

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G": DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA.No.3698/Del./2010  
Assessment Year 2007-08

ITO, Ward II(1) New CGO Complex, B-Block, NH-IV, Faridabad.	vs.	Satish Kumar, Prop. M/s Gaurav Steels, Main Road, Mujessar, Sector-24, Faridabad. <b>AAVPK4726E</b>
(Appellant)		(Respondent)

For Revenue	Shri Sanjay Tripathi, Sr. DR
For Assessee	Shri Somil Agarwal, Adv.

Date of Hearing	31.10.2018
Date of Pronouncement	06.11.2018

**ORDER**

**PER DR. MITHA LAL MEENA, A.M.**

This appeal by Revenue is directed against the order dated 28.05.2010 of the Ld. CIT(A), Faridabad for AY 2007-08 on the following grounds of appeal:

1. *"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.*

- 1,33,56,101/- made by the Assessing Officer on account of bogus purchases especially when the assessee had failed to discharge his onus to prove the identity of the alleged supplier and the genuineness of the alleged transactions despite granting numerous opportunities and even total failure on assessee's part to even furnish copies of GRs, challans or any other evidence regarding delivery of goods, or even the copies of purchase bills leads to the conclusion that the assessee failed to prove the same which resulted into addition on account of bogus purchases.
2. On the facts and in the circumstances of the case, the order of the learned CIT(A) is perverse and contrary to the evidence available on record in holding that the Assessing Officer has not been able to make out his case against the progressive trading result declared by the assessee and has declared the purchases worth Rs. 1,33,56,101/- as bogus by relying on Inspector's report, which was not even confronted to the assessee as on facts in as much as the Inspector's report was duly confronted to the Counsel on 04-12-2009 and this fact is duly mentioned in the very first line of para: 6 at page 3 of the assessment order.
  3. On the facts and in the circumstances of the case, the learned CIT(A) has erred on facts and in law in holding that the statement of Sh. Vinod Goyal was recorded in another case and was not confronted to the assessee, hence it had no evidentiary value-especially inspite of repeated opportunities, the assessee did not produce the party M/s Maa Durga Trading Co. nor apprised any difficulty in doing so and in another case with similar facts, this person namely Sh. Vinod Goyal was found to be having the same PAN as mentioned in the alleged confirmation furnished by the assessee and Sh. Vinod Goyal denied having any concern with M/s Maa Durga Trading Co. and the assessee did not cooperate in disclosing the whereabouts of Sh. Vinod Goyal, therefore, he could be traced only towards the end of limitation and there was no time to confront the assessee on this issue after 29-12-2009.
  4. On the facts and in the circumstances of the case, the learned CIT(A) has erred on facts and in law in holding that the Assessing Officer's case falls flat on the inherent weakness of his action in acknowledging the fact that the sales have been accepted by the

- Assessing Officer, which were not possible without purchases and therefore, the imbalance in the trading version effected by the Assessing Officer was unsustainable disregarding the fact that there cannot be any sustainable addition which strays beyond a few decimals of the GP rate declared by the assessee, because every addition is found to inflate the GP rate, going by the Ld. CIT(A)'s logic, no Assessing Officer will be able to make any addition.*
5. *On the facts and in the circumstances of the case, the learned CIT(A) has erred on facts and in law in deleting the addition of Rs. 14,43,239/- made by the Assessing Officer on account of, bogus liability without giving any independent findings and has purely relied on the contentions of the A.R. of the assessee, as reproduced by the Ld. CIT(A) in his order.*
  6. *On the facts and in the circumstances of the case, the Ld. learned CIT(A) has erred on facts and in law in deleting the addition of Rs. 14,43,239/- made by the Assessing Officer on account of bogus liability especially when the assessee has failed to discharge the primary onus to prove the identity and the genuineness of liability reflected in his account books despite granting opportunities.*
  7. *On the facts and in the circumstances of the case, the learned CIT(A) has erred on facts and in law in deleting the addition of Rs. 14,43,239/- made by the Assessing Officer on account of bogus liability in presuming that the onus to be upon the Assessing Officer, which was not the case.*
  8. *That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.*

2. There are two effective issues are identified for adjudication as under:

- 1) Bogus purchases of Rs. 1,33,56,101/- and
- 2) Bogus liability of Rs. 14,43,239/-.

3. Briefly, the facts of the case are that return declaring income of Rs. 1,75,440/- was filed by the assessee on 12.10.2007 and the assessment was completed u/s 143(3) of the Act on 29.12.2009 at an income of Rs. 1,49,74,780/-. The AO made two additions of Rs. 1,33,56,101/- and Rs. 14,43,239/- to the assessee's returned income, on account of bogus purchases and bogus liability respectively. The aggrieved assessee filed appeal before the Ld. CIT(A), Faridabad, who vide impugned order dated 28.05.2010 in appeal no. 238/09-10, deleted the said additions by observing as under:

*"8. I have carefully considered the submissions of the Ld. AR and perused the impugned order of assessment. I find that the AO has not been able to make out his case against the appellant's progressive trading results declared and has blatantly declared the purchases of Rs. 1,10,38,298/- and Rs. 23,17,803/- from M/s Maa Durga Trading Company and M/s Om Trading Company respectively as bogus only on the misconceived and fallacious basis that they did not exist at the given addresses, relying upon the report of the Inspector which was not confronted with the assessee during the course of assessment proceedings, and upon the alleged denial by*

*Shri Vinod Kumar Goyal, Prop. M/s Maa Durga Trading Company. As contended by Ld. AR, the statement of Shri Vinod Kumar Goyal had been recorded at the back of the assessee and it was also not recorded in the case of the appellant, as Shri Vinod Kumar Goyal appeared in some other case before the AO on 29.12.2009. Therefore, such statement of the third party has no evidentiary value. Moreover, in declaring such huge amount of purchases as bogus or in genuine, the AO has not discharged his onus u/ 69 in bringing material on record which may prove beyond any shred of doubt that such purchases were not actually made by the assessee. Further, the AO's case falls flat on the inherent weakness of his action in acknowledging the fact that the sales have been accepted by the AO, which can be made out of purchases only which if not accounted for, would lead to non-existence of sales to that extent. Therefore, the imbalance in the trading version effected by the AO, is wholly imaginary and baseless and hence unsustainable. The AO has also not invoked any section or legal sanction under the I.T. Act, 1961 under which these purchases could be disallowed being ingenuine or not expended. Thus, the entire addition of Rs. 1,33,56,101/- being meritless on both fact and law stands deleted.*

11. *I have carefully considered the contentions of the Ld. AR and perused the impugned order of assessment. I find that the AO has in a very mechanical and cursory manner made the addition of Rs. 14,43,239/- without any proper finding or discussion on record. The very fact that the balance amount of Rs. 14,43,239/- was outstanding as on 31.03.2007 from*

*M/s Hindustan Trading Co. shows that the liability existed as such as on 31.03.2007 and hence as per the elaborate defense and discussion undertaken by the Ld. AR on this issue, both on facts and law, the addition of Rs. 14,43,239/- can in no way be assessed as deemed income u/s 41(1) of the Income Tax Act, 1961. Similarly, such credit balance cannot also be by any stretch of imaginary treated as bogus when the AO has not discharged his burden in establishing the non-genuineness of such credit or, which may be subjected to the provisions of section 68 of the Income Tax Act, 1961. In fact, the entire disallowance is wholly without any legal support or factual material on record. Hence, it stands cancelled.”*

4. The Ld. DR. Supported the assessment order contending that the order of the learned CIT(A) is perverse and contrary to the evidence available on record in holding that the Assessing Officer has not been able to make out his case against the progressive trading result declared by the assessee and has declared the purchases worth Rs. 1,33,56,101/- as bogus by relying on Inspector's report, which was not even confronted to the assessee as on facts in as much as the Inspector's report was duly confronted to the Counsel on 04-12-2009 and this fact is duly mentioned in the very first line of para: 6 at page 3

of the assessment order; that the statement of Sh. Vinod Goyal was recorded in another case and was not confronted to the assessee, hence it had no evidentiary value-especially, inspite of being given repeated opportunities, the assessee did not produce the party M/s Maa Durga Trading Co. nor apprised any difficulty in doing so and in another case with similar facts, this person namely Sh. Vinod Goyal was found to be having the same PAN as mentioned in the alleged confirmation furnished by the assessee; that Sh. Vinod Goyal denied having any concern with M/s Maa Durga Trading Co. and the assessee did not cooperate in disclosing the whereabouts of Sh. Vinod Goyal, therefore, he could be traced only towards the end of limitation and there was no time to confront the assessee on this issue after 29-12-2009 and that the Assessing Officer's case falls flat on the inherent weakness of his action in acknowledging the fact that the sales have been accepted by the Assessing Officer.

5. The Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(A). He submitted that the AO has not disputed the sales of the assessee. that Shri Vinod Kumar Goyal appeared in some other case before the AO on 29.12.2009 and he allegedly stated that he had no concern with M/s Maa Durga Trading Company. It was further submitted that neither the copy of the said statement was ever made available to the assessee nor any opportunity to cross examine Sh. Vinod Kumar Goyal was allowed to the assessee. Thus, any statement of Sh. Vinod Kumar Goyal relied upon by Ld. AO cannot be admitted as evidence and, therefore, needs to be excluded from consideration in view of 125 ITR 713 (SC) and 288 ITR 345 (Del.). As regards to the Inspector's report as to the non-existence of the parties which was submitted that copy of the said report was not available to the assessee. Therefore, this report cannot be relied upon. He further argued that even if it is considered, though denied that assessee has not made purchases from these two parties yet the factum of purchase per se cannot be denied. How could

the sales be effected without purchases? This fact cannot be lost sight of that assessee is a trader and has made sales of 2,58,167 kgs. Of sheet and plate and 3,71,995 kgs. Of structure and which has been accepted by the Ld. AO also. Assessee had made sales, it could not have been made without the corresponding purchases. Therefore, this allegation of Ld. AO that purchases to the tune of Rs. 1,33,56,101/- has not been made cannot be justified on any score and cannot be sustainable.

6. Heard. It is un disputed fact on record that the AO treated M/s Maa Durga Trading Company as bogus entities on the basis of inspector's report which was not confronted to the assessee. The AO noted that the assessee did not cooperate in assessment proceedings by not disclosing the whereabouts of Sh. Vinod Goyal, therefore, he could be traced only towards the end of limitation and there was no time with the AO to confront the assessee on this issue after 29-12-2009.

7. We find that the Ld. CIT(A) erred in observing the AO was not able to make out his case against the progressive trading results declared by the assessee and that the purchases worth Rs. 1,33,56,101/- was treated as bogus by the AO, relying on Inspector's report, which was not even confronted to the assessee in as much as the Inspector's report was duly confronted to the Counsel on 04-12-2009 and this fact is duly mentioned in the very first line of para: 6 at page 3 of the assessment order. The ld.AR submission that the statement of Sh. Vinod Goyal was recorded in another case and was not confronted to the assessee, in no way reduce its evidentiary value, especially in as much as repeated opportunities, the assessee did not produce the party M/s Maa Durga Trading Co. nor apprised any difficulty in doing so and in another case with similar facts, this person namely Sh. Vinod Goyal was found to be having the same PAN as mentioned in the alleged confirmation furnished by the assessee. On the fact, the ld. CIT(A) ought to have examined

veracity of the statement of statement of Sh. Vinod Goyal and the Inspectors report before landing on the such conclusions.

8. The counsel for the assessee contended that the AO has treated the purchases of Rs. 1,10,38,298/- and Rs. 23,17,803/- from M/s Maa Durga Trading Company and M/s Om Trading Company respectively as bogus only on the misconceived and fallacious basis that they did not exist at the given addresses, relying upon the report of the Inspector which was not confronted with the assessee during the course of assessment proceedings, and upon the alleged denial by Shri Vinod Kumar Goyal, Prop. M/s Maa Durga Trading Company. As contended by Ld. AR, the statement of Shri Vinod Kumar Goyal had been recorded at the back of the assessee and it was also not recorded in the case of the appellant, as Shri Vinod Kumar Goyal appeared in some other case before the AO on 29.12.2009. Therefore, such statement of the third party has no evidentiary value.

9. Considering the ld. AR contention that the purchases were treated as bogus only on the misconceived and fallacious basis that they did not exist at the given addresses, relying upon the report of the Inspector which was not even confronted with the assessee during the course of assessment proceedings, and upon the alleged denial by Shri Vinod Kumar Goyal, Prop. M/s Maa Durga Trading Company whose statement had been recorded at the back of the assessee. The ld. Sr. Dr. has not controverted these contentions raised by the counsel for the assessee. Thus, the assessee was prevented by sufficient cause in not producing the necessary documents/evidences as required by the AO, which the Ld. CIT(A) has not adjudicated while addressing the issue of bogus purchases, though, it was duly confronted to the assessee during the course of assessment proceedings vide para 6, page 8 of the assessment order. Therefore, we find it deem fit to restore the issue back to the CIT(A), for deciding the matter pertaining to bogus purchases after granting due opportunity afresh of being heard to both the assessee and the AO.

10. In the above view, the case is restored to the CIT(A), for afresh consideration and examination of the issue of bogus purchase of Rs. 1,33,56,101/- with the following observation:

- I. To examine the statement of Shri Vinod Kumar Goyal, Prop. M/s Maa Durga Trading Company recorded at the back of the assessee, and Inspector report, confront the assessee with the same.
- II. Call for remand report from the AO on the submission of the assessee.
- III. No doubt, the assessee shall cooperate in the afresh proceedings, before the CIT(A).
- IV. All pleas available under the law shall remain so available to the assessee in the fresh proceedings before the Ld. CIT(A).

11. The next issue pertains to the bogus liability of an amount of Rs. 14,43,239/-. The AO made the addition as an outstanding liability of M/s Hindustan Trading Company as

on 31.03.2007 by way of bogus and non-existent liability and hence, added it to the assessee's taxable income.

12. The counsel submitted that it was out of the opening balance carried forward from the earlier years that itself acknowledge the liability on record (APB,71). The CIT(A) has rightly held that the credit balance of Rs. 14,43,239/- cannot be assessed as deemed income u/s 41(1) of the Income Tax Act, 1961 by any stretch of imagination as bogus liability when the AO has not established the non-genuineness of such credit, how it could be subjected to the provisions of section 68 of the Income Tax Act, 1961. In this regard, he reiterated the submission made before the CIT(A), (PB 71-77) as under:

- a) The amount in question is opening balance and there are no purchases from M/s Hindu Trading Company during the impugned year and, therefore, no addition is called for.*
- b) Application of section 41(1) requires a positive finding from the Ld. AO that the impugned liability is a trading liability and if at all the said liability has ceased to exist, it has ceased to exist in impugned*

year. Further merely because creditor is not traceable cannot be the reason for application of section 41(1) as held in the following judicial decisions:

- **Satpal & Sons (HUF) vs. ACIT, in ITA No. 388/Del/2015, date of order 29.08.2017, ITAT Delhi Bench.**
  - **CIT vs. Alvares & Thomas (2016) 69 taxmann.com 257 (kar.).**
  - **CIT vs. Alvares & Thomas (2015) 62 taxmann.com 286, ITAT Bangalore Bench.**
  - **DCIT vs. Ratnamani Metals & Tubes Pvt. Ltd., in ITA No. 3783/Ahd./2008, date of order 01.10.2010, ITAT Ahmedabad.**
  - **CIT vs. Bhogilal Ramjibhai Atara., (2014) 222 Taxman 0313 (Guj.).**
- c) The very fact that the liability is appearing in the balance sheet at **PB 10** read with **PB 13**, is a strong acknowledgement of debt payable by assessee. Reliance is placed on the following judgments:
- **CIT vs. Sita Devi Juneja (2010) 325 ITR 0593 (P&H).**
  - **CIT vs. Tamil Nadu Warehousing Corpn., (2007) 292 ITR 0310 (Mad.)**

13. We find that the AO did not brought any evidence on record to hold that such liability has ceased to exist or remitted by the creditor; that the said liability is being shown as payable by the assessee in his balance sheet reflects that this liability is payable by the assessee and that the confirmation from M/s Hindustan Trading Company which was duly signed by the said party further goes to prove that such sum has not been remitted by the creditor.

14. In view of above fact, the entire disallowance on account of bogus liability of Rs. 14,43,239/- is bad in law in the absence factual material on record. As such, we find no error in finding of CIT(A) on this issue and accordingly confirm finding of CIT(A) on this issue. All the grounds pertaining to bogus liability are rejected.

15. In the result, the appeal is partly allowed for statistical purpose.

Order pronounced in the open court on 06.11.2018

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**  
 Dated 06.11.2018  
 \*Kavita Arora

Sd/-  
**(DR. MITHA LAL MEENA)**  
**ACCOUNTANT MEMBER**

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	31.10.2018/01.11.18
Date on which the typed draft is placed before the dictating Member	01.11.18/05.11.18
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	06.11.2018
Date on which the final order is uploaded on the website of ITAT	06.11.2018
Date on which the file goes to the Bench Clerk	06.11.2018
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	

