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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.645/Del/2016
Assessment Year: 2011-12

M/s. Crossing Infrastructure (P.) Ltd., Crossing Republic Township, Glass Gate, Near ABES Engg. Collage, NH-24, Dundahera, Ghaziabad.	**Vs.**	DCIT, Central Circle, Ghaziabad
PAN :AACCC5615Q		
(Appellant)		**(Respondent)**

Appellant by	Shri Ajit Gandhi, CA
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	25.03.2019
Date of pronouncement	28.03.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 29/12/2015, passed by the Ld. Commissioner of Income-tax (Appeals)-Ghaziabad [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

1. *For that the Ld. CIT(A) grossly erred in sustaining the addition of Rs. 2,21,27,264/- made by the Ld. Assessing Officer (AO) being disallowance of expenses claimed by the appellant company on account of purchases made from three parties on the ground that the three parties are not genuine.*

2. *For that no defect whatsoever having been found by the Ld. AO in the regularly maintained audited books of account of the appellant company, the impugned addition is unwarranted and the same ought to have been deleted by the Ld. CIT(A).*

3. *For that no discrepancy whatsoever having been found by the Ld. AO in the course of assessment proceedings, the impugned addition is unwarranted and the same ought to have been deleted by the Ld. CIT(A).*

4. *For that the impugned addition having been made on the basis of materials gathered at the back of the appellant company without providing to it a chance to have its say in rebuttal, the same is unwarranted and ought to have been deleted by the Ld. CIT(A).*

5. *For that the Ld. CIT(A) was not justified in not taking into consideration the rejoinder dated 28.12.2015 filed by the appellant company to the remand report dated 06.11.2015 submitted by the Ld. AO.*

6. *For that being unsustainable, both factually and legally, the impugned addition of Rs.2,21,27,264/-, it is prayed, may kindly be deleted.*

7. *For that the appellant company craves leave of this Hon'ble Tribunal to be allowed to take additional ground or grounds of appeal at or before the time of hearing.*

2. Briefly stated facts of the case as called out from the order of the lower authorities are that the assessee was engaged in the business of real estate, developer, builder and colonizer and for the year under consideration filed return of income on 30/09/2011 declaring total income of Rs.4,42,67,430/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (in short 'the Act') was issued and complied with. The Assessing Officer has noted that the survey under section 131 of the Act was carried out at the premises of the holding company of the assessee, i.e., M/s Amazon Infrastructure Private Limited by the Investigation Wing of the Department wherein the assessee declared additional income of Rs.2,01,00,000/- for assessment year 2010-11 and

Rs.49,00,000/- for the assessment year 2011-12, i.e., the year under consideration. The assessee included additional income for the year under consideration in the return of income filed and hence no separate addition was made by the Assessing Officer. In assessment proceeding, the Assessing Officer observed that the assessee shown purchases from following parties as under:

A)	*M/s. Ganesh Traders*	*13812075/-*
B)	*M/s. Anjali Traders*	*7696939/-*
C)	*M/s. Buildwell Cement Traders*	*618250/-*
	Total	***22127264***

2.1 The assessee filed copy of ledger account of these parties in its books of accounts and bank statement showing payment through cheque, but the Assessing Officer asked confirmation of the transaction from the parties, which the assessee failed to produce. The Assessing Officer has noted that during investigation by the Investigation Wing of the Department, above parties were found to be nonexistence. He has mentioned that in search proceedings under section 132 of the Act at the premise of M/s AK Traders Group and M/s Panchsheel Buildtech Private Limited Group, above parties including few other parties were found to be engaged in providing accommodation entries only. He has referred to the assessment in the case of AK Traders Group also. In view of failure of the assessee in producing confirmation of those parties and parties found to be nonexistence in search/assessment proceeding of other cases, the Assessing Officer disallowed the purchases amounting to Rs.2,21,27,264/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who upheld the disallowance observing as under:

"5.4 Grounds of appeal no. 5 & 6:
In these ground the appellant has claimed that the A.O. has erred in treating purchases non genuine. From the assessment order, I find that the assessee had failed to produce any confirmation from three parties namely—(i) M/s. Ganesh Traders (ii) M/s Anjali Traders & (iii) M/s Buildwell Cement Traders. On the other hand inquiries conducted by Investigation Wing during search in case of M/s A.K. Traders group and M/s Panchsheel Buildtech (P) Ltd. had revealed that these parties were only entry providers. During assessment of M/s A.K. Traders by DOT, Central Circle, Ghaziabad, it was again confirmed that persons of M/s A.K. Traders group were mere entry providers. Statement of
fact that they were mere entry providers.

Even otherwise during appellate proceedings the appellant has been provided copies of statements dated 13.10.2010 u/s 132 of Sh. Pankaj Sharma Prop, of A.K. Traders who admitted to have operated concerns engaged in providing bogus bills as accommodation entries. Suffice it to say that assessee has been provided enough opportunity to prove genuineness of purchases and he has been confronted with the results of inquiries that the concerns are non existence on given addresses and assessee even failed to produce any confirmation from them. Therefore, the contention that enough opportunity was not provided is rejected.

In his statement u/s 132 dated 13.10.2010, Sh. Pankaj Sharma admitted that he operated following concerns engaged in providing bogus bills:-

1. M/s A.K. Traders, 82-A, Mahendra Enclave, Ghaziabad
2. M/s Tushar Building Material Suppliers (shop no. 3, Ilarish Chandra lea Bagh, Chhaparaula, Ghaziabad.
3. M/s Sigma Sales Corporation, 13-6, Ramtc Ram Road, Ghaziabad.
4. M/s Manvi Traders, C-7, Ramleram Road, Ghaziabad.
5. M/s. G.S. Steel, 14, Navyug Market, Ghaziabad
6. M/s. S.R. Enterprises, 14, Navyug Market, Ghaziabad
7. M/s. Mahalaxmi Traders, Delhi Gate, Ghgaziabad.
In this statement in answer to question no. 26., Sh. Pankaj Sharma categorically admitted that he has not carried out any actual business in these concern. Any concerns which wanted bills of goods would deposit amount in the bank A/c of these concerns through RTGS or cheque and he would return back cash to the concerned party after withdrawal from bank A/e of these concerns or after transferring amount to some other account and withdrawal thereafter. He and his persons were engaged in withdrawing money and returning back. Bill making was done by Anshul and Pa wan. In answer to question no. 27, he has stated that since only bills were made by these firms, there is no question of these firms having any nodown. In his statement dated 13.02.2013 u/s 131 during

assessment proceedings u/s 153A, Sh. Pankaj Sharma has again reiterated that he was engaged only in providing bogus bills and the said concerns did not carry out any actual supply of goods. He used to earn commission @ 0.01% on these transactions.

Similarly Sh. Sanjay Thakur in statement u/s 131 dated 13.02.2013 has also admitted to be engaged in providing accommodation entries along with Sh. Pankaj Sharma and Harish Gupta.

*All these statements were provided to the appellant during appellate proceedings. Besides, on physical inquiry' by Investigation Wing, M/s Gaitesh Traders and Buildwell Cement Traders were found non existence on the given addresses. All these evidence having been confronted to the appellant during appellate and assessment proceedings*and despite that the assessee having failed to file even confirmation of these parties the appellant's claim of genuineness of purchases is not tenable.*

It is found that the appellant has made purchases of Rs. 1,38,12,075/- from M/s. Ganesh Traders. However, M/s Ganesh Traders in turn has made purchases from M/s A.K. Traders, M/s Manvi Traders, M/s Sigma Sales Corporation, M/s S.R. Enterprises who are nothing but entry providers. Therefore, purchases from M/s. Ganesh Traders by the assessee are clearly non genuine. Besides, physical inquiries by investigation Wing reveals that on the given address of Ganesh Traders at Plot No. 1, Opp. DPS School, Meerut Road, Ghaziabad was found to be non-existent and no persons in locality were, aware of this concern. For bank purposes, its address was given to be 2/152, Tyagi Market, Patel Marg, Sibbanpura, Ghaziabad but inquiry reveals that this shop was owned by one Ganesh Trading company which was dealing in batteries. Inquiry with Mahamedha Urban Cooperative Bank as regards bank account of M/s Ganesh Traders showed that cash was withdrawn from this account after deposit by cheque. In light of these facts including the statements of entry providers and the fact that the appellant failed to produce any confirmation from the said concern, it is amply clear that purchases are not genuine from M/s Ganesh Traders.

As regards Anjali Traders from which the appellant has purchased of Its. 76,96,939/-. It was found that there was no concern was on the given address 709, Krishna Vihar Colony, Lalkuan, Ghaziabad was found. Inquiry with Mahamedha Urban Cooperative Bank as regards bank account of M/s Anjali Traders showed that cash was withdrawn from this account after deposit by cheque. In light of above facts including statements of entry providers and the fact that the appellant failed to'produce any confirmation from the said concern, it is amply clear that purchases are not genuine from M/s Anjali Traders.

As regards Buildwell Cement Traders from which purchase of Rs. 618250/- are claimed, it is seen that inquiry revealed that no persons in locality were aware of this concern and post sent by Investigation Wing was received unserved mentioning that there was no such concern.

In view of above facts, it is clear that the appellant has failed to prove genuineness of purchases. Action of the A.O. therefore, calls for no interference. Additions of Rs.2,21,27,264/- are sustained. Grounds of appeal 5 & 6 are rejected."

2.2 Aggrieved with the finding, the assessee is in appeal before the Tribunal, raising various grounds as reproduced above.

3. In the grounds raised, the sole issue involved is of disallowance of purchase amounting to Rs.2,21,27,264/-.

4. Before us, the Ld. counsel of the assessee filed a paper-book containing pages 1 to 167 and submitted that the assessee has maintained proper books of accounts and purchases in question are duly entered in its books of account. The Ld. counsel referred to copy of details of purchases made from M/s Ganesh Traders available on pages 37 to 92 of the Paper Book. Similarly, referred to the details of purchases made from M/s Anjali Traders and M/s Buildwell Cement Traders available on pages 93 to 130 and pages 131 to 148 of the APB respectively. The Ld. counsel submitted that goods have been transported to the premises of the assessee mainly through trucks and tempos, which are duly mentioned in the bills issued by those parties. The Ld. counsel referred to page 38 of the Paper Book to show that goods mentioned therein were transported through Vehicle No. UP-14M 2440. The Ld. counsel has said that all the purchases are duly entered in the books of accounts of the assessee and, thus, no disallowance should be made merely on the basis of the statement of the 3rd party that they were engaged in providing

accommodation entries. The Ld. counsel relied on the decision of the Tribunal in ITA No. 5087 to 5091/ Del/2016 the case of Panchsheel Buildtech Private Limited for assessment year 2009-10 to assessment year 2013-14. The Ld. counsel submitted that in the said case also there were allegation of providing accommodation entries by the same parties and the Tribunal (supra) directed to estimate the profit of the assessee applying net profit rate of 8% or higher rate declared by the assessee. The Ld. counsel submitted that net profit rate of 8% may also be applied over the turnover of the assessee for estimating the profit for the year under consideration.

5. On the contrary, the Ld. DR submitted that the assessee has failed to submit any confirmation from the alleged purchase parties and during search proceeding, those parties has admitted the fact of issuing only bogus bills without any physical delivery of the goods to the assessee. The Ld. DR submitted that the vehicles mentioned in the bills issued by the parties are registered as Scooter/ motorcycle or car and thus the claim that goods have been transported to the premise of the assessee is totally wrong claim. She submitted a list of registration number mentioned in the copy of bills issued by those parties and type of vehicle, downloaded from the website vahan.nic.in. The details of registration number and corresponding vehicles filed by Ld. DR is summarized as under:

S. No.	***Registration Number***	***Vehicle mentioned in Bill available on page number of the paperwork***	***Type of vehicle***
1.	*UP12M2840*	*Page No. 70 of PB*	*M-Cycle/Scooter; Hero Honda Motors Ltd/CD DLX*

2.	*UP16M0480*	*Page No. 76 of PB*	*M-Cycle/Scooter; Bajaj Auto Ltd./Pulsar 150 DTSI*
3.	*UP14AJ2780*	*Page No. 68 of PB*	*M-Cycle/Scooter ; Bajaj Auto Ltd./Pulsar 150 DTSI*
4.	*UP12M2818*	*Page No. 80 of PB*	*M-Cycle/Scooter; Hero Honda Motors Ltd./CD DLX*
5.	*UP13T0721*	*Page No. 80 of PB*	*Goods Carrier; Tata motors Ltd./LPT 1613/42*
6.	*UP16A0128*	*Page No. 78 of PB*	*Motor Car Daewoo Motors; India Ltd./Matiz Model Cars*
7.	*HR55P1128*	*Page No.66 of PB*	*Three Wheeler (Passenger); Piaggio Vehicles Pvt. Ltd./ Ape Three Wheeler T.V./A/RCAB*

6. In view of the above, the Ld. DR submitted that disallowance of entire purchase in dispute need to be upheld.

7. We have heard the rival submission and perused the relevant material on record. We find that the Ld. CIT(A) has brought on record the statement of Sh. Pankaj Sharma, Prop. of M/s AK Traders to substantiate that his concern was engaged in issuing bogus bills of goods without any actual delivery of goods. The relevant part of the order of the Ld. CIT(A) has already been reproduced above. The Ld. CIT(A) has further mentioned that M/s. Ganesh Trader has claimed to have made purchases from M/s AK Traders. Thus, the Ld. CIT(A) has concluded that purchases made by the assessee from M/s. Ganesh Traders are also non-genuine. Similarly, the Ld. CIT(A) has substantiated that M/s Anjali Traders and M/s Buildwell Cemented Traders were not found at the addresses provided and no confirmation has been filed by the assessee.

8. The Ld. counsel of the assessee has submitted before us that the lower authorities has relied only on the statement of third parties or evidence in relation to third parties and not found anything wrong in the books of accounts of the assessee. In

support, he relied on the decision of the Tribunal in the case of Panchsheel Buildtech P. Ltd. (supra), wherein the Tribunal directed to adopt profit at the rate of 8% of the estimated basis, particularly the assessee being contactor in said case, where the law has also prescribed presumptive rate of 8%. The relevant finding of Tribunal is reproduced as under:

> *"2.8 Considering the above submission, we find that the Assessing Officer in the present case has doubted the genuineness of the claimed purchases of material from 6 parties in the assessment year 2009-10, 22 parties in the assessment year 2010-11, 21 parties in the assessment year 2011-12, 1 party each in the assessment years 2012-13 and 2013-14. He disallowed the claimed purchases made from these parties on the basis that they were not found on their given addresses. The. A. K. Traders Group and M/s. Sigma Sales Corporation from whom the assesses had made purchases, had admitted that they were engaged in the business of entry provider and no actual sale of material were by them. The Assessing Officer noted further that bank accounts of the parties showed a unique trend as the payments though were made through cheques, such cheques were deposited and the amounts were withdrawn shortly thereafter in cash. Under these facts and circumstances, it is very difficult to arrive at the conclusion that the claimed purchases by the assessee were entirely free from any doubt. However, the non-interference by the Assessing Officer to the claimed sales supports the case of the assessee that materials were purchased. Undisputedly, payments to these parties, who had supplied material to the assessee have been made through banking channels. The Assessing Officer has tried to make it a case of purchases, which have been made through books of accounts, but have been found bogus. Taking all these facts in its totality, we are of the view that a balance between the assessee and the Revenue can be made by estimating profit of the assessee for the purpose of taxation to plug the leakage, if any. We find that in the assessment year 2014-15 the Assessing Officer in the assessment framed under section 143(3) has accepted the net profit of Rs.28,65,08,537/- on a turnover of Rs.4,01,15,91,110/- giving NP rate of 7.14%. It is a best comparable instance and accordingly we find it reasonable to apply NP rate of 8% or such higher rate as declared by the assessee for estimating the net profit liable to tax on the declared turnover. We order accordingly with further direction to the Assessing Officer Lliat no other deduction shall be allowable therefrom. The grounds are accordingly allowed partly."*

9. Thus, we find that the Tribunal in the above case has also observed that claimed purchases by the assessee were entirely not free from any doubt, but as a balance between the assessee and the Revenue directed to estimate net profit at the rate of 8%. In that case, the assessee is a contractor, whereas in the instant case the assessee is a Builder and developer of real estate and not a contactor and thus profit rate adopted in the case of Panchsheel Buikldtech P. ltd. (supra) cannot be applied over the instant case. Before us, the Ld. DR has raised serious allegation of irregularity in the documents maintained by the assessee. The Ld. DR has pointed out that the assessee has claimed to have transported the goods by trucks mentioned in the respective bills, whereas on verification of the registration numbers provided in the bills on the government website, those vehicles are found to be Scooter, motorcycle or car etc and evidently no goods could have been transported by way of those vehicles. We note that Hon'ble Delhi High Court in the case of Jansampark Advertising and Marketing Private Limited, 375 ITR 373 has held that the learned CIT(A), having notice of want of proper enquiries, could not have closed the Chapter simply allowing the appeal and deleting the addition made and it was the obligation of the first appellate authority as well as of the ITAT to ensure that effective enquiries was carried out.

10. Respectfully following the above decision of the Hon'ble High Court and in view of the discrepancies pointed out by the Ld. DR, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) to carry out the necessary enquiries to verify the fact that goods in question have been delivered to the assessee, not only from the statement or evidence collected from third party, but

also from the records maintained by the assessee. The Ld. CIT(A) may also carry out any other enquiries which deem fit to verify the claim of the assessee that goods from these parties were actually purchased and received by the assessee and transported by the vehicles mentioned in the respective bills. The Ld. CIT(A) is directed to adjudicate the issue in dispute after taking into account material already available on record as well as any material gathered in the enquiries carried out by him. It is needless to mention that both the parties should be provided adequate and reasonable opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

11. The appeal of the assessee is accordingly allowed for statistical purposes.

Order pronounced in the open court on 28th March, 2019.

Sd/-	Sd/-
[BHAVNESH SAINI]	**[O.P. KANT]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 28th March, 2019.
RK/-[d.t.d.s]
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi