentic and genuine. Further, these purchase transactions are not such as would be amenable to a numerical count such that it could be said that for making sale of certain number of items purchases of an equal number was necessary. Mere payment through account payee cheques for purchases cannot be taken as a conclusive proof of the genuineness of the purchases. The hesitation of the vendors to respond to the notices u/s 133 (6) of the Act and to confirm the transactions by the vendors does put the transactions under a cloud, constraining the AO to verify*

*the veracity of transactions through other means as are known in commercial practice and law. In the circumstances, therefore, the AO was correct in not accepting the book results after failing in his attempts to verify them through other means as deployed by him. As per the table drawn above, in the preceding years for turnover as mentioned against them, the net profit rate varies between 3.8% to 4.07%. That gives an average of around 4%. For the subject year the AO has not gone by the net profit realization but has added unverified purchases to the income as computed by him. I do not approve the same because if the appellant made sales, it must have also made outlay on purchases. Moreover, the A.O. has made addition u/s 69C in respect of purchases which he considered as not verified/confirmed whereas section 69 C is to be applied in a case where an expenditure is found to have been incurred and the source of the same is not satisfactorily explained by the assessee. For the year, on a turnover of Rs.4,17,07, 303/- the net profit shown is Rs. 15,70.930/-, which works out to 3.76%. I direct that net profit rate at 5% be taken in terms of the turnover for the year. In that way there would be no scope for further addition for purchases based on the book version or for liabilities ceasing to exist in the view of the AO. The A.O. may take necessary action by way of informing the Assessing Officers of the parties who had shown invalid/duplicate PANs. Grounds nos. 1 and 2 of the appeal are partly allowed.”*

8. In view of above conclusion of the CIT(A), when we analyse the provision of section 251 of the Act which defines the powers of the first appellate authority against the order of the Assessing Officer, then we note that as per sub-section (1) of section 251 in the appeal against the order of assessment, the CIT(A) may confirm, reduce, enhance or annul the assessment. While laying dicta about the powers of the CIT(A), the Hon'ble Supreme Court in CIT vs McMillan & Co. Reported as 33 ITR 182(S.C.) approving the proposition laid by Hon'ble Bombay High Court in the case of Narrondas

Manordass vs CIT 31 ITR 909 (Bombay), it was held that the powers of CIT(A) are much wider than the powers of the appellate under Civil Procedure Code (CPC) and he has jurisdiction over entire assessment without being confined to the issues or subject matter of the appeal and first appellate authority may examine all issues relevant to assessment order and he is empowered to correct the assessment order in respect of all such matters even to prejudice or against the assessee enjoying said powers including power of enhancement of assessment. The Hon'ble Apex Court while dealing with these powers in the case of CIT vs Hardtroy Motilal Chamaria 66 ITR 443 (Hon'ble Supreme Court) it was held that in the powers of the first appellate authority under the Act, no analogy can be drawn between CIT(A) and first appellate authority empowered under CPC because it is only the assessee who has been given right to appeal against assessment order and if there is no appeal by the assessee, the assessment order attains finality, however, subject to rectification u/s 154, revision u/s 263 or reassessment u/s 147/148 or 153A/153C of the Act which can only be exercised after satisfaction and fulfilment of stringent statutory conditions. It is pertinent to note that since the revenue has no statutory right of appeal against the assessment order, the CIT(A) is not an ordinary court of appeal but the CIT(A) has been conferred with very wide powers and once he exercises powers of first appellate authority u/s 251 of the Act, how powers are not restricted to examining only those aspects which been considered by the Assessing Officer and adjudicated by the assessing authority but extends to

correcting the assessment not only matters/issues agitated by the assessee but also on the issues which have been considered by the Assessing Officer and adjudicated while framing the assessment order. Thus, the powers of the CIT(A) are wide enough to protect the interests of the revenue as can be observed by the powers of enhancement in the proposition of Hon'ble High Court in the judgment in the case of CIT vs Kanpur Col Syndicate 53 ITR 225 (S.C.) wherein speaking for the apex court, their lordships held that while an appeal by the assessee the CIT(A) have coterminous powers with the Assessing Officer and he can do what the Assessing Officer can do and direct the Assessing Officer to do what he has failed to do.

9. In the extant case, the Assessing Officer has taken returned income for the assessee i.e. Rs.15,70,930 as profit and loss account and has made huge additions u/s 69C and 41(1) of the Act. The Assessing Officer disallowed the purchases claimed by the assessee without disturbing amount of sales shown in the profit and loss account and the result shown in the books of accounts have been thrown aside by him. The CIT(A) noted contradiction in the manner of computation of income having not accepted the book results. We are of the opinion that if the Assessing Officer dismissed and discarded book results on the ground that purchases are not proved and on the other hand, he accepted the sales amount shown in the P&L account as correct then the financial account results gets completely skewed. This contradiction in the conclusion of the Assessing Officer has been pointed out by the CIT(A) by holding that if the

sales figures are accepted to be correct, then it would be logical to presume that such sales could not have been made without effecting purchases as shown in the profit & loss account. Nevertheless, the first appellate authority observed that the obdurate and persistent absence of any confirmation from some of the sellers (vendors) does not make the book results suspect. We further observe that the CIT(A) has opined that the grounds on which the Assessing Officer disallowed and added back the purchases by erroneously invoking sections 69C and 41(1) of the Act are flimsy or irrelevant but she was quite cautious about the final conclusion as she has taken the position that though the rejection of book results be otherwise justified on the facts of the case but the computation of income consequent thereto is not correct. Accordingly, she set right the error committed by the Assessing Officer in the assessment order by directing the Assessing Officer that the computation of the income of the assessee be made on basis of 5% of a flat rate of turnover for estimation of net profit as opposed to gross profit which further provide opportunity from claiming expenses therefrom. We also observe that the CIT(A) has taken percentage @5% of turnover which was based on the past record of the assessee which was not disputed and rather accepted by the revenue. This view also finds support from the dicta laid down by the Privy Council in the case of CIT vs Laxmandas Badridas 05 ITR 180 (PC) wherein it was held that in making an assessment, after rejecting book of accounts and results therefrom, the Assessing Officer has

to make an honest estimate and in doing so, he must take into account the past assessment record of the assessee .

10. In the case in hand, there were two aspects viz. first, rejection of book results and second, computation of income thereafter. The first appellate authority's impugned order reveals that she does not seriously question the power of the Assessing Officer to reject book results for valid and sound reasons nor she disputed that some peculiar facts and circumstances exist in case which properly justify the rejection of book results. The dispute remained about the manner of computation of income wherein the CIT(A) has cumulatively joined issue with the Assessing Officer. The CIT(A) concluded that the reasons for making additions u/s 69C and 41(1) of the Act are not strong or legally and factually justified. Consequently, the CIT(A), keeping in mind propositions and principles laid down on the issue, correctly held that the proper way of making the computation of income is to apply the net profit rate on the basis of average rate of net profit rate adopted in the immediately preceding assessment of the assessee. The CIT(A) was quite balance when she took 5% of turnover as against 4% or 4.25% disclosed by the assessee in the earlier/past assessments. In the light of above noted facts and findings of the CIT(A), we are inclined to hold that the CIT(A) granted relief to the assessee after due application of mind and proper and logical analysis of facts and circumstances of the case keeping in view the principles and prepositions (dicta) laid down by Hon'ble Apex Court on the issue of estimation of net profit in the event of rejection of book results

and she used discretion properly and in a justifiable manner having regard to the facts of the present case in hand.

11. Ld. DR contended that the Assessing Officer has not rejected book results and books of accounts of the assessee and all that the Assessing Officer has done is to disallow purchases and add back unclaimed liability (ceased liability of trade creditors) without rejecting the book results. But on vigilant perusal of the assessment order we note that, however, the Assessing Officer has not rejected book results in so many words in the assessment order but from the general tone and tenor of the assessment order and from the reasons given by the Assessing Officer, it is apparent that the Assessing Officer disbelieves book results when he doubted correctness of the purchases as shown in the P&L account and also amount due to the assessee as per books. We further observe that when the P&L account contains both the purchase figure in the debit side and sales turnover figure on the credit side and Assessing Officer commences the computation from the net profit figure shown in the P&L account but when he verified the purchases, he disallowed substantive part thereof without disturbing the sales figure the logical inference would be that the Assessing Officer has not accepted or has not reposed confidence in the books of accounts. It is not open or allowed to the CIT(A) to reject the book results partially and accept them partially. In the eventuality when the Assessing Officer disbelieved purchases and major part of purchases are sought to be treated as bogus or disproved and consequently proceeds to make addition u/s 69C of the Act without

correspondingly adjusting the sales figure specially when the liabilities (creditors) recorded in the balance sheet are also disbelieved and added back as income, then it would be a reasonable and logical inference that the Assessing Officer has rejected the book results without making any express observations in the assessment order.

12. Ld. DR has also vehemently argued and contended that the CIT(A) adopted a very low rate of percentage while estimating net profit. Learned counsel of the assessee supporting the view taken by the first appellate authority submitted that the CIT(A) has adopted 5% of total turnover for estimating net profit for assessment year 2008-09 against 4.00% for assessment year 2006-07 and 4.25% for assessment year 2007-08 which is much higher in comparison to immediately two preceding assessment years to the assessment year under consideration i.e. 2008-09 which cannot be allowed as low.

13. Placing rejoinder to the aforementioned arguments at Ld. Counsel of the assessee placed reliance on the dicta laid down by Hon'ble Allahabad High Court in the case of CIT vs. Banwarilal Bansidhar (1998) 229 CTR 229 (Allahabad) and submitted that when income of the assessee is assessed at G.P. rate by rejecting books of accounts u/s 145(1) proviso no disallowance can be made u/s 40A(3) of the Act. The Ld. Counsel has also placed reliance on the judgment of Hon'ble Jharkhand High Court in the case of Amitabh Construction (P) Ltd. vs. ACIT (2011) 335 ITR 523 (Jharkhand) that in the best judgment assessments when the AO has passed contradictory order by holding

the books of accounts are not reliable while deciding the issue of the creditors but relied upon the return for accepting the profit shown to be correct which is supported by books of accounts then the AO commits an error of law by adding the amount u/s 68 of the Act merely because of alleged non genuineness of the transaction shown in the account of creditors.

14. In the present case also the AO has accepted returned income and impliedly rejected book results by making two additions. The AO grossly committed error on fact and also against the well settled principles of the accounting while he disbelieved purchases to be genuine without making and consequent adjustment to sale and that too the AO again made additions regarding three trade creditors alleging the transactions as bogus u/s 41(1) of the Act. These additions made on contradictory observations and baseless action of the AO have been deleted by the CIT(A) and she proceeded to estimate net profit by taking higher percentage of NP in comparison to earlier two years inferring that the AO rightly rejected the book results. This conclusion of the CIT(A) is a sustainable and in accordance with the provisions of the Act which require no interference at our end in view of dicta of Hon'ble Allahabad High Court in the case of CIT vs. Banwarilal Bansidhar (supra) and Hon'ble Jharkhand High Court in the case of Amitabh Construction (P) Ltd. (supra).

15. On careful consideration of above contentions, we are of the opinion that as per ratio of the judgment of Privy Council in the case of CIT vs Laxmandas Badridas (supra) in making an assessment after rejecting books of accounts and results therefore, the Assessing Officer has to make an honest estimate and having done so he must take into account the past assessment records of the assessee but the Assessing Officer of the present case miserably failed in discharging his functions while framing assessments. On the other hand, the CIT(A), enjoying coterminous powers with the Assessing Officer estimated the net profit in the proper manner as contemplated by the Act and on the basis of sound and well accepted principles. We may further point out that for subsequent assessment year 2009-10 the returned income of the assessee has been accepted in the order u/s 143(3) of the Act without disputing the amount of purchases and creditors. To sum up, we finally hold that the CIT(A) neither exceeded her jurisdiction nor adopted a view against the interest of revenue rather she adopted higher percentage for estimation of net profit, in the eventuality of rejection of book results and accounts, as against lower percentage of net profit shown by the assessee and accepted by the revenue. The CIT(A) was fair enough when she upheld the implied rejection of book results, despite noticing some contradictions in the view taken by the Assessing Officer, because of the facts and circumstances surrounding the purchases particularly the reluctance of the sellers to comply with the notice issue to them u/s 133(6) of the Act and consequently making another addition in regard to

trade creditors. In this situation, the CIT(A) was justified and correct in estimating net profit @5% of turnover and directing the Assessing Officer to delete other two additions. We are inclined to hold that the Assessing Officer made addition without making any express adjudication stating rejection of book results and the CIT(A) was right and justified in inferring rejection of book results and consequently directing the Assessing Officer to estimate net profit @5% of turnover which is certainly higher than the book results of past/preceding two years, The CIT(A) was correct in allowing relief to the assessee and thus we are unable to see any ambiguity, perversity or any other valid reason to interfere with the same and hence we uphold the conclusion of the CIT(A). Accordingly, all three grounds of the revenue being devoid of merits are dismissed.

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

Order pronounced in the open court on 30.10.2015.

Sd/-

(L.P. SAHU)  
ACCOUNTANT MEMBER

Sd/-

(CHANDRAMOHAN GARG)  
JUDICIAL MEMBER

DT. 30th OCTOBER 2015  
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. C.I.T.(A)
4. C.I.T.
5. DR

By Order

Asstt.Registrar