

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No.- 5610/Del/2014  
(Assessment Year: 2011-12)**

|  |     |  |
|--|-----|--|
| M/s Raunaq International Ltd.,<br>1009, Surya Kiran Building,<br>19, K.G. Marg,<br>Cannaught Place, New Delhi-1. | Vs. | Dy. Commissioner of Income<br>Tax,<br>Central Circle-II,<br>New Delhi. |
| <b>PAN No:</b> AAACR5747C  |     |  |
| <b>APPELLANT</b>   |     | <b>RESPONDENT</b>  |

**ITA No.- 6081/Del/2014  
(Assessment Year: 2011-12)**

|  |     |   |
|--|-----|---|
| Asstt. Commissioner Of<br>Income Tax,<br>Central Circle-11, New Delhi. | Vs. | M/s Raunaq International<br>Ltd.,<br>1009, Surya Kiran Building,<br>19, K.G. Marg,<br>Cannaught Place, New Delhi-<br>1. |
| <b>PAN No:</b> AAACR5747C  |     |   |
| <b>APPELLANT</b>   |     | <b>RESPONDENT</b>   |

**Assessee by** : Sh. M.K. Madan (Adv.)  
**Revenue by** : Sh. Atiq Ahmed (Sr. DR)

**Date of Hearing** : 14/05/2018  
**Date of Pronouncement** : 22/06/2018.

**ORDER**

**PER : O.P.KANT, JM**

These Cross Appeals filed by the Revenue and the Assessee respectively are directed against order dated 29/08/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-XXXI, New Delhi [in short the Ld. CIT(A)] for Assessment Year 2011-12. As both the appeals have emanated from the same impugned order, both were heard together and disposed of by way of this consolidated order for the sake of convenience and brevity. The grounds of appeal raised by the **Revenue in ITA No. 6081/Del/2014** are reproduced as under:

- "1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstance of the case the Ld. CIT(A) has erred in deleting addition of Rs. 8759437/- made by the Assessing Officer on account unverifiable purchase made from M/s Reliance Metal India.*
3. *The appellant craves leave to add, amend any/all the grounds of appeal before of during the course of hearing of the appeal."*

2. The grounds raised in appeal by **the Assessee in ITA No. 5610/Del/2014** are reproduced as under:

- "1. *That the order passed by the Ld. CIT(A) XXXI is bad in Law & on facts.*

2. *That the Ld. CIT(A) has erred in not allowing the claim of Rs. 15,66,869/- on account of Leave Encashment u/s 43B of the Income Tax Act, 1961.*
3. *That the Ld. CIT(A) has erred in not allowing withdrawal of interest disallowance of Rs. 1,39,462/- u/s 14A read with Rule 8D of the Income Tax Rules 1962.*
4. *That the assessee craves, leaves to alter, amend, vary, add any grounds of Appeal."*

3. Briefly stated facts of the case are that the assessee company filed its return of income for the year under consideration on 20/09/2011 at total income of Rs. 9,36,19,769/-. The case was selected for a scrutiny and notice under section 143(2) of the Income-tax Act 1961 (in short th 'Act' ) was issued and complied with. The assessment under section 143(3) of the Act was completed on 05/03/2014 at total income of Rs. 10,23,79,206/-after making following disallowance :

- " (i) *Disallowance of the purchases of Rs. 87,59,437/- made from Reliable Metal India.*
- (ii) *Disallowance of Rs. 15,66,869/- on account of leave encashment u/s 43B of the IT Act.*
- (iii) *Disallowance of the interest of Rs. 1,39,462/- u/s 14A r.w. Rule 8D of the IT Act."*

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who deleted the disallowance of Rs. 87,59,437 for purchases from M/s Reliable Metal (India), but upheld the other two disallowances made under section 43B and section 14A

of the Act. Aggrieved with the order of the Ld. CIT(A), both the Revenue and the Assessee filed appeal before the Tribunal raising the grounds as reproduced above.

**5. The Ground Nos. 1 and 2** of the appeal of the Revenue relate to the addition of Rs. 87,59,437 deleted by the Ld. CIT(A), which was made by the Assessing Officer on account of unverifiable purchase made from M/s Reliable Metal (India).

6. Facts in respect of the issue in dispute are that the information was received by the Assessing Officer from the Maharashtra VAT Department that the Assessee received non genuine bills or accommodation bills amounting to Rs. 87,59,437 from M/s Reliable Metal (India), CP Tank Road, Mumbai. In the information, the VAT Department sent an affidavit of proprietor of M/s Reliable Metal (India), wherein he admitted that he had done business of issuing only tax invoices. In the said affidavit, it is also mentioned that subsequently Sh. Purushottam Kothari was given power of operation of all activities of M/s Reliable Metal India. The Assessing Officer issued letter dated 04/07/2013 to M/s Reliable Metal India for verification of transactions. The said letter returned back unserved. The letter dated 10/10/2013 issue by the Assessing Officer to sh.

Purushottam Kothari also remained unserved. After considering submission of the assessee, the Assessing Officer disallowed the purchases with following observations:

" i. *Though the assessee has produced details in respect of purchases & sales, stock register and confirmation of the parties to whom the sales have been made and has also furnished copy of confirmation dated 25.04.2011 of M/s Reliable Metal India, however, the facts remain that the assessee cannot produce Mr. S.P. Dewasi Prop of M/s Reliable Metal (India) nor could assessee file fresh confirmation from the Reliable Metal (India).*

*The assessee has also submitted copy of bank accoutns and details of apyments made through RTGS to M/s Reaince Metal (India). The payments made by the assessee are appreaing in the bank account of M/s Reliable Metal (India)., which has been obtained form the bank u/s 133(6) of the IT Act. The assessee has submitted that it has made genuine pruchase and has made sale of those goods at a profit of Rs. 2.99 lacsk. The contention of the assessee is not acceptable in view of the following:-*

- a. Assessee has not filed fresh confirmation of reliable metal india.*
- b. Assessee has not been abvle to produce the " supplier"*
- c. There is an affidavit filed bythe supplier before VAT Department that he has not made any transactions.*

*view of above discussiion purchases of Rs. 87,59,437/- made from Reliable Metal is disallowed and added to assessee's declared income. Therefore, provision of section 27191)(c) of the IT Act are attracted. Penalty proceedings u/s 271(1)(c) have been initiated seperately.*

7. The Ld. CIT(A) however, deleted the addition relying on the decision of the **Hon'ble Delhi High Court in the case of CIT versus Sunrize Tooling Systems Private Limited (2014) 361 ITR 206 (Delhi)**. The Ld. CIT(A)

concluded that all the primary documents supporting the purchase were filed by the assessee and therefore assessee discharged its onus to substantiate the purchases, whereas the Assessing Officer has relied only on the finding of the Maharashtra VAT Authorities. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“ 4.2.11 During the appeal proceedings the AR has made a detailed submission which has been reproduced at para 3 above. He has also relied upon on the decision of Hon'ble High court of Delhi in the case of CIT vs. Sunrise Tooling System Pvt. Ltd., (2014) 361 ITR 206 (Delhi) wherein Hon'ble High Court dismissed the department's appeal against order of Hon'ble ITAT deleting the addition made on account of certain purchases admitted (later reiterated) by one of the Directors as an accommodation transaction.*

*4.2.12 It is noted here that the facts of the appellant's case are similar to those in the case of CIT Vs. Sunrise Tooling Systems Pvt. Ltd. (Supra). In the present case appellant has made available the documentary evidences which were in its possession to establish the genuineness of the purchase transaction. The appellate has produced copy of the purchase bill, confirmation of the supplier who has duly mentioned the PAN in it. Appellant had also supplied the statement of the Bank account, evidencing the payment as well as details of the RTGS payments made into the bank account of the supplier maintained with ING Vysya Bank, Fort, Mumbai. The appellant has also submitted the copy of the VAT return filed by it wherein it has declared the purchases made from the said suppliers. The appellant had also submitted stock register and statement of purchases and sale of raw material quantity wise and value wise for the relevant period which has been examined by the AO without finding any mistakes in similar circumstances. In the case law cited by AR, Hon'ble ITAT has held that after the primary evidences in the form of relevant documents were made available by the assessee in support of the genuineness of the claim purchases, the onus to establish that the same were bogus shifted to the department. The relevant contents of ITAT's order incorporated in the order of the Hon'ble High court at page 208 & 209 are reproduced below for ready reference:*

*4.2.13 The AR has submitted that the AO was asking the assessee to do something which was impossible. He has pointed out that the Maharashtra VAT*

*authorities had visited supplier's premises and found them to be closed. The authorities had not been able to record the supplier's statement and that the affidavit sent by him was merely a photocopy. On the basis of the findings of Hon'ble ITAT in the case of Sunrise Tooling Systems Pvt. Ltd. (Supra), I have to hold that on submissions of primary documents the onus of the assessee to prove the purchases stood discharged.*

*4.2.14 Now the question is whether in the light of findings of Maharashtra VAT authorities there was extra burden on the assessee to establish the genuineness of the purchases. In the case of Sunrise Tooling Systems Pvt. Ltd. also (Supra) similar situation arose in view of the statement of the Director of the company. In that case Hon'ble ITAT noted that the AO cannot deny the claimed purchases when the sales made have been accepted. It also went into the trading results and found as a matter of fact that the trading results were better in the year under consideration as compared to the earlier years. In the present case, the AR has submitted that the goods purchased from reliable Metal (India) were sold by the appellant to 4 parties as listed in the assessment order itself. He has also stressed that in the said transaction involving purchase of goods from Reliable Metal (India), the appellant has made a profit of Rs. 2.99 lacs. Therefore, to assume that the appellant concealed any profit or any income by entering into bogus purchase transaction involving Reliable Metal (India) was baseless.*

*4.2.15 I note that the AO has examined the stock register. The AR has filed the copy of the same in the paper book. The said register contains details of the supplier alongwith quantitative details of the material purchased. The register also contains details of the customers to whom sales have been made. The register also contains details of the quantitative details of the material with invoice number etc. These factors show that the appellant has tried to doubly establish the genuineness of the purchases in the background of the findings of the Maharashtra VAT authorities. To that extent the onus of the appellant in this regard has been very well discharged.*

*4.2.16 On the other hand, AO has merely relied upon the findings of the Maharashtra VAT authorities which also is not a complete one. No one has been able to record the statement of the supplier who is supposed to be the source of adverse evidence. There is no recording of the statement of the said party nor cross examination by the appellant. I do not find any merit, under these circumstances, in the action of the AO who has called for fresh confirmation without pointing out any discrepancies in the stock register or statement of purchase and sales both quantity wise and value wise. In the present case if the AO disbelieves the purchase then there would be no merit in accepting sales figures also. In case the AO had found that the appellant had incurred any loss by accounting bogus purchases, there could have been merit*

*in the disallowance. In the instant case the appellant has been able to show one-to-one relationship between the goods sold by him to 4 parties with material procured from Reliable Metal (India). In view of this, there is no merit in the action of the AO.*

*4.2.17 It is noted here that, it is not as if the supplier was not at all in existence. Even the report of the Maharashtra VAT authorities reproduced in the assessment order indicate that the supplier was operating from two premises which, however, were found closed (or left by the party) during the subsequent financial year. There is a failure in getting clear and unambiguous adverse evidence and its confrontation before the appellant. The appellant cannot be held responsible for the same. This is not a case of purchases being shown without sale of goods. Further, the AO has examined the stock register which has all the relevant entries. The AO has not found any discrepancies in the same. In view of this, it has to be held that the purchases shown in the name of Reliable Metal (India) cannot be disallowed. It is possible that the appellant might have taken only purchase bill from the said party and has obtained the goods from some other source who did not give the bill. (This fact however has not been established). In such situation, it is not the case of any concealment of income. The AO, could have rightly suspected the value of purchase and sales. In the present case it is not possible to entertain such a thought as in the whole transaction the appellant has declared a profit of about Rs. 2.99 lacs. Considering all these factors the addition of Rs. 87,59,437/- made by the AO is hereby deleted.”*

8. Before us, the Ld. DR submitted that in view of the affidavit submitted by Mr. S.P. Dewasi, proprietor of M/s Reliable Metal India that he was engaged in issuing only paper invoices (i.e. without actual delivery of goods), to substantiate the purchases shown from him, the onus is on the assessee to substantiate that goods were actually received from M/s Reliable Metal India. He submitted that from the documents filed by the assessee, which included purchase bills and payment through banks, only indicated paper trail and no evidence of goods being delivered physically to the assessee, has been filed by assessee. According

to him, sales shown by the assessee of corresponding amount of goods and confirmation of those parties, may confirm sale of goods by the assessee, but that cannot confirm that those goods were delivered to the assessee by M/s Reliable Metal India, particularly in view of the affidavit of the proprietor of said concern, that he was engaged in issuing paper bills only. According to him, in such a situation, the logical conclusion is that the assessee has purchased those goods from another parties in cash and supplied to the parties, to whom sale bills have been issued. He submitted that the Ld. CIT(A) has also expressed this kind of possibility where sales recorded in books are confirmed but purchase recorded in books are not confirmed. Accordingly, he submitted that in this kind of situation addition should have been made for unexplained cash utilized for purchase of goods out of books of accounts.

9. The Ld. Counsel of the assessee, filed a Paper Book containing pages 1 to 72 and submitted that the assessee furnished copy of relevant bills of purchase, copy of challans, copy of bank statement indicating payments to M/s Reliable Metal (India), copy of VAT returns indicating purchases, stock register indicating entry of said purchases and corresponding sales to the parties and their confirmation etc. He further submitted that the Assessing Officer has already verified payments from the supplier's bank statement also. He submitted that

only ground for disallowance of the said purchases is inability of the assessee in producing the said supplier. According to him, the said proprietor Mr. S.P. Dewasi of M/s Reliable Metal India was even could not be traced by the VAT Department, how it was possible for the assessee to produce him. The assessee discharged his onus of substantiating the purchases and therefore no disallowance could have been made in the case of the assessee. In support of the contention, he relied on the order of the Ld. CIT(A). He further submitted that if the purchases of the assessee are not genuine, in that case corresponding sales should also be removed and the assessee should be granted relief accordingly. According to him, there was no leakage of revenue as the supplier has recorded sales in its books of accounts and the assessee has recorded the same as purchase and offered the gross profit of Rs. 2.99 Lacs on said purchase transactions.

10. We have heard the rival submissions and perused the relevant material on record including the Paper Book filed by the assessee. In the case before us the dispute is in respect of purchases of Rs. 87,59,437 /- shown by the assessee in its books of accounts from M/s Reliable Metal India. A copy of all such bills issued and copy of corresponding delivery challan issued by M/s Reliable Metal

India are available on page 51 to 62 of the assessee's Paper Book. We have observed from these documents that:-

-In these Bills, sales of stainless steel pipes (SS Pipes) and stainless steel sheets/plates (SS Sheets / Plates) is recorded.

-In these bills only weight of the items in kilograms, which vary from 2575 Kgs to 9225 kgs, has been recorded and no detail as to numbers or a specification of the items is mentioned.

-In the column for order number only, order number are not mentioned and only word "verbal" is recorded.

-In these bills, the columns for dispatched by and Lorry number/goods carries number and date etc are left blank.

-In the delivery challan's issued by M/s reliable metal India also no detail of Truck number or any other mode of the transport or number of items is mentioned.

11. We have also noted that in case of M/s Reliable Metal India, the Maharashtra VAT Department carried out enquiries for verifications of sales and the proprietor of the concern Sh. SP Dewasi, failed to appear before the authorities and the premises were found to be closed. On further enquiries by the Maharashtra VAT Department, he filed an affidavit before the VAT authorities in the form of a statement that the bills issued by him were only paper bills (i.e. no goods were actually supplied by him).

12. The assessee has filed before the lower authorities purchase bills and challans to substantiate purchases from M/s Reliable Metal India. The assessee is further claiming that the purchases are genuine because the payments have been made to M/s Reliable Metal India through banking channels and which has been confirmed from the bank statement of the assessee as well as bank statement of M/s Reliable Metal India. The assessee is also claiming that said purchases are appearing in the VAT return filed by the assessee

13. In our opinion, filing of copy of purchase bills and challan or copy of VAT return in itself, cannot establish that goods have been actually supplied by the said party to the assessee, particularly when the supplier himself is denying the fact of physical delivery of goods. Further, showing the payment through banking channel also cannot establish the fact of physical delivery of goods.

14. Further, the assessee claimed that goods were sold to the parties, who has confirmed receipt of the goods and entries of purchases and sales are entered in the stock register, which was duly produced before the Assessing Officer.

15. Regarding the contention of entries in stock register, before us, the assessee submitted a statement of purchases and sales, which is available on page 1 to 25 of the Paper Book. This statement has been claimed as stock

register. This register contains party wise purchase bill and quantity details and corresponding sales of the same items. We have observed a unique feature in said register that exactly identical quantity is recorded in sale bill corresponding to each purchase bill. For ready reference, we are reproducing the purchase bills, items and quantity in respect of purchases made from one of the party, namely Essar Steel Limited and corresponding sales, which are available on page 24 of the Paper Book, as under:

| PURCHASE INVOICE | PURCHASE INVOICE DATE | ITEM DESCRIPTION | QTY UOM | SALES INVOICE | SALES INVOICE DATE | QTY UOM | NAME OF THE PARTY                                |
|------------------|-----------------------|------------------|---------|---------------|--------------------|---------|--|
| 155542           | 04/01/2011            | PLATES           | 4.92 MT | 156/036       | 31-JAN-11          | 4.92 MT | 6.90 NTPC LTD.<br>(RIHAND)                       |
| 155540           | 04/01/2011            | PLATES           | 4.93 MT | 156/036       | 31-JAN-11          | 4.93 MT | 0.00 NTPC LTD.<br>(RIHAND)                       |
| 155541           | 04/01/2011            | PLATES           | 5.01MT  | SITE FAB      |                    | 5.01MT  | 0.00 NTPC LTD.<br>(RIHAND)                       |
| 177180           | 03/02/2011            | PLATES           | 31.07MT | SITE FAB      |                    | 31.07MT | 0.00 NTPC LTD.<br>(RIHAND)                       |
| 189249           | 17/02/2011            | PLATES           | 7.16MT  | SITE FAB      |                    | 7.16MT  | 0.00 NTPC LTD.<br>(RIHAND)                       |
| 189250           | 17/02/2011            | PLATES           | 9.09MT  | 204/043       | 14-MAR-11          | 9.09MT  | 6.30 NTPC LTD.<br>(RIHAND)                       |
| 146398           | 20/12/2010            | PLATES           | 24.69MT | 128/001       | 30-DEC-10          | 24.69MT | 17.73 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS |
| 146545           | 20/12/2010            | PLATES           | 14.71MT | 128/001       | 30-DEC-10          | 14.71MT | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 153884           | 31/12/2010            | PLATES           | 14.39MT | 137/2&139/3   | 31-DEC-10          | 14.39MT | 36.76 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS |
| 152792           | 30/12/2010            | PLATES           | 9.48MT  | 137/2&139/3   | 31-DEC-10          | 9.48MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 152791           | 30/12/2010            | PLATES           | 24.00MT | 137/2&139/3   | 31-DEC-10          | 24.00MT | 0.00 POWERFEN<br>INFRASTRUCTURE                  |

|        |            |        |          |              |           |          |  |
|--------|------------|--------|----------|--------------|-----------|----------|--|
|        |            |        |          |              |           |          | (L.L.C) FOHS                                     |
| 153710 | 31/12/2010 | PLATES | 19.27MT  | 137/2&139/3  | 31-DEC-10 | 19.27MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 153752 | 31/12/2010 | PLATES | 4.93 MT  | 137/2&139/3  | 31-DEC-10 | 4.93 MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 153751 | 31/12/2010 | PLATES | 4.98 MT  | 137/2&139/3  | 31-DEC-10 | 4.98 MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 153750 | 31/12/2010 | PLATES | 4.93 MT  | 137/2&139/3  | 31-DEC-10 | 4.93 MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 155381 | 03/01/2011 | PLATES | 15.22 MT | 144/04       | 13-JAN-11 | 15.22 MT | 6.70 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 156215 | 05/01/2011 | PLATES | 13.39 MT | 150/05       | 24-JAN-11 | 13.39 MT | 19.02 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS |
| 157531 | 06/01/2011 | PLATES | 18.12 MT | 150/05       | 24-JAN-11 | 18.12 MT | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 157588 | 07/01/2011 | PLATES | 18.28 MT | 150/05       | 24-JAN-11 | 18.28 MT | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 154257 | 01/01/2011 | PLATES | 14.41 MT | 152/006      | 28-JAN-11 | 14.41 MT | 6.48 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 177641 | 03/02/2011 | PLATES | 17.50 MT | 172/07       | 11-FEB-11 | 17.50 MT | 7.88 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 198294 | 27/02/2011 | PLATES | 9.04 MT  | NON BILLABLE |           | 9.04 MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |
| 198295 | 27/02/2011 | PLATES | 6.69 MT  | NON BILLABLE |           | 6.69 MT  | 0.00 POWERFEN<br>INFRASTRUCTURE<br>(L.L.C) FOHS  |

Similar details in case of purchases from M/s Reliable Metal India are available on page 6 of the Paper Book, which are reproduced as under for ready reference:

| Purchase invoice | Purchase invoice date | Item description | QTY. UOM | PURCHASE Sales invoice AMOUNT SALES INVOICE DATE | QTY.UOM  | CUSTOMER NAME                 |
|------------------|-----------------------|------------------|----------|--|----------|-------------------------------|
| RMI/152/10       | 25-Jun-10             | S.S. Sheet/Plate | 8995 KGS | 18.80 063/MH/063<br>25-JUN-10                    | 8995 KGS | 19.44<br>BALAJI<br>ENTERPRISE |
| RMI/151/10       | 24-Jun-10             | S.S. PIPE        | 5215 KGS | 10.43 060/MH/060 24-                             | 5251 KGS | 10.69                         |

|            |           |                     |          |                            |          |   |
|------------|-----------|---------------------|----------|----------------------------|----------|---|
|            |           |                     |          | JUN-10                     |          | D.M.MET<br>AL                             |
| RMI/149/10 | 24-Jun-10 | S.S. PIPE           | 2575 KGS | 7.57 057/MH/057 24-JUN-10  | 2575KGS  | 7.85<br>SHAILES<br>H METAL<br>CORP.       |
| RMI/147/10 | 23-Jun-10 | S.S.SHEET/<br>PLATE | 9225 KGS | 18.08 052/MH/052 23-JUN-10 | 9225 KGS | 18.91<br>BALAJI<br>ENTERPR<br>EISE        |
| RMI/144/10 | 22-Jun-10 | S.S. PIPE           | 6470 KGS | 12.75 046/MH/046 22-JUN-10 | 6470 KGS | 13.26<br>MAHALA<br>XMI<br>STEEL<br>CENTRE |
| RMI/141/10 | 21-Jun-10 | S.S. PIPE           | 7410 KGS | 16.60 039/MH/039 21-JUN-10 | 7410 KGS | 17.04<br>SHAILES<br>H METAL<br>CORP.      |

16. In our opinion that statement of purchases and sales filed by the assessee, is not a stock register maintained in day-to-day course of the business and it has been prepared subsequently to match the party wise purchases and corresponding sales only.

17. The confirmation of the parties to whom goods have been sold and the statement of purchases and sales may establish the fact that goods are sold and delivered to those parties, however these documents cannot establish that the assessee received goods physically from M/s Reliable Metal India. In our opinion, the assessee did not discharge its onus of substantiating physical delivery of goods to the assessee. The assessee has not furnished any evidence as how the goods were transported to the assessee. The assessee has not provided any evidence of expenditure on truck or any lorry for transport of these heavy goods

weighing in tons, from the premises of M/s Reliable Metal (India), either by the assessee or by M/s Reliable Metal India. From the tax invoices issued by the assessee for sale of good available in page 33 to 38, it is evident that office of the assessee at Mumbai was located on 14<sup>th</sup> Floor, Hoechet House, Nariman Point, Mumbai. It is not clear, how & where the assessee could have stored the goods purchased. The assessee has also not shown before us loading and unloading expenses incurred on the purchase in question. In such circumstances, when sales have not been doubted by the Assessing Officer, the only conclusion which could be drawn is that the assessee has purchased goods in cash from other persons or grey market and supplied to the parties to whom the goods were sold.

18. In the para 4.2.17 above , the Ld. CIT(A) has mentioned that the assessee has shown sales corresponding to each of the purchases in reference and thus it was not a case of purchases being shown without sale of goods. However he has mentioned that it is possible that the appellant might have taken only purchase bill from the said party and has obtained the goods from some other source, who did not give the bill.

19. We agree with the above observation of the Ld. CIT(A). In the circumstances, where sales recorded in books of accounts are confirmed but the purchase are not getting confirmed, the only possibility is that the assessee has purchased goods in cash from grey market and the payment made subsequently through cheque or RTGS are received back in cash or transferred by way of cheque or RTGS to other related concerns.

20. In the instant case goods have been shown as purchased between 21/06/2010 to 25/06/2010, whereas payments for those purchases have been shown to have made from 21/10/2010 to 10/02/2011. The assessee has shown payment to M/s Reliable Metal India through RTGS, details of which, available on **Page 46 of the Paper Book**, are reproduced as under:

*Details of Amount Trnsfrd thru RTGS*

|    | <b><u>Party</u></b> | <b><u>Amount</u></b> | <b><u>Bank</u></b> | <b><u>Dtd</u></b> | <b><u>CHEQUE NOS</u></b> |
|----|---------------------|----------------------|--------------------|-------------------|--------------------------|
| 1. | Reliable Metal      | 1150000.00           | icici              | 21/10/2010        | 535146                   |
| 2  | Reliable Metal      | 1500000.00           | Icici              | 25/10/2010        | 536276                   |
| 3  | Reliable Metal      | 455749.00            | Sbi                | 25/10/2010        | 069846                   |
| 4  | Reliable Metal      | 750000.00            | Icici              | 28/10/2010        | 536288                   |
| 5  | Reliable Metal      | 666064.00            | Icici              | 09/12/2012        | 550117                   |
| 6  | Reliable Metal      | 500000.00            | Sbi                | 18/01/2011        | 277332                   |
| 7  | Reliable Metal      | 1350000.00           | Sbi                | 31/01/2011        | 277360                   |
| 8  | Reliable Metal      | 1094038.00           | Sbi                | 07/02/2011        | 277375                   |

|   |                |            |     |            |        |
|---|----------------|------------|-----|------------|--------|
| 9 | Reliable Metal | 1293586.00 | sbi | 10/02/2011 | 277388 |
|---|----------------|------------|-----|------------|--------|

**Total 8759437.00**

21. In view of aforesaid circumstances, we can safely presume that the cash corresponding to the RTGS payment must have been received back by the assessee after date of payment i.e. after 21/10/2010 and therefore goods for supplying to sales parties were purchased (i.e. 21/6/2010 to 25/06/2010) from other persons, utilizing cash. The onus is on the assessee to explain when & how the cash has been paid for purchase from gray market and it is for the assessee to explain availability of cash in books of account. In such circumstances generally cash purchases are made at lower price than normal, and the gross profit of the taxpayer also becomes higher.

22. We observe that the above issue of cash investment in purchases has not been examined by the Ld. Assessing Officer and consequently the assessee also did not get opportunity to explain its stand, we feel it appropriate to restore the issue of unverifiable purchases to the file of the Assessing Officer for deciding afresh in view of our observations above and in accordance with law after providing adequate opportunity of being heard to the assessee accordingly, this ground of Revenue's appeal is allowed for statistical purposes.

**23. The ground No. 1** of the appeal of the Assessee is general in nature and covered by other grounds, and thus we are not specifically adjudicating upon this ground.

**24. In ground No. 2**, the Assessee has challenged sustaining of disallowance of Rs. 15,66,869/- on account of leave encashment under section 43B of the Act.

The Ld. CIT(A) rejected the claim of the assessee observing as under:

*" 4.3.1 In this ground the appellant is agitating against the AO's action in not allowing the appellant's claim for deduction of provision for leave encashment of Rs. 15,66,869/-. The appellant had submitted before the AO that as per the direction of the Hon'ble Supreme Court in the case of Exide Industries Ltd., it had made the payment of tax on the said provision and claimed it. The AO, however, did not accept the same and rejected the appellant's claim made during the assessment proceedings. He has also referred to the decision of Hon'ble Supreme Court in the case of Goetz (I) Ltd. wherein it was held that the AO cannot entertain any claim made without revising the return of income.*

*4.3.2 During the appeal proceedings, the AR has submitted that the matter is pending before Hon'ble Supreme Court and that a direction may be given to the AO to allow the expenses on the final outcome of the matter pending before the Hon'ble Supreme Court.*

*4.3.3 It is noted that for the present year the appellant has not made any claim in the return of income. Therefore, the AO has rightly rejected the claim. Moreover, on the same issue I have already held in the appellant's own case for A.Y. 2009-10 that the appellant was not eligible for the claim as the words in Section 43B(f) of the IT Act are very clear and no claim is entertainable unless*

*there is actual payment during the year. Following my order dated 09/12/2012 in the appellant's own case for A.Y. 2009-10 and for the same reasons, this ground is rejected."*

24.1 Before us the Ld. Counsel reiterated the submission made before the Ld. CIT(A), whereas the Ld. DR relied on the finding of the Ld. CIT(A).

24.2 We have heard the rival submission and perused the relevant material on record. In the instant case it is evident from the order of the Ld. CIT(A) that the assessee has not made actual payment of the said amount of leave encashment. As per the provisions of the section 43B of the Act, claim of leave encashment is allowed only in payment basis. If the assessee has not made the actual payment, it is not entitled for deduction under section 43B of the Act. We do not find any error in the order of the Ld. CIT(A) and accordingly we uphold the same. The ground of the appeal of the assessee is rejected.

25. **The ground no. 3** of the appeal of the assessee relates to disallowance under section 14 A of the Act amounting to Rs. 1,39,462/-.

25.1 In the return of income filed the assessee disallowed amount of Rs. 1,39,462/-however during the assessment proceeding filed a claim to withdraw the said disallowance. The Assessing Officer rejected the claim of the assessee

on the ground that no revised return of income was filed withdrawing the said disallowance. The Ld. CIT(A) also rejected the claim of the assessee following his own order dated 09/12/2012 for Assessment Year 2009-10.

25.2 Before us, the assessee claimed that investment in shares of the group company was made out of own interest free refunds and no expenditure was incurred for earning the dividend income of Rs. 3,51,960/-. The Ld. Counsel also filed copy of the balance sheet to support the contention that no unsecured loans having been taken and the borrowed funds have been utilized towards purpose for which loans were taken. On the contrary, the Ld. DR relied on the finding of the Ld. CIT(A).

25.3 We have heard the rival submission and perused the relevant material on record. In the facts of the case, it is not clear whether the disallowance of Rs. 1,39,462/- made suo moto by the assessee in the return of income filed was in accordance with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). The contention of the assessee of utilization of owned interest free funds for investment in shares of sister concern will become relevant only when the disallowance of interest attributable to investment in assets capable of yielding exempted income has been made, while computing the disallowance of Rs.

1,39,462/-. Since no such details have been furnished before us by either of the party, thus in the interest of Justice, we feel it appropriate to restore this issue to the file of the Assessing Officer for deciding afresh in accordance with law. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard on the issue. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

26. In the result, appeal of the revenue is allowed for statistical purposes, whereas appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22/6/2018.

Sd/-

**AMIT SHUKLA**  
**(JUDICIAL MEMBER)**

Sd/-

**O.P.KANT**  
**(ACCOUNTANT MEMBER)**

Dated: 22.06.2018

Pooja/-

Copy forwarded to:

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

## ASSISTANT REGISTRAR

## ITAT NEW DELHI

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| Date of dictation  |  |
| Date on which the typed draft is placed before the dictating Member                  |  |
| Date on which the typed draft is placed before the Other Member                      |  |
| Date on which the approved draft comes to the Sr. PS/PS                              |  |
| Date on which the fair order is placed before the Dictating Member for pronouncement |  |
| Date on which the fair order comes back to the Sr. PS/PS                             |  |
| Date on which the final order is uploaded on the website of ITAT                     |  |
| Date on which the file goes to the Bench Clerk                                       |  |
| Date on which the file goes to the Head Clerk  |  |
| The date on which the file goes to the Assistant                                     |  |

|                                      |  |
|--------------------------------------|--|
| Registrar for signature on the order |  |
| Date of dispatch of the Order        |  |