

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-1506/Del/2017  
(Assessment Year: 2011-12)**

Supertech Infrastructure Pvt. Ltd. 1114, Hemkunt Chamber, 89, Nehru Place, New Delhi. AALCS2379G	vs	DCIT Central Circle Ghaziabad.
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**Stay Appl. No. 406/Del/2017  
(In ITA No.-1506/Del/2017)  
(Assessment Year: 2011-12)**

Supertech Infrastructure Pvt. Ltd. 1114, Hemkunt Chamber, 89, Nehru Place, New Delhi. AALCS2379G	vs	DCIT Central Circle Ghaziabad.
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<b>Assessee by</b>	<b>Sh. S.R. Wadhwa, Adv.</b>
<b>Revenue by</b>	<b>Sh. S.S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>10.10.2017</b>
<b>Date of Pronouncement</b>	<b>27.10.2017</b>

**ORDER****PER SHRI K.N. CHARY, JUDICIAL MEMBER**

This is an appeal by the assessee challenging the order dated 16.01.2017 in appeal no. 146/2014-15 passed by the Ld. Commissioner of Income Tax (Appeals)-Meerut (hereinafter for short called as the "Ld. CIT (A)") on the following grounds of appeal:

1. *"The order dated 16.01.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Meerut, is bad in law and on facts.*
2. *That the Ld. CIT (A) has grossly erred in enhancing the income of the appellant company by Rs. 11,55,92,087/- on the alleged ground that the same represents bogus purchases from M/s A.K. Traders Group while the said amount represents only the balance of advance given by the appellant company to M/s A.K. Traders and is duly shown as recoverable in its Balance Sheet as on 31.03.2011.*
3. *That on the facts and circumstances of the case, the Ld. CIT (A) has erred in directing the Assessing Officer to add an amount of Rs. 1,44,721/- being commission paid to M/s A.K. Traders u/s 69C of the Act.*
4. *That the Ld. CIT (A) is not justified in confirming the addition of Rs. 2,91,28,413/- on account of the goods supplied by (i) M/s A.K. Traders (Rs. 1,00,00,115/-) and M/s G.S. Steel (Rs. 1,91,28,298/-).*
5. *That no reasonable opportunity at all was allowed to examine M/s A.K. Traders or M/s G.S. Steel and as such, the additions being uncalled for deserve to be deleted.*
6. *That the penalty proceedings initiated u/s 271(1)(c) of the Act are illegal and deserves to be withdrawn/dropped.*
7. *The appellant craves leave to add, amend or modify any ground before or at the time of hearing of the appeal."*

2. Briefly stated facts are that the assessee is deriving its income from the business of developing housing projects in Haridwar, Uttarakhand. For the AY 2011-12 they have filed their return of income on 29.09.2011

declaring a total income of Rs. 28,42,385/- and during the scrutiny u/s 143(3) of the Income Tax Act, 1961 (for short called as the 'Act') AO made an addition of Rs. 2,91,28,413/- while disallowing the expenditure treating it as bogus purchases. Appeal preferred by the assessee was dismissed by the Ld. CIT (A) by way of impugned order. Hence, the assessee is before us in this appeal. Alongwith appeal, assessee filed stay petition to stay the demand. However, since both the parties are ready, we propose to hear the appeal itself.

3. It is the argument of the Ld. AR that the assessee made purchases from M/s A.K. Traders and M/s G.S. Steel and such purchases were duly supported by the bills received, and the payments to the parties were made through the account payee cheques. He further submitted that in spite of furnishing the photo copies of bank statements, AO relied upon the statement obtained from one Mr. Ajay Sharma, Proprietor of M/s A.K. Traders recorded at the time of search and without furnishing the copies of the same to the assessee and without providing any opportunity to the assessee to cross examine him. Ld. AR further submitted that no documentary evidence was found during the course of search to prove that the purchases made from the parties were not genuine. The other grievance express on behalf of the assessee is that without considering

the submissions made by the assessee Id. CIT (A) passed the impugned order confirming the addition of Rs. 2,91,28,413/- and also proposing to enhance the income of the assessee by a sum of Rs. 11,57,36,808/- including the commission of Rs. 1,44,721/-. According to the assessee during the year under consideration the assessee gave an advance of Rs. 14,47,20,500/- to M/s A.K. Traders which was supplying material, M/s A.K. Traders supplied the material worth Rs. 2,91,28,413/-, as such, balance amount was shown on the asset side of the balance sheet as amount recoverable and a litigation is pending before the Court of the ACJM-3, Ghaziabad in respect of such an amount. It is, therefore, the contention of the assessee that the authorities below failed to verify this fact with reference to the bills and vouchers and other books of account produced by the assessee. Per contra, Ld. DR heavily relied upon the orders of the authorities below and submitted that the order of the AO speaks that one Mr. Ajay Sharma had clearly stated that he does not know anything about the credits in different bank accounts opened in his name and he does not know about the sales tax or other transactions and during the assessment of the income of Mr. Ajay Sharma the proprietor of M/s A.K. Traders and Mr. Pankaj Sharma, Proprietor of M/s G.S. Steel it was found that those are the accommodation entry providers and the assessee has not filed

any confirmation from those two people nor any evidence is produced in support of the contention of the assessee that material was received from those two parties. He further argued that the turnover of the assessee is Rs. 29,53,52,377/-, whereas the income shown is only Rs. 28,42,385/- which is less than 1% and in the line of business of the assessee i.e. Real Estate Development, such a low profit is not possible.

4. We have carefully gone through the record. Assessment order itself reads that as against the total turnover of Rs. 29,53,52,377/-, the assessee had declared the total income of Rs. 28,42,385/- and it is certainly less than 1%. Assessee is engaged in the business of Real Estate Development and assessee does not plead any peculiar reasons for such low profit rates of less than 1% in the business of Real Estate Development. As could be seen from the record, AO observed that during the assessment proceedings relating to Sh. Ajay Sharma of M/s A.K. Traders and Sh. Pankaj Sharma of M/s G.S. Steel, it was found that they are the accommodation entry operators. By placing this fact in juxtaposition to the failure of the assessee to explain the genuineness of the purchasers that were debited to the profit and loss account, the AO reached the conclusion that such an expense has to be disallowed. On this aspect the assessee is making a grievance that AO failed to verify the

fact of the assessee paying an advance of Rs. 14,47,20,500/- to M/s A.K. Traders and as against the said advance amount M/s A.K. Traders supplied the material worth Rs. 2,91,28,413/-, as such, in respect of the balance, litigation before the Court was initiated while the balance amount of Rs. 11,55,92,087/- was shown in the balance sheet on the asset side as amount recoverable. The other grievance of the assessee is that the Ld. CIT (A) also failed to consider the written submission made by the assessee on 23.03.2015, where an attempt was made to prove the genuineness of the purchases from M/s A.K. Traders and M/s G.S. Steels by furnishing the bills, vouchers etc. Having regard to the facts and circumstances of the case, we are of the considered opinion that the verification of the facts pleaded by the assessee will go to the root of the case and has a bearing on the just tax liability of the assessee. However, since it is not possible for verification of such fact in this forum, we deem it just and proper to set aside the matter to the file of the AO for verifying the facts pleaded by the assessee with reference to the documents produced by him before the Ld. CIT (A). With this view of the matter, we restore the matter to the file of the AO for consideration afresh on the above lines by giving an opportunity to the assessee to put forth their case and evidence.

Since we dispose of the appeal itself, stay petition becomes infructuous.  
Hence, it is liable to be dismissed.

5. In the result, Stay petition is dismissed as infructuous and the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 27.10.2017  
\*Kavita Arora

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

