

**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.7022/Del/2014  
Assessment Year: 2008-09

M/s. Mansarovar Infratech Pvt. Ltd. (Formerly known as Garhwal Mandal Sales Pvt. Ltd.), Dhalwala, Tehsil Narendera Nagar, Tehri Garhwal	<b>Vs.</b>	Asstt. Commissioner of Income Tax, Circle Haridwar
<b>PAN :AAACG5220B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Gautam Jain, Advocate & Shri Lalit Mohan, CA
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	28.03.2019
Date of pronouncement	29.04.2019

**ORDER**

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

This appeal by the assessee is directed against order dated 01/10/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-I, Dehradun [in short 'the Ld. CIT(A)'] for assessment year 2008-09 raising following grounds:

1. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and assessment framed under section 147/143(3) of the Act, which were without jurisdiction and therefore, deserved to be quashed as such.*

- 1.1 *That the learned Commissioner of Income Tax (Appeal^)* has failed to appreciate that there was no material on record with the learned Income Tax Officer to form "reason to believe" that income of the appellant company had escaped assessment and therefore, initiation of proceedings mechanically on the basis of a report received from Investigation Wing without independent application of mind was illegal, invalid and hence unsustainable.
- 1.2 *That the learned Commissioner of Income Tax (Appeals)* has failed to appreciate that there was no valid approval obtained by the learned Assessing Officer before assumption of jurisdiction under section 147 of the Act and hence on this ground too, the said initiation of proceedings were without jurisdiction.
2. *That the learned Commissioner of Income Tax (Appeals)* has erred both in law and facts in upholding the addition of Rs. 32,76,741/- representing the purchases made by the appellant company from M/s. Meet Enterprises and held to be an accommodation entry.
  - 2.1 *That the learned Commissioner of Income Tax (Appeals)* has failed to appreciate that appellant company has placed on record documentary evidence in the shape of bills and transportation challans showing purchases made by the appellant company alongwith the fact that payments to the supplier had been made by account payee cheques and therefore, the burden of the appellant stood discharged and it could not be justifiably held that purchases made by the appellant were accommodation entries.
  - 2.2 *That the learned Commissioner of Income Tax (Appeals)* has also failed to appreciate that the Sales Tax Department had accepted the genuineness of the existence of the supplier M/s. Meet Enterprises and hence, there was no justification to hold that such purchases were bogus purchases.
  - 2.3 *That the learned Commissioner of Income Tax (Appeals)* has further erred both in law and on facts in upholding the addition on the basis of alleged statement obtained by the Investigation Wing behind the back of the assessee which in law could not be made a basis to uphold the addition.
  - 2.4 *That the learned Commissioner of Income Tax (Appeals)* has failed to appreciate that once the sales of the appellant have been accepted, the books of accounts having not been rejected by the learned Assessing Officer, the conclusion that the purchases made represented accommodation entry was not a valid conclusion and hence not tenable.

- 2.5 *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in failing to appreciate the detailed submissions supported by adequate documentary evidence and judicial pronouncements relied upon by the assessee.*
3. *That without prejudice to the aforesaid and in the alternative, the learned Commissioner of Income Tax (Appeals) ought to have restricted the addition to the gross profits on such purchases and not made the addition by way of entire purchases and thus in any case, the addition made and sustained is excessive.*
4. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest u/s. 234B of the Act.*

*It is ,therefore, prayed that addition made and sustained of Rs. 32,76,741/- alongwith interest levied may kindly be deleted and appeal of the appellant be allowed.”*

**2.** The briefly stated facts of the case are that information was received from the Investigation Wing of the Income Tax Department that the assessee had received an accommodation entry of Rs.32,76,741/-in the form of purchases made from M/s Meet Enterprises during the financial year 2007-08, relevant to the assessment year under consideration. According to the said information, M/s Meet Enterprises was a proprietary concern of one Sh. Sunil Kumar, who was resident of Muzaffarnagar. The Investigation Wing found that he was a driver of one Sh. Pushkar Tyagi, resident of Sahibabad. The Investigation Wing noted that the aforesaid proprietary concern maintained bank account with Punjab National Bank, Ghaziabad and Axis bank limited Ghaziabad. It was noted that the assessee company (erstwhile name Garhwal Mandal Sales Private Limited) is one of the party whose cheque(s) were found deposited in bank account of M/s. Meet Enterprises, Muzaffarnagar. The Investigation Wing examined the records and found that the assessee has made

payment of Rs.32,76,741/- to M/s Meet Enterprises in the relevant period. Further on examination, it was found that in the purchase bill in the books of the assessee, name of the seller was M/s Meet Enterprises, Ram Dhan Colony, Shivalik Nagar, Haridwar, having TIN 05006640257. On further enquiry from the Trade Tax Department, it was revealed that proprietor of this firm was Sh. Vikas Kumar S/o Sh. Vijay Pal Singh, Muzaffarnagar.

**2.1** It is also noted that Sh. Vikash Kumar was examined and he stated that he used to run the business of M/s. Meet Enterprises but stated that he had only one transaction in which he sold the goods to the National Trading Co., Roorkee and that he had no other business transactions. On enquiries, the Investigation Wing found that none of the parties were able to substantiate the veracity of the claim of purchases made from M/s Meet Enterprises by submission of proper bills, name and address of the person with whom business transaction was discussed/finalized. The Investigation Wing also made enquiries in respect of the parties located at New Delhi, Gurgaon, Kolkata, and UP, who received payment from M/s Meet Enterprises. The investigation Wing found that after deposit of the cheque, Cash was withdrawn immediately from their account. Most of the parties were not found in existence at the given address and summons issued to them remain uncomplished with. In view of these observations, the Investigation Wing treated those parties as shell/conduit entities having no real business and finally summed up that different cash credit and debit entries in the bank accounts of M/s. Meet Enterprises is accommodation entry provided without any real business transactions. The statement of director of the assessee company Shri Rakesh Aggarwal was

recorded by the Investigation Wing who deposed that the purchases were duly made from one M/s Meet Enterprises whose proprietor was Sh. Vikash Kumar.

**2.2** In view of the information received, assessment was reopened by way of issue notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') on 02/03/2012. During the course of assessment proceedings, the assessee submitted that all the purchases have been duly recorded in the books of account of the assessee. It was also contended that Sales Tax Department has accepted the sale and purchase made by the assessee. It was also submitted that assessee has not submitted carriage/transportation papers because the goods were stated to be purchased on FOR basis. It was also submitted that payments were made through banking channels and therefore, any irregularities in the conduct of business by the supplier could not be a ground to deny the claim of expenditure made by the assessee. The Assessing Officer deputed an Inspector of Income Tax Department to conduct an enquiry who reported that there is no such address of the concern M/s Meet Enterprises even in the past. He also directed the assessee to produce the supplier which was not complied with. He further noted that copy of sales tax order of M/s. Meet Enterprises reflected sales of iron scrap whereas the assessee had purchased MS Bar (Sariya). He also noted that M/s. Meet Enterprises had only shown one transaction in which, he has sold goods to National Trading Co., Roorkee and that he had no other business transactions. Having regard to the above, it was concluded that the purchase made from M/s. Meet Enterprises and payments entered into the books of accounts of

assessee are not genuine and, therefore, the expenditure claimed of Rs. 32,76,741/- was denied in the order of assessment.

**2.3** On appeal, the Ld. CIT(A) upheld the disallowance on the basis that M/s. Meet Enterprises, Shivalik Nagar, Haridwar is a different entity from M/s. Meet Enterprises, Nehru Nagar, Ghaziabad. He also held that while the activity at Haridwar was under the proprietorship of Shri Vikash Kumar, M/s. Meet Enterprises having office at Nehru Nagar, Ghaziabad was stated to be under the proprietorship of Shri Sunil Kumar S/o Lala Ram who was actually a benamidar of Shri Pushkar Tyagi. It was held that while the firm at Haridwar had indulged in only one business transaction with National Trading Enterprises, Roorkee, the firm having account at Ghaziabad had only been indulging in accommodation entry and money laundering operation. It was held that assessee claimed to have purchased the goods from M/s. Meet Enterprises, Haridwar but the payment made by the assessee has been credited to the account of M/s. Meet Enterprises maintained at Ghaziabad and thus, the fact of payment to the party from whom the goods are stated to be purchased was not proved. He also held that the assessee has shown an extremely low rate of gross profit i.e. 5.22% in its Returns and therefore, Assessing Officer had justifiably rejected the purchases stated to be made from M/s. Meet Enterprises as bogus and added back the entire amount of Rs.32,76,741/- claimed as expenditure on this account. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

**3.** Ground Nos. 1 to 1.2 of Appeal were not pressed and are therefore, dismissed.

**4.** Grounds Nos. 2 and 3 relate to addition of Rs. 32,76,741/- representing the purchases made by the assessee company and held to be an accommodation entry .

**4.1** Before us, the learned counsel for the assessee filed two paper-books containing pages from 1 to 104 and 105 to 129 and contended that denial of deduction or genuineness of purchase is not in accordance with law. In support, he contended that claim made may kindly be accepted in light of the following undisputed facts:

- i) That assessee is engaged in the business of trading of cut pieces of MS Bar;
- ii) That completed books have been maintained including stock register and have been examined during the course of assessment proceedings. A copy of stock register is placed at pages 93-104 of Paper Book;
- iii) That books of accounts are duly audited u/s 44AB of the Act and under the Companies Act' 1956;
- iv) That there was sale of Rs.9,99,91,142.04/- and purchase of Rs. 9,90,26,702.37 (page 8 of Paper Book) which have been debited in books of accounts and, there is no direct evidence to dispute or deny any of the transactions;
  - (a) Details of purchases (Steel) above Rs. 1,00,000/- during the year 2007-08 (Assessment year 2008-09) (pages 118-120 of Paper Book);
  - (b) Details of sales (Steel) above Rs. 1,00,000/- during the year 2007-08 (Assessment year 2008-09) (pages 121-126 of Paper Book);

- v) That books of accounts so maintained by the appellant company have not been rejected by the learned Assessing Officer by invoking section 145(3) of the Act and, profit declared stands accepted as such;
- vi) That entire purchase and sales duly accepted and verified in sales tax order for the instant assessment year (pages 30-32 of Paper Book);
- viii) That the consideration was duly discharged through banking channels as would be evident from the following evidence:
  - a) Copy of cheque issued by the appellant company to M/s Meet Enterprises (pages 111-113 of Paper Book)

**4.2** It was further contended that in case of purchases, assessee is under a burden to establish delivery of goods and payment of consideration for such delivery. It was submitted that in the instant case, both the facts are not in dispute as the delivery of goods is duly recorded in the stock register and the fact of supply is also accepted in the sales tax order for the instant assessment year. Furthermore, as regards payment of consideration, it was also stated that such payments have been made through banking channels and there is no allegation or evidence to suggest that such payments as made by the appellant have remitted back to the supplier. It was therefore, submitted that addition so made is not in accordance with law and therefore, may kindly be deleted. Reliance was placed on the following judgments:

- i) *CIT vs. Precious Jewels Corporation* 205 Taxman 22 (Raj)(MaG.)
- ii) *ACIT v. Karam Chand Ruber Industries* ITA No. 6599/D/2014

- iii) *Manoj Sharma v. ITO 103 taxmann.com 105 (Del)*
- iv) *CIT v. Nikunj Eximp Enterprises (P) Ltd. 372 ITR 619 (Bom)*
- v) *CIT v. Simit P. Seth Tax No. 553/203 (Guj) dated 16.3.2013*

**4.3** On the contrary, the learned DR supported the action of the authorities below and relied on the following judgments:

- i) *N.K. Proteins Ltd. vs. CIT (2017-TIOL-23-SC-IT)*
- ii) *N.K. Industries Ltd. Vs. DCIT 292 CTR 354 (Guj)*
- iii) *CIT vs. Arun Malhotra 363 ITR 195 (Del)*
- iv) *CIT vs. La Medica 250 ITR 575 (Del)*
- v) *Vijay Proteins Ltd. vs. ACIT 58 taxmann.com 44 (Guj)*
- vi) *Sanjay Oilcake Industries vs. CIT 316 ITR 274 (Guj)*

**4.4** We have considered the submissions and perused the material on record. During the instant year, it is a matter of record that assessee has declared sales of Rs. 9,99,91,142/- and purchases of Rs. 9,90,26,702/- from trading of M.S Bar. It is also noted that books of account are duly audited under section 44AB of the Act. It is also noted that out of the total purchases, purchases of Rs. 32,76,741/- have been made from one M/s. Meet Enterprises. The copies of invoices from the supplier duly stating the bill no., tin no. have also been placed on record and copies of cheques issued alongwith the receipts from whom two cheques were issued have also been placed on record. It is noted as a matter of record that according to invoices, the supplier is M/s. Meet Enterprises, Ramdham Colony, Shivalik Nagar, Haridwar and as per the receipts issued by the said supplier, it is noted that the cheques have been issued to the said supplier.

This fact is specifically evident from the invoices from pages 107 to 110 of Paper Book and receipts placed at pages 111 to 113 of Paper Book. It is also matter of record that statement of Director of assessee has been recorded by the Investigation Wing and in the course of such investigation, he had admitted to have received supplies from M/s. Meet Enterprises, Haridwar. The purchase and sale of assessee have also been accepted in the order of sales tax for the instant assessment year, copy of which is placed at pages 32 to 34 of Paper Book. The issue, therefore, arises is that once the supplies have been received by the assessee which are duly recorded in the books of account accepted as such and also accepted in the sales tax order, would it be justified to hold that such supplies against which payments have already been made are not genuine purchases for the reason that there is another proprietorship concern by the same name i.e. Meet Enterprises at Ghaziabad. It is no doubt true that cheques issued by the assessee in the name of M/s. Meet Enterprises had been deposited in the account of M/s. Meet Enterprises, Ghaziabad instead of Meet Enterprises, Haridwar. But the sales made by the assessee have not been doubted by the Assessing Officer. It is impossible to make sales without corresponding purchases. In the stock register corresponding to the sales, purchases have been duly recorded. In the circumstances of no irregularity observed in the inventory record, entire purchases of Rs.32,76,741/- cannot be disallowed .

**4.5** In the above facts and circumstances, we are of the considered opinion that it would be inappropriate to deny the entire expenditure claimed by the assessee. We are of the opinion that at best it would be a case that purchases have been made

from one party in grey market and bills have been obtained from another party i.e. accommodation entry provider. Thus, the purchases themselves cannot be said to be bogus as the same is duly recorded in the books of account of the appellant and such books stands accepted even in the impugned order of assessment.

**4.6** We are of the opinion that the entire amount should not be disallowed but the disallowance should be restricted to the profit margin embedded in such amount. This view is also supported by the judgment of Gujarat High Court in the case of CIT vs. Bhola Nath, 355 ITR 290. The relevant portion of the order is as under:

*“6. We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CIT reported in [2009] [316 ITR 274](#) (Guj). Such decision is also followed by this court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT vs. KishorAmrutlal Patel. In the result, tax appeal is dismissed.”*

**4.7** Also the Hon'ble Gujarat High Court in the case of CIT v. Sathyanarayan P. Rathi 351 ITR 150 has held as under:

*“4. We are of the opinion that the revenue ought to have preferred two appeals if the revenue was aggrieved by the Tribunal's verdict of not only rejecting its appeal but of allowing assessee. However, when we are not inclined to interfere with the Tribunal's order on merits, we do not insist on the revenue's filing a separate appeal.  
5. From the record, we noticed that the Commissioner (Appeals) as well as the Tribunal found that the purchase of raw-material, in which the assessee was trading, were only made, but not from the disclosed sources. In other words, the case against the assessee was that the purchases were made in the grey market through cash*

*payment and some entries were obtained from certain suppliers who had not sold such goods.*

*6. The present case, thus, being one of only purchase but not from disclosed sources, it would be only profit element embodied in such purchase which could be added in the income of the assessee and thus, rightly so done by the Commissioner (Appeals) and the Tribunal.*

*7. If this be our conclusion, only question arises whether such profit element should be estimated at the rate of 30% or 12½%. Whenever such a question arises, some reasonable estimation is always permissible. Hardly any question of law on such aspect would arise. Merely, it is pointed out that the assessee was a trader and that the Tribunal retained 12½% of the purchase towards its possible profit, we do not find any reason to entertain the appeal. In the result, Tax Appeal is dismissed.”*

**4.8** Similar view has also been expressed in the case of CIT vs. Simit P. Sheth 356 ITR 451 wherein it has been held as under:

*“6. In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.*

*7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.”*

**4.9** In the instant case, the assessee is engaged in dealing in MS Bar (Iron/Steel Product) and has shown gross profit rate of 5.22%. We find that in the case of Sh. Sanjay H. Shah, Mumbai Vs. Income Tax Officer in ITA No.5063 to 5065/Mum/2017 for assessment year 2009-10 to 2011-12, who was also engaged in

trading of Iron & Steel product, the Tribunal restricted the disallowance to 5% of the total alleged bogus purchases observing as under:

*“7. The Id. AR of the Assessee in his submission claimed that VAT rate is only 4%. The rate of VAT is not disputed by Revenue. In our view considering the nature of trade of assessee and the facts of the present case, the disallowance made by AO and sustained by Id. CIT(A) is excessive and unreasonable. In our view the assessee has given sufficient evidences to substantiate its purchases, on which no finding was given by the lower authorities. Moreover, no incriminating material is brought on record except assumption and presumption of AO that assessee has availed accommodation bills. The addition of alleged bogus purchased are based on third party information. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable ITA No.5063/Mum/2017 to 5065/Mum/2017 Shri Sanjay H Shah income component and not the substantial part of the transaction. Thus, keeping in view the assessee has paid the VAT at the applicable rate on all the purchases. Further, in our view no yardstick formula can be applied while assessing the amount of revenue leakage. Moreover, the revenue has not disputed the consumption of steel. Hence, keeping in view of any possibility of the revenue leakage in the present case, the disallowance of purchases of steel at 5% of the purchases would meet the end of justice. Similar view was taken by Hon'ble Gujarat High Court in CIT Vs Simit P Seth [2013(356 ITR 451)] and by Hon'ble Bombay High Court in Hariram Bhambani ITA No 313 of 2013.*

*8. Thus, respectfully following the decision of Hon'ble Gujarat High Court in CIT Vs Simit P Seth supra and by Hon'ble Bombay High Court in Hariram Bhambani (supra), the disallowance of cost of purchases of steel is restricted to 5% of the purchases. The assessing officer is directed accordingly. In the result the ground No. 1 of the appeal is partly allowed.”*

**4.10** As the assessee is also involved in trading of identical products, respectfully following the decision of the Tribunal in the case of Sh. Sanjay H. Shah (supra), we direct the learned Assessing Officer to restrict the disallowance to 5% of the

impugned purchase of Rs.32,76,741/-. The grounds no. 2 & 3 of the appeal are partly allowed.

**5.** The ground No. 4 of the appeal is consequential in nature and thus, we are not required to adjudicate upon.

**6.** In the result, the appeal of the assessee is partly allowed.

***Order is pronounced in the open court on 29<sup>th</sup> April, 2019.***

**Sd/-  
[BHAVNESH SAINI]  
JUDICIAL MEMBER**

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

Dated: 29<sup>th</sup> April, 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