

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1364/Del/2015  
AY: 2010-11**

Dy.CIT, Circle 19(2) New Delhi	<b>vs.</b>	PES Installations Pvt. Ltd. 13 <sup>th</sup> KM Mile Stone Opp. Maharaja Agarsain Hospital Rohtak Road New Delhi 110 056  PAN: AAACP7353A
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**(Appellant)**

**(Respondent)**

**Department by :** Sh. Surender Pal, Sr.D.R.

**Assessee by :** Sh. Sanjay Gupta, C.A.

**Date of Hearing :** 08/11/2018

**Date of Pronouncement:** 30/11/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by Revenue against order dated 19.12.2014 passed by Ld.CIT(Appeals)-7, Delhi pertaining to Assessment Year (A.Y.) 2010-11 on following grounds of appeal:

*"1. In the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting addition of Rs.7,15,83,975/- made by Ld. Assessing Officer (Ld. A.O.) by rejecting books of accounts and holding the purchases shown by the assessee as bogus.*

2. In the facts and circumstances of the case, the Ld.CIT(A) has erred in admitting the additional evidence filed by assessee in violation of Rule 46A(3) as the assessee's case is not covered under Clause (a) to (d) of Rule 46A.

3. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”

**2. Brief facts of the case are as under:**

Assessee filed its return of income on 11/10/10 declaring total income of Rs. 73,70,807/-. The case was selected for scrutiny and notice under section 143 (2) of the Act along with notice under section 142 (1) and questionnaire was issued to assessee. In response to statutory notices, after a considerable delay, representative of assessee appeared before Ld. AO and filed requisite details as called for.

**3.** Ld. AO recorded that assessee failed to produce books of accounts for verification of purchases nor have filed any copies of accounts of persons from whom the purchases were made for verification of creditors and purchases. Ld. AO issued summons under section 131 and notice under section 133 (6) of the Act was issued. As none attended on behalf of assessee, in compliance to summons, Ld.AO came to conclusion that, purchases were not supported by genuine bills, challans and details of dispatch of goods and transportation of goods and considered not verifiable. It was also observed by Ld. AO that entities from whom purchases are shown, are non-existent paper entities, who are not carrying any genuine regular business activity. Ld. AO therefore made addition of Rs.44,89,680/-on account of other income without allowing any expenditure.

Ld.AO also rejected books of accounts and estimated net profit at 25% of sales, 40% on job work which was unreasonable and excessive according to assessee.

**4.** Aggrieved by order of Ld. O assessee preferred appeal before Ld.CIT(A), who allowed claim of assessee and deleted addition.

**5.** Aggrieved by order of Ld. CIT (A) revenue is in appeal before us now.

**6.** Ld.Sr.DR placing reliance upon order of Ld. AO submitted as under:

i) The purchase are not supported by genuine bills, challans and details of dispatch of goods and transportation of goods and considered not verifiable.

ii) Entities from whom purchases are shown are non-existent are not carrying on any genuine regular business activity.

iii) From the copies of purchase bills it is not ascertainable what was the mode of transportation of goods from the destination of seller to the destination of assessee.

iv) In some cases whole of amount of purchase was shown as creditors at the end of the year and the assessee has not produced any evidence to discharge its onus to explain the amount of creditors as appearing in its books of account.

v) Vide summons under section 131 and notices under section 133(6), 20 entities were required to attend this office of confirm the purchases made by the assessee company, but no such person attended in compliance to summons. Report of Inspector of this office, who was deputed to find out about genuineness of such entities, is self explanatory as tabulated above.

vi) Wherein replies have been received, only copies of account are sent. No return filed with the Trade Tax Department showing total sales made by the seller is annexed with the reply filed. In the absence of details of returns of sales made by the seller and as verified. In the absence of details of returns of sales made by the seller and as verified from the records of Trade Tax Department, it is held that the entities from whom purchases made are shown, are not genuine entities and are non-existent paper entities who are not carrying out any genuine business. Purchases made from these entities are not genuine purchase but just to enhance the cost of purchase to reduce profit and eventually taxable income of the assessee company.

vii) Nothing has been brought on record to prove genuineness of creditors appearing in the books of account even after providing various opportunities to the assessee.

**6.1.** He thus submitted that, as details filed by assessee were not verifiable, addition made by Ld.AO deserves to be sustained.

**7.** On the contrary, Ld.AR submitted that assessee submitted following documents during assessment proceedings:

(i) Confirmation from the parties of the account showing purchases and their income tax PAN duly signed and stamped.

(ii) Copy of ledger account for the subsequent year showing the detail of cheques etc. issued to the parties against their purchases.

(Hi) Copies of purchase bills showing the complete details of the supplies made along with detail of VAT registration details.

(iv) Bank statements were also produced for verification of payment through cheques. Original bills were also produced for their verification.

**8.** It was submitted that, assessee is engaged in execution of work orders, awarded by Government departments, hospitals, and makes purchases from various parties, which usually differs from work to work and year to year. He submitted that it is admitted fact that, purchases were made on strength of duly issued tax invoices, that contains TIN number and other details, which were produced before Ld. AO. Regarding non-compliance of confirmation of purchases, Ld.AR submitted that verification of books of accounts contained complete vouchers, purchase bills which were produced before Ld.AO on various dates, which has not been considered in assessment order. Insofar as said notice issued under section 133 (6) is concerned, Ld.AR submitted that parties have directly sent confirmation to Ld.A.O. and some of them have attended office of Ld.AO, but no attendances were marked in order sheet. He thus submitted that observations of Ld. AO regarding purchases made and creditors being bogus is incorrect and without any basis..

**9.** Ld.AR submitted book results of assessee has been progressive, since past assessment years. Placing reliance upon observations of Ld.CIT (A) Ld.AR submitted the addition to be deleted.

**10.** We have perused submissions advanced by both sides in light of records placed before us. It is observed that Ld. CIT(A) admitted additional evidence filed under rule 46A, after calling for remand report from Ld.A.O. Ld. CIT (A) observed that, for

rejecting books of accounts, Ld.A.O. is to consider whether or not books disclose true state of accounts and correct income could be deduced therefrom. Admittedly, assessee's method of accounting has been accepted in preceding Assessment Years and in our opinion, unless there is contrary material available on record method consistently followed by assessee cannot be rejected without any basis. We therefore agree with observation of Ld.CIT (A) that accounts regularly maintained in course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. We therefore uphold the view of Ld.CIT(A) in accepting books of account of assessee.

**11.** Insofar as addition regarding estimation of sales, job work income and other income, it is observed that Ld.A.O. has not given any reason for estimation. Ld.CIT (A) has recorded that even during remand proceedings Ld.A.O. has not made any enquiries and no comments have been given regarding books of accounts maintained by assessee. It is very much categorical to observe that sales has not been doubted by Ld.A.O. Ld.CIT (A) accepted claim of assessee by observing as under:

*“6.4 the appellant had submitted before several documents like confirmation from parties, copies of purchase bills, original bills, bank statements, copy of Ledger accounts. These were all sent to the AO from sending a report. However, the AO has not given any comments on the documents submitted.”*

In paper book filed before us at page 222, copy of remand report has been placed. Ld. AO observed therein that, mere filing PAN

numbers or assessment particulars, VAT returns and copy of sales tax RC etc., do not establish identity of persons. He further notes that actual and true identity of persons or company was business undertaken by them. PAN numbers/registration of VAT are allotted on basis of application, without actual defacto verification of identity or ascertaining actual nature of business activity, and therefore cannot be blindly accepted. On further perusal of the remand report it is observed that Ld. AO himself has not taken up any steps to verify these details. In our considered opinion moment assessee filed various details regarding sellers, onus shifts upon Ld. AO to verify the same at his end. Further it is observed that assessee has been having a progressive profit ratio from the preceding assessment years evident from page 240 placed in the paper book.

**12.** On the basis of above, we do not find any infirmity in the view taken by Ld.CIT (A) and the same is upheld.

**13. Accordingly grounds raised by revenue stands dismissed.**

**14. In the result appeal filed by revenue stands dismissed.**

Order pronounced in the open court on 30/11/2018

Sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 30<sup>th</sup> November,2018

- Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	