

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SMT BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 4907/DEL/2014
(A.Y. 2010-11)**

Paramount Residency Pvt Ltd
208, Savita Vihar, Sikka Mansion
LSC, IInd Floor, Delhi

Vs.

Dy. CIT
Central Circle - 18
New Delhi

PAN : AACCP 9106 H

**ITA No. 6102/DEL/2014
(A.Y. 2010-11)**

Dy. CIT Vs.
Central Circle - 18
New Delhi

Paramount Residency Pvt Ltd
208, Savita Vihar, Sikka Mansion
New Delhi

PAN : AACCP 9106 H

[Appellant]

[Respondent]

Date of Hearing : 07.08.2018

Date of Pronouncement : 13.08.2018

Assessee by : Shri Ashwani Taneja, Adv
Shri Kamal Piyush, CA
Shri Saurabh Goel, CA

Revenue by : Shri Sanjeet Singh, CIT- DR

ORDER**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

These two cross appeals filed by the assessee and revenue are preferred against the order of the Commissioner of Income Tax(A)-III, Delhi - 7, New Delhi dated 08.08.2014 pertaining to assessment year 2010-11.

2. The bone of contention is the purchases made from the following four parties;

<i>S.No.</i>	<i>Name of the parties</i>	<i>Amount of purchase</i>
<i>1.</i>	<i>Mohan Ram Trading Co.</i>	<i>Rs. 1,25,40,049</i>
<i>2.</i>	<i>Shyamji Traders</i>	<i>Rs. 25,79,978</i>
<i>3.</i>	<i>Ganga Trading Co.</i>	<i>Rs. 85,01,193</i>
<i>4.</i>	<i>U-Tek Sales Corporation</i>	<i>Rs. 5,50,00,000</i>
	<i>Total</i>	<i>Rs. 7,86,21,320</i>

3. The AO treated the aforesaid purchases of Rs. 7,86,21,320/- as bogus purchases and made addition of the same.

4. When the matter was agitated before the first appellate authority, the first appellate authority restricted the disallowance to Rs. 1,96,55,330/-. The assessee is in appeal before us against this

addition sustained by the CIT(A) and the Revenue is in appeal before us in respect of the deletion of Rs. 5,86,65,990/-.

5. Since the underlying facts are same, both the appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

6. As mentioned elsewhere, during the course of scrutiny assessment proceedings, the AO noticed that the assessee has made the claim of expenses in respect of purchases of material made from the following four parties:

<i>S.No.</i>	<i>Name of the parties</i>	<i>Amount of purchase</i>
<i>1.</i>	<i>Mohan Ram Trading Co.</i>	<i>Rs. 1,25,40,049</i>
<i>2.</i>	<i>Shyamji Traders</i>	<i>Rs. 25,79,978</i>
<i>3.</i>	<i>Ganga Trading Co.</i>	<i>Rs. 85,01,193</i>
<i>4.</i>	<i>U-Tek Sales Corporation</i>	<i>Rs. 5,50,00,000</i>
	<i>Total</i>	<i>Rs. 7,86,21,320</i>

7. The assessee was asked to furnish the details in respect of the above mentioned purchases. For ascertaining the genuineness of the expenditure claimed, summons u/s 131 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] were sent to these parties. The AO observed that the summons were received back unserved from the

postal authorities. The AO asked the assessee to produce these four parties for verification. The assessee chose to reply as under:

"Kindly refer the hearing in the matter held in your office wherein the undersigned was show caused to explain as to why purchases made from following parties for reason that either such parties did not comply with summons issued under section 131 or otherwise summons could not be served as the premises were found locked with respect to four specific parties.

In this connection before proceeding in the matter, undisputed facts already on record are briefed as under:

- (a) The payment to these parties for purchases was made through account payee cheque drawn on disclosed bank account, duly reflected in accounts and audited statements.
- (b) It is matter of fact that even during course of search no cash equivalent was or anything on the contrary was found.
- (c) Alternatively considering that as per nature of business activity involved and the income accrued is subjected to mandatory guidelines as per accounting standard - 7, according to which the income and claim of cost thereof is in proportion to % of completion of projects. Thus under the circumstances the claim (if any) is only to the extent of completion % thereof
- (d) The supplies received are duly supported by following records maintained:
- (e)

- (1) Each supply have been duly recorded in inwards register after physically verifying the same.
- (2) The supplies are received through transporters having valid GR Nos.
- (3) The supplies are duly recorded in stock records duly maintained in due course.
- (4) The supplies are duly recorded in stock records duly maintained in due course and supported by respective GRNs.
- (5) Stock registers duly maintained by us consistently show that the supplies not only physically received, recorded but also issued to stores/works.
- (6) The purchases are duly recorded and form part of stocks in trade, books and audited statements.

Though the records along with other records are duly maintained to show the authenticity of purchases, however considering paucity of time and volume of record the same being relied but not placed on record, however in case your good self require some/ all such record, kindly pin point the same we shall place the same on record.

However, without prejudice and anything on the contrary on record or brought to our knowledge, we now take this opportunity to explain the peculiarity of nature of trade briefly as under:

It is a matter of fact borne out be peculiarities attached to our business and projects that we have to deal with various persons operating in unorganized sector i.e. persons, involving labour and other suppliers of materials mainly illiterate persons or persons operating in unorganized

sectors and grey markets in addition sometimes certain decisions for purchase of items are taken on the spot considering the various unforeseen factors to ensure uninterrupted works. Such decisions and consequent transactions are entered through our employees or other authorized persons authorized to deal with them. Many of such suppliers of services operation in grey market do not maintain proper record of transactions and business is mostly controlled in unorganized and unplanned manner.

Thus purchases are normally made after being satisfied that the vendors are registered with local tax authorities having valid TIN nos as well being assessed to Income tax. The supplies as referred above were arranged through one of such vendor.

Since this a peculiarity attached to our business, therefore in order to minimize such activities we have already formulated a policy to discourage such dealings. One of such policy being that payments for purchases be made through account payee cheques and the supplies of services and material be duly supported by concerned parties invoices and proofs of receipt of such material or utilization of services for the projects and business and upon being satisfied about genuineness involved such expenses are claimed.

Since , it is the responsibility and accountability of employees and other persons to ensure un interrupted works or face administrative action ,therefore under the circumstances supplies, there may be situation where such delegated persons are constrained to arrange

supplies through grey market, middle men or persons operating in unorganized sector, but payment in lieu thereof made and bills in this respect arranged from parties other than actual suppliers so as to ensure payments in lieu services/supplies be made.

The merits of our contentions are automatic from records being maintained by us wherein the supplies made have been duly received and form part of our inventory as at **31.03.2010**.

Thus in view of explanation above, it is evident that no adverse inference in the matter is called for.

We hope that the explanation given shall be accepted and in case your good self is of different view, please provide us the basis of such view with an opportunity to rebut and cross examine."

8. The AO was not satisfied with the submissions made by the assessee. The AO was of the opinion that the alleged suppliers of materials were neither found existing at the given address nor they could be located. Summons u/s 131 of the Act were returned unserved. Therefore, the genuineness of the expenditure has not been proved. The AO, accordingly treated the purchases of Rs. 7,86,21,320/- as non-genuine and added the same to the income of the assessee.

9. The assessee carried the matter before the CIT(A) and reiterated its contents that the purchases are genuine and have been made from genuine parties whose PAN details were made available to the AO alongwith the VAT details and TIN numbers alongwith confirmations from the respective parties. It was strongly contended that there is no evidence that the summons have been received back as unserved. Considering this claim, the first appellate authority called for remand report from the AO. The AO submitted remand report vide letter dated 03.03.2014 and the same reads as under:

"F.No. DCIT/CC-18/2013-14/660

Dated: 03.03.2014

To

The Commissioner of Income Tax

(Appeals)-III, Delhi-110092

(Through Addl. CIT, Central Range -5, New Delhi)

Respected Sir,

Sub:- Appeal No. 194/2013-14 in the case of M/s Paramount Residency Pvt. Ltd. for the assessment year 2010-11- Submission of report regarding - A kind reference is made to your office letter F.No. CIT(A)-III/2012- 13/308 dated 30.10.2013 calling for a report on the cited subject matter. In this regard, the required report is submitted as under:-

2. *The search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out on 11.03.2011 in the case of assessee company. During the course of search and seizure proceedings, it was found that assessee has shown purchases from the following parties:*

- (i) M/s. Mohan Ram Trading Company amounting to Rs.1,25,40,449.*
- (ii) M/s Shyamji Traders amounting to Rs. 25,79,978.*
- (Ili) Ganga Trading Company amounting to Rs. 85,01,193.*
- (iv) U-Tek Sales Corporation amounting to Rs. 5,50,00,000.*

During The course of search and seizure proceedings and post search enquiries, it was found by the investigation Wing that these parties are not existing at the address mentioned on the bills and could not be found in the field enquiries.

3. *Thereafter, during the course of assessment proceedings under section 153A of the Income Tax Act, 1961, in order to ascertain the genuineness of the expenditure claimed to have been incurred in making the aforesaid purchases, summons under section 131 of the Income Tax Act, 1961 were sent to the above parties. However, summons under section 131 of the Income Tax Act, 1961 were received back unserved from the postal*

authorities. Further the assessee through order sheet entries was categorically asked to produce the above parties so that the genuineness of the purchases made from these parties could be ascertained, however, despite affording several opportunities, the assessee failed to produce the parties for verification of alleged purchases of material made from them.

3.1 In view of the aforesaid facts, the genuineness of expenditure claimed by way of alleged purchase from the above mentioned parties was not proved and therefore, purchases made from them aggregating to Rs. 7,86,21,320 was treated as non genuine and therefore disallowed.

4. During the course of appellate proceedings, one of the ground taken by the assessee is that the addition has been made on account of fact that summons sent by the Assessing Officer during the course of assessment proceedings have been received back, however, on inspection of the records by the assessee, no such evidence was available on file in respect of the summons having received back as unserved. In this regard, it is submitted that this ground is not found correct as the summons sent to the parties and received back were found available in another separate folder. The names of parties to whom summons sent and received back are as under:-

- (i) Mohah Ram Trading Company
- (ii) Shyamji Traders

In respect of remaining two parties i.e. M/s Ganga Trading Company and U-tek Sales Corporation to whom summons were sent and received back unserved, it is stated that evidence is not available on file in respect of the summons having received back as unserved.

4.1 Further, during the appellate proceedings, the assessee claimed that during the assessment proceedings, bills of parties from whom purchases were made as well as the bank statements have been filed showing that the payment have been made to the suppliers of raw material through account payee cheques/RTGS. The confirmations filed in the course of appellate proceedings have also been sent for comments.

4.2 In view of above, during the course of remand proceedings, notices under section 133(6) of the Income Tax Act, 1961 were sent on 20.12.2013 to the following parties:

- i. M/s. U-Tek Sales Corporation*
- ii. M/s. Mohan Ram Trading Company*
- Hi. M/s. Shyamji Traders*
- iv. M/s. Ganga Trading Company*

4.3 In response to the notices under section 133(6), replies from the above parties were received through speed post alongwith copy of accounts statement (Ledger copy), total sales made by the party to the company, total payment received from the company and bank statements.

4.4 Through letter dated 27.12.2013, the director of the assessee company was also requested to appear on 07.01.2014. The assessee attended the hearing proceedings and filed letter dated 07.01.2014 which has been placed on record.

4.5 In this regard, it submitted that vide order sheet entry dated 10.01.2014, the assessee was asked to produce the parties for verification of alleged purchases but the assessee failed to produce them for examination and verification of alleged purchases. Thereafter, the summon under section 131 of the Income Tax Act, 1961 was issued to the above parties on 23.01.2014 to attend the office on 30.01.2014. However, nobody was appeared in response to the summons also.

4.6 Further Inspector of this Circle was deputed to visit banks and collect the bank statement of the above said parties under section 133(6) of the I.T. Act, 1961. The Inspector has collected the bank statements of all parties except Bank of Baroda, Ghaziabad and submitted the same through his report. Information from Bank of Baroda has been received though speed post. All information have been placed on records.

4.7 On analysis of the bank accounts of the aforesaid parties, it is noticed that after deposit of cheques there is immediate withdrawal, in

cash, either on the same date or on subsequent date, in most of the instances showing that these parties are bogus and alleged transactions of purchases are just entries and there is no actual purchases made by the assessee company.

4.8 In view of the aforesaid facts, it is evident the parties from whom the assessee claimed alleged purchases did not appear in the assessment proceedings as well in course of remand proceedings for the purpose of verification of alleged purchases/examination. Therefore, the genuineness of expenditure claimed by way of alleged purchase from the above mentioned parties does not get proved at all and consequently, purchases made from them aggregating to Rs. 7,86,21,320 was rightly treated as non genuine and disallowed by the Assessing Officer in the assessment order.

5. Thus considering the overall facts as discussed above, it is submitted that the addition made on account of disallowance of bogus purchases is correct and same is required to be confirmed/upheld as this is case where the alleged purchases were held to be non-

genuine/bogus in course of search and post search enquiries/investigation and at the time of assessment proceedings under section 153A and even in the course of current remand proceedings and matter may accordingly be adjudicated upon.

Yours faithfully,

Sd/-

(Bhawani Shankar)

*Deputy Commissioner of
Income Tax Central Circle-18,
New Delhi."*

10. After considering the facts and detailed submissions, the Id. CIT(A) observed that it was only in two cases, namely, Mohan Ram Trading Co and Shyamji Traders that the summons issued u/s 131 of the Act came back as unserved. In respect of the other two parties, there was no evidence with the AO that summons have been received back unserved. The CIT(A) further observed that during the remand proceedings, the AO issued notice u/s 133(6) to all the four parties who responded to the AO and confirmed the transactions by filing copy of accounts, as appearing in their books. The first appellate authority further observed that from the perusal of the bank statements of the four parties, it is noticed that all the withdrawals have been made in cash immediately on the same day or on a subsequent date, which is

very unlikely in a normal business. The CIT(A) concluded by holding that the assessee has failed to produce the four parties nor they were found to exist at the address given on the bills. The bank statements of all these parties show that the amount has been withdrawn on the same or succeeding day. Further, there is a huge gap between the date of issue of invoice and the date of GR note.

11. However, the first appellate authority, drawing support from the provisions of section 40A(3) of the Act, in his wisdom, disallowed 25% of disputed purchases and restricted the disallowance to Rs. 1,96,55,330/-.

12. Before us, the ld. AR vehemently stated that both the lower authorities have grossly erred in ignoring the direct evidences furnished by the assessee in support of genuineness of the purchases. It is the say of the ld. AR that the entire addition has been made by the AO and partly sustained by the CIT(A) only on the ground that the assessee could not produce the four parties. The ld. Counsel strongly stated that merely because the persons could not be produced, would not mean that the purchases are bogus and the parties are non-est.

The ld. AR relied upon his detailed submissions made before the first appellate authority.

13. Per contra, the ld. DR supported the findings of the AO. It is the say of the ld. DR that the onus was on the assessee to produce all the four parties to establish the genuineness of the purchases and since the assessee has failed to discharge the onus cast upon it, the action of the AO is fully justified and the CIT(A) grossly erred in restricting the addition to Rs. 1,96,55,330/-. The entire addition deserves to be sustained.

14. We have given thoughtful consideration to the orders of the authorities below. The facts on record show that a search and seizure operation was carried out in the appellant's group on 11.3.2011. It is pertinent to mention here that no incriminating material was found during the course of search proceedings. The AO chose four parties from whom building construction materials were purchased. It would not be out of place to mention that the fair market value of the project situated at Paramount Symphony, NH - 24, Ghaziabad is at Rs. 3,29,82,68,526/- which was estimated by the Valuation Cell of the Income-tax Department at Rs. 3,53,47,33,961/-. This means that the

Valuation Cell of the I.T. Department has estimated the fair market value of the said project much higher than the value declared by the assessee. Further, on a project of more than 300 crores, the AO has doubted the genuineness of purchases only to the extent of Rs. 7.86 crores, which is about 2.52%.

15. The lower authorities have harped upon the fact that the parties were not produced for verification. While doing so, both the lower authorities have ignored the conclusive direct evidences brought on record, namely, PAN details, VTA details, TIN Numbers, confirmations and bank statements. There is no dispute that all the payments have been made by account payee cheques. The lower authorities have taken an adverse view because they found that the payees have withdrawn cash on the same or succeeding day. There is not an iota of evidence whatsoever to show that the cash has reached back to the assessee.

16. The Hon'ble Calcutta High Court in the case of CIT Vs. Dataware Private Limited in Tax Appeal No. 263 of 2011 & GA No. 2856 of 2011 in its order dated 21.09.2011 has observed as under:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence"

17. The Hon'ble Supreme Court in the case of Tejua Rohit Kumar Kapadia 94 Taxmann.com 325 has declined to allow the SLP against the judgment of the Hon'ble Gujarat High Court wherein the Hon'ble High Court has held that purchases made by the assessee - trader were duly supported by bills and payments were made by account payee cheque and the seller also confirmed the transaction and there was no evidence to show that the amount was recycled back to the assessee and, accordingly, held that addition was not called for. In that case also, the AO had disallowed some expenditure treating the purchases as bogus and made the addition.

18. The Id. DR has strongly relied upon the judgment of the Hon'ble Gujarat High Court in the case of N.K. Proteins Ltd 2016-TIOL-3165-AHM-IT wherein the facts show that during the course of search proceedings at the office premises of NKPL, blank signed cheque books and vouchers of number of concerns were found. Further, endorsed blank cheques of NKPL by these concerns were also found wherein the endorsement was on the back of the cheques. Accordingly, the purchases made from these concerns were treated as bogus purchases by the AO.

19. The facts of the case in hand are clearly distinguishable from the facts of this case in as much as there was nothing of such documents, as referred, were found from the possession of the assessee even during the course of search and seizure operation. The Id. DR has also placed reliance on some other judicial decisions, but the facts are totally different from the facts of the case in hand.

20. As mentioned elsewhere, total estimated value of the project for the year under consideration is more than Rs. 300 crores. Therefore, it would be a futile exercise to doubt the genuineness of a meagre amount of Rs. 7.86 crores. Moreover, as mentioned elsewhere, the purchases were duly supported by bills and vouchers. The payments

have been made through account payee cheques. The payments are reflected in the bank statement of the payer and the payee. We, therefore, do not find any reason for doubting the genuineness of these purchases. While restricting the disallowance to Rs. 1,96,55,330/-, the reasoning given by the first appellate authority is not only absurd, but illogical. The first appellate authority has heavily relied upon the decision in the case of Vijay Proteins Ltd 55 TTJ [Ahd] 76. Considering the facts of the case in totality, as discussed hereinabove, we are of the considered view that that entire addition deserves to be deleted. We, accordingly, set aside the findings of the CIT(A) and direct the AO to delete the entire addition of Rs. 7,86,21,320/-.

21. In the result, the appeal of the assessee is allowed whereas the appeal of the Revenue is dismissed.

The order is pronounced in the open court on 13.08.2018.

Sd/-

**[BEENA PILLAI]
JUDICIAL MEMBER**

sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 13th August, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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	