

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “बी” पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य  
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM  
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA Nos.1168 to 1170/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Rahul Cables Pvt. Ltd.,  
Office No.114-115, Ist Floor,  
East Wing, Arora Tower,  
M.G. Road, Pune – 411 001  
PAN : AABCR4218B

.... अपीलार्थी/Appellant

Vs.

Principal Commissioner of Income Tax-3,  
Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Doshi  
Revenue by : Smt. Nirupama Kotru, CIT-DR

सुनवाई की तारीख / <b>Date of Hearing : 24.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 04.05.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

These are the 3 appeals filed by the Assessee under consideration involving Assessment Years 2009-10 to 2011-12. These appeals are filed against the revision order of Pr.CIT-3, Pune, passed u/s.263 of the Act commonly dated 23-03-2017.

2. Assessee has raised common grounds in these three assessment years. For the sake of completeness and reference, grounds for **A.Y. 2009-10** are extracted here as under :

“1. On the facts and in the circumstances of the case the CIT has erred in invoking provision of sec.263 overlooking the legal position that the order of the Assessing Officer cannot be regarded as erroneous within the meaning of Explanation 2 to sec.263(1) of the I.T. Act, 1961.

2. *On the facts and in the circumstances of the case the CIT has grossly erred in not appreciating the fact that **there is neither lack of inquiry nor non application of competent mind by Assessing Officer while passing the assessment order.** The contents of the assessment order and the assessment proceedings clearly proves **that Assessing Officer has carried in-depth enquiries and applied his mind and adopted one of the plausible view** legally allowable and therefore his order should not have been regarded as erroneous in as much as prejudicial to the interest of revenue.”*

From the above, as per the assessee, the revision order of the Pr.CIT is unsustainable as the Pr. CIT invoked section 263 of the Act against the AO's order adding only 20% of the bogus purchases in the reassessment. Assessee argues that AO's decision constitutes one of the **plausible views** in the matter and a debatable issue. Further, Ground No.2 also raises the issue of AO's failure in conducting enquiries with regard to the claim relating to sundry creditors balances and other claims in the return of income.

3. Briefly stated relevant facts for the **A.Y. 2009-10** are that the assessee is a company and is engaged in the business of cables, electrical, electronic and telephonic goods as a dealer. Assessee filed the original return of income on 31-10-2009 declaring total income of Rs.2,51,15,300/-. There is no scrutiny assessment in this case u/s.143 of the Act. On receipt of information from the DG (Investigation), Pune regarding Hawala/Bogus purchases as supplied by the Sales Tax Department, AO noticed that the assessee is one of beneficiary of the same and made purchases of goods from 19 of the parties whose name appear in the list of bogus purchases. The total of such purchases works out to Rs.3,47,78,546/- for the A.Y. 2009-10. As per procedure laid down in the provisions of section 147/148 of the Act, AO recorded the reasons on 06-09-2013 and held that he had reason to believe that, out of the above, an amount of Rs.69,55,709/- has escaped assessment for A.Y. 2009-10. Accordingly, a notice u/s.148

was issued on 06-09-2013. In response to the said notice, assessee submitted that the original return filed on 31-10-2009 u/s.139(1) of the Act declaring total income of Rs.2,51,15,300/- may be treated as return filed in response to notice u/s.148 of the Act.

Similarly, as per the AO, an amount of Rs.42,09,223/- and Rs.22,20,410/- for the A.Yrs. 2010-11 and 2011-12 respectively escaped the assessments and relevant assessments were reopened

4. During the re-assessment proceedings, there was scrutiny into the transactions of alleged bogus purchases of Rs.3,47,78,546/-. Assessee filed various documents and details demonstrating the trail of goods as well as the payments involving the banking channels. However, in response to the AO's demand for producing the sellers of the goods, the assessee could not comply with the same as the same is outside his scope. Further, the AO perused the goods receipt register and held that the assessee failed to produce the stock register. On this issue, assessee submitted that there is no need for him to maintain the stock register. AO considered the above submissions, documents, registers furnished by the assessee and, relying on various decisions including the judgment of Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises Pvt. Ltd. 216 taxmann 171 and the decision of Ahmedabad Bench of the Tribunal in the case of Vijay Proteins Ltd. Vs. ACIT 58 ITD 428 (Ahmedabad Tribunal), held that making entire addition of Rs.3,47,78,546/- is not proper. He also analysed the GP ratios of the assessee over the years and held making addition of GP of the said bogus purchases would meet the ends of justice. Relevant lines from Para 7 & 8 of the assessment are extracted here as under :

*"7 . . . . . Now, to arrive at the conclusion for amount of Rs.3,47,78,546/-, the financials of the assessee were examined for the period relevant to A.Y. 2008-09 to 2011-12.*

.....  
 .....

08. Now, to calculate the reasonable amount of addition on account of these bogus purchases, there are various methods which are discussed.

- a. First method is adding the whole amount of such bogus purchases which comes out to be Rs.3,47,48,546/-. This is also unreasonable because bogus purchase is nothing but inflated purchase shown in the accounts to reduce the actual profit earned.
- b. Second method is calculating 20% of the total turnover of the assessee for the year under consideration, i.e. 20% of Rs.1,21,31,76,927/- which comes out to be Rs.24,26,35,385/-. This is not reasonable as the bogus purchases are only 2.8% of the total turnover.
- c. Third method is calculating 20% of such bogus purchases which comes out to be Rs.69,55,709/-.

*I am of the opinion that 20% of the total purchases made from such alleged parties is needed to be added back to the income as it is the most reasonable amount amongst all.”*

Accordingly, after due verification of facts and the judgmental laws, the AO restricted the addition to 20% of the said purchases. Thus, the assessment attained the finality.

5. Subsequently, the Pr.CIT-3, Pune verified the assessment records of the assessee and analysed the above narrated facts of the case relating to bogus purchases and issued show cause notice dated 23-02-2017 to the assessee calling for explanation as to why the provisions of section 263 of the Act should not be invoked and why the assessment may be set aside. Assessee filed a letter dated Nil giving written submissions contesting against the said proposal of the Pr.CIT. In support, assessee relied on various decisions in this regard. Subsequently, the Pr.CIT analysed the details furnished by the assessee and held that AO completed these assessments without fully obtaining the details from the assessee. Further, the Pr.CIT held that AO failed to verify the genuineness of the purchases and failed to make entire addition of Rs.3,47,78,546/- of the purchases. He also found fault with

the AO in restricting the addition to Rs.69,55,709/-, i.e. 20% of the said bogus purchases.

Further, in the revision order, Pr.CIT dealt with the scope relating to incorrect assumption of law and fact and held that it is a case of incorrect application of law and in support, Pr. CIT relied on various decisions in this regard. Eventually, the CIT held that the AO has not verified all the relevant issues leading to reduction in the correct taxable income. Therefore, as per the Pr.CIT, the order passed by the AO is prima-facie erroneous in so far as it is prejudicial to the interest of revenue.

Further, on the issue of sundry creditors too, Pr.CIT held that the AO failed to examine sundry creditors, valuation of stock, other purchases and various claims of expenses debited to the profit and loss account, making the order of the AO as erroneous and prejudicial to the interest of the revenue. Accordingly, the Pr.CIT restored the matter to the AO for proper verification of the said issues and pass a fresh assessment order in accordance with law.

6. Aggrieved with the said revision order of the Pr.CIT, assessee filed the present appeal with the grounds mentioned above.

7. Before us, Ld. Counsel for the assessee submitted that the main issue examined by the AO in the reassessment proceedings revolves around the said issue of bogus purchases only. The reasons recorded by the AO before issuing the said notice u/s.148 of the Act also evidences the above. Further, bringing our attention to the various pages of the paper book, Ld. Counsel for the assessee demonstrated the fact relating to furnishing of relevant purchase bills from the alleged suppliers for the years under consideration. Further, bringing our

attention to various paragraphs of the re-assessment order, Ld. Counsel submitted that every aspect of the issue of bogus purchases was thoroughly examined by the AO before making an adhoc addition of 20% of the bogus purchases of Rs.69,55,709/-. In doing so, AO relied on various decisions to support the GP additions only and not the entire such purchases. Therefore, according to Ld. AR for the assessee, the view taken by the AO is one plausible view.

Further, mentioning that the issue of making entire addition is again a debatable issue, Ld. AR submitted that making addition on account of GP ratio is also a matter of huge debate and relied on various decisions on the issue. Further, justifying the addition @20% of the bogus purchases made by the AO in the re-assessment, Ld. Counsel submitted that there are various decisions to support the addition made by the AO. Therefore, there is no erroneous assumption of law in this case. Further, he submitted that when the trail of goods are satisfactorily explained along with the transactions of payment for the purchase of goods, the assessee cannot be found fault on these bogus purchase of goods. In support of his submissions, Ld. Counsel relied on the following case laws and filed the copies of the same :

1. *M/s. Mudhra Steel & Alloy Pvt. Ltd. Vs. CIT-1, Pune – ITA Nos. 1079 & 1710/PN/2011, dated 20-09-2013.*
2. *Mudhol Land Holding Company Pvt. Ltd. Vs. CIT 57 taxmann.com 213 (Pune-Trib.)*
3. *CIT Vs. Design & Automation Engineers (Bombay) Pvt. Ltd. 177 Taxman 9 (Bombay)*
4. *CIT Vs. Nirav Modi 71 taxmann.com 272 (Bombay)*
5. *CIT Vs. Nirav Modi 77 taxmann.com 78 (SC)*
6. *M/s. Fortune Metals Vs. CIT – ITA No.962/PN/2014, dated 21-03-2016*

8. Further, on the issue of sundry creditors, Ld. Counsel for the assessee submitted that sundry creditor balances are being carried forward and no addition is called for on this account as the CIT did not

make out a case of cessation of liabilities. Ld. Counsel submitted that the said balances are genuine. There is no cessation of liabilities. There is no scope for application of provisions u/s.41(1) of the Act for making of additions as implied by the Pr.CIT as there is no case of cessation of liability on any of the liabilities. If the revenue's case is cessation of liabilities, the onus is on the AO to demonstrate the same. AO cannot make addition on this account in the fresh assessment as the assessee complied with the provisions of the Act. Further, he mentioned that AO is not under any obligation to examine the sundry creditors account or the claims/deductions in the return of income. Making the re-assessment on the said issue was never the issue as per the reasons recorded by the AO at the time of reopening of the assessment. Therefore, it is not the case of the Revenue that AO picked up the issue and concluded the issue without enquiries or verification which he should have been done by the AO. Further also, on the other issues listed in Para 6.2 of his order, Ld. AR submitted that there is no error in the reassessment order that makes the order erroneous in so far as it is prejudicial to the interest of revenue.

9. On the other hand, Ld. DR for the Revenue relied heavily on the order of the Pr.CIT. AO's failure to make addition of 100% of entire bogus purchase of Rs.3,47,78,546/- constitutes the order erroneous and AO's failure to conduct investigation to sundry creditors also makes the order erroneous in so far as it is prejudicial to the interest of the revenue. However, on debatability of the issue relating to bogus purchases, Ld. DR has nothing to mention.

10. We heard both the parties and perused the orders of the Revenue on the issue of bogus purchases and the need for making addition of entire such purchases, copies of decisions etc. We have also gone

through the purchase bills, other documents filed in the form of paper book by the assessee. The case of the Pr.CIT in the revision order is that the AO failed to make enquiries before completing the assessment on the claims relating to bogus purchases and the sundry creditor balances. We shall take up all the issues in the subsequent paras.

11. Regarding the allegation of the Pr.CIT relating to **bogus purchases**, we find the AO has taken up this issue in the re-assessment proceedings u/s.148 of the Act and called for details relating to the purchase of goods, delivery of goods and payment details for the said purchases. At the end of the scrutiny or investigation, AO came to the conclusion of making GP addition of the bogus purchases @20% would meet the ends of justice. AO relied on various decisions for arriving at this decision. Accordingly, AO made addition @20% amounting to Rs.69,55,709/-. Therefore, in our view, it is a case of taking plausible view by the AO on the issue under consideration. In the revision order, the Pr.CIT did not agree with the said view and restored the issue to the file of AO for fresh assessment implying in favour of making addition of entire such purchases. In this process, Pr.CIT ignored the fact relating to existence of various views on this issue. We have also noticed on the issue of bogus purchases, there are various views inviting debates on the requirement of making entire additions or GP additions of various rates or various GP rates etc. Therefore, making addition on account of bogus purchases constitutes a debatable one. As such, the AO has taken one prevailing view in this matter. Therefore, thrusting another view by the Pr.CIT in his revision order in our view is outside the scope of provisions of section 263 of the Act. Therefore, it is not a clear cut case of erroneous assumption of law as made out by the Pr.CIT. Hence,

the revision order on this issue is unsustainable in law. Accordingly, relevant grounds raised by the assessee on this aspect are allowed.

12. Regarding the other issue of sundry creditors, we find this issue was discussed by the Pr.CIT in para 6.2 of his order. This issue was not at all taken up in the re-assessment proceedings. The reasons recorded by the AO supports the same. Normally, such issues are taken up in the regular assessment u/s.143(3) of the Act. In this case, there is no such order passed by the AO at the relevant point of time. Further, it is not the case of the Revenue that the issue of sundry creditors was not examined by the AO. In this regard, we also perused the relevant lines from Para No.6.2 and the same is extracted here as under :

*“6.2 Further, perusal of the records shows that the Assessing Officer in the re-assessment proceedings failed to examine sundry creditors shown by the assessee company, the details of other purchases, valuation of stock and various expenses as claimed by the assessee company in its profit and loss account, which makes the order not only erroneous but prejudicial to the interest of revenue.. . . .”*

Therefore, we find the issues above narrated by the Pr.CIT are general and casual. It is not the case of the Pr.CIT that the above issues were allowed by the AO after due process of verification of scrutiny of the account. As such, AO is not under any mandate to examine sundry creditor account. Further, it is also not the case of the Pr.CIT that there is something erroneous about the sundry creditor account and therefore, the AO failed to make proper/adequate enquiries on this issue. In our opinion, the Pr.CIT's finding is too general and the same is unsustainable. He failed to make out a case that allowing claims of the assessee on this issue amounts to erroneous order of the AO in so far as it is prejudicial to the revenue. In the absence of any categorical finding on erroneous assumption of law/fact leading to loss of revenue, the finding of the Pr.CIT is not sustainable. Therefore, we

are of the opinion that the directions given by the Pr.CIT are liable to be quashed. Accordingly, the re-assessment order of the AO is restored. The grounds raised by the assessee are allowed.

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

**ITA Nos. 1169 & 1170/PUN/2017**  
**A.Yrs. 2010-11 & 2011-12**

14. Since the facts, issues, decision of the AO/Pr.CIT, arguments and counter arguments are same as that of appeal ITA No.1168/PUN/2017 for A.Y. 2009-10, the decision given in the said A.Y. 2009-10 applies to these assessment years too. Therefore, with similar reasoning, we allow the grounds raised by the assessee for the A.Yrs. 2010-11 & 2011-12 too.

15. To sum up, all the appeals of the assessee are allowed.

Order pronounced in the open court on this 04<sup>th</sup> day of May, 2018.

Sd/-  
**(VIKAS AWASTHY)**  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
**(D. KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 04<sup>th</sup> May, 2018  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. Pr.CIT-3, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune