

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6275/Del/2016
(Assessment Year: 2011-12)

DCIT Circle-16(1), New Delhi	Vs.	Maple IT Services Pvt. Ltd, HR-15/17, Basement, Cabin No. 03, Pul Pehladpur, New Delhi PAN: AAECM4273E
(Appellant)		(Respondent)

Revenue by :	Ms Rinku Singh, Sr. DR
Assessee by:	None
Date of Hearing	14/01/2019
Date of pronouncement	18/02/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the ld CIT(A)-24, New Delhi dated 30.09.2016 for the Assessment Year 2011-12.
2. The revenue has raised the following grounds of appeal:-
 - “1. *Whether in facts and circumstances of the case and in law, the ld CIT(A) is legally justified in admitting additional evidence under Rule 46A of the Income Tax Rules, 1962 (the Rule) even when the case of the assessee did not fall in clause (a) to (d) of Rule 46A of the Rule?*
 2. *Whether in facts and circumstances of the case and in law, the ld CIT(A) is legally justified in deleting the addition of Rs. 2,17,17,417/- on account of unverifiable purchase on the basis of self serving claim of the assessee ignoring a fact that assessee was admittedly engaged in bogus purchase in immediately preceding assessment years (Assessment Year 2009-10 and 2010-11) and had not discharged its initial onus to produce any verifiable evidence in support of its claim of purchases from related parties?*
3. The brief facts of the case is that assessee , a company , filed its return of income on 27/9/2011 declaring income of INR 55 2684/- . Several notices were issued to the assessee and there was non-compliance with respect to the several details called for. Therefore, the learned assessing officer

proceeded to make the assessment on the basis of the facts available on record. He further mentioned that the assessee is deliberately avoiding substantiating its return of income and claim of various expenses and deductions. In view of this he found that assessee has debited the interest expenditure of INR 1 9492033/- in profit and loss account, in absence of any details he proceeded to disallow 15% of the above amount of Rs. 2923804/-. The assessee has also entered into several transactions of substantial nature of purchase and sales within the group companies. He noted that the assessee has shown purchases of INR 21 7170 4178 and sales of INR 21 7370 6348 from the sister concerns. He further referred that the assessee belongs to Tulip group whose chairman in the statement under section 132 (4) during the course of search made a substantial declaration of Rs 25,00,00,000 on account of bogus purchases. Therefore the learned assessing officer noted that that assessee company has made substantial purchases and sales with group companies for which no details have been filed by the assessee. In absence of any detailed he proceeded to make the addition of 10% of total purchases made from the group companies. Accordingly he made an addition of Rs 21717417/-. Accordingly assessment under section 144 of the income tax act 1961 was passed on 27/3/2014 determining total income of the assessee at Rs 25193905/- against the returned income of INR 5 52684/-.

4. Against the order of the learned AO assessee preferred an appeal before the learned Commissioner of Income Tax (A) – 24, New Delhi. The learned CIT – A passed an order on 30/9/2016 wherein he upheld the disallowance of interest expenditure, however, deleted the disallowance of/addition of 10% of the total purchases. Therefore revenue is in appeal before us against the deletion of 10% of the disallowance of purchase expenses deleted by the learned CIT – A.
5. The learned senior departmental representative vehemently submitted that the learned CIT – A has admitted the additional evidence under rule 46A of the income tax rules even when the assessee's case did not fall under the any of the exact exceptions provided under that rule. She submitted that the assessee was given enough opportunity before the assessing officer but failed to produce any details before the assessing officer and surprisingly

produced all the details before the learned CIT – A. She further referred to para number 4.4.3 of the order of the learned CIT appeal wherein she referred to the various observations made by the assessing officer for examination during the course of remand proceedings. She stated that the assessing officer has vehemently opposed admission of additional evidences.

6. With respect to the disallowance purchases the assessee did not produce details of sales and purchases but merely undertook rotation of sale and purchase the sales and purchases were entirely to the group concerns giving rise to suspicion that it has indulged in bogus transactions to introduce unaccounted income. Further she stated that there is an admission of bogus purchases in the case of the assessee. She stated that this finding of the learned assessing officer has been brushed aside by the learned CIT – A without showing any reason. Therefore she submitted that that the learned CIT appeal in order has faltered on the issue of additional evidences admitted by him without recording the reasons as well as deleting the addition itself.
7. Despite notice , none appeared on behalf of assessee to represent the case before us. Further more on looking at the order sheet of these appeals it is apparent that in earlier times also whenever the appeal was fixed none appeared on behalf of the assessee. Therefore it is apparent that assessee is not interested in presenting its case before the bench. It is also evident that before the assessing officer, the assessee did not appear and furnish the proper details. In view of fact that this appeal is filed by the revenue in 2016, it is decided on merit on basis of information available on record.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently the assessee has entered into several transactions of purchases and sales with its sister concerns. Before the assessing officer no details were furnished. Therefore the learned assessing officer made the addition of 10% of the total purchases. The learned assessing officer was of the view that in the statement dated 25/9/2009 recorded u/s 132 (4) of the income tax act of the chairman of the group wherein he has disclosed INR 250,000,000 on account of bogus purchases debited to the books of account for the financial year 2008 – 09 and 2009 –

10. The learned assessing officer noted that assessee in order to inflate turnover has routed the purchases and sales among group companies and the same time reduced the profit and inflate expenses. Therefore the learned AO was concerned about the genuineness of the transactions of sale and purchases within group companies. Before the learned CIT – A assessee made submissions regarding purchases and sales which was also made before the learned assessing officer vide letter dated 27/11/2013. However the AO did not believe that it is the complete information based on which he can assess the genuineness of the purchases. The learned CIT – A noted that during the period when the assessment proceedings were completed the chairman of the group was jailed due to various reasons and therefore he admitted the additional evidences. In view of this we do not find any infirmity in the order of the learned CIT –A of the additional evidences were admitted. In view of this ground number 1 of the appeal of the learned AO is dismissed.

9. However with respect to the deletion of the addition, the learned CIT – A has noted that AO noted that appellant has purchased and sold goods in the same day with the transactions being with sister concerns only and that too at the end of the year raised doubts about the genuineness of the transactions. Therefore the learned CIT – A noted that however this is a suspicion and not evidence. According to him there is no evidence to disprove its claim that the purchases which are backed by the invoices issued by the sister concern are bogus. He further noted that more over considering that both the purchaser and the seller group concern are bogus purchase would naturally be offset with bogus sales. He further noted that one cannot disallow the purchases on suspicion and on while ignoring that the corresponding purchases would then have to be treated as bogus also thus resulting in a zero-sum outcome. Therefore he deleted the above disallowance made by the learned assessing officer. We have carefully considered the reasons given by the learned assessing officer as well as the learned CIT – A. The learned CIT – A has deleted the disallowance on the single premises that bogus purchases would naturally be offset with bogus sales. However he did not give any answer to the allegation of the learned assessing officer that what is the reason that appellant has purchased and

sold goods on the same day with the transaction being with sister concerns only and that too at the end of the year. This is not the answer for genuineness of the transactions. If the learned assessing officer has not made any investigation, the learned CIT appeal has failed miserably to give any answer to the finding of the learned assessing officer. Further the contention of the learned CIT – A is also fallacious to say that it is a zero-sum outcome. It may be the fact that the purchases are at lower quantity at higher prices and the sales are of lower amount and higher quantity, than it cannot be a zero-sum outcome. Even otherwise he failed to find out the real reason of entering into these transactions i.e. genuineness. He also gullibly believed the explanation given by assessee before him that the assessee has offered a profit on the set of purchases and sale transactions for the simple reason that there is no reference of the items traded by the assessee. Further on the total turnover even with the sister concern of INR 217,300,000 assessee has merely offered the profit of INR 5.52 Lacs. There is no finding of the learned CIT – A on these accounts. In view of this the whole issue is set aside to the file of the learned CIT – A to give proper finding on deletion of the addition made by the learned assessing officer of Rs. 21717417 on account of 10% of the total purchases made from the group companies. Accordingly ground number 2 of the appeal is set aside to the file of the learned CIT – A with the above direction. Needless to say that proper opportunity of hearing would be given to the assessee as well as to the learned assessing officer to make the detailed enquiry on the issue. Hence ground number 2 of the appeal is allowed with above direction.

10. In view of this the appeal of the learned AO is allowed partly with above direction for statistical purposes.

Order pronounced in the open court on 18/02/2019.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/02/2019
Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi