

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

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4142/Del/2016 : Asstt. Year : 2012-13

Income Tax Officer, Ward-2, Rewari (Haryana)-123401	Vs	M/s P. L. & Sons Infrastructure Pvt. Ltd., Behind PNB Building, Qutubpur, Rewari
(APPELLANT)		(RESPONDENT)
PAN No. AAACP9607R		

ITA No. 4143/Del/2016 : Asstt. Year : 2012-13

Deputy Commissioner of Income Tax, Rewari Circle Rewari	Vs	M/s NKB Infrastructure Pvt. Ltd., 555, Qutubpur, Old PNB Building, Rewari
(APPELLANT)		(RESPONDENT)
PAN No. AADCN5591K		

Assessee by : Sh. Gautam Jain, Adv.

Revenue by : Ms. Rinku Singh, Sr. DR

Date of Hearing: 10.07.2019

Date of Pronouncement: 11.07.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

In ITA No.4142/Del/2016, the Revenue has raised the following grounds:

1. CIT(A) has erred in deleting the addition of Rs. 27,84,750/- made by the AO on account of unexplained expenditure u/s 69C of the I.T. Act as the genuineness of the transactions with the sister concern could not be proved. Further, the invoice submitted by assessee claiming whole of purchase of about 11,850 Ton of the material has been made on single day which requires around 228 trucks to carry this material and no details of the vehicles in which the material was transported was given. Even the three type of material GSB/Bajri/Stone was not segregated and the rate of purchase of Rs. 235/- per ton was given, which is not acceptable in absence of segregation of type of material.

2. CIT(A) has erred in deleting the addition of Rs.13,17,273/- made on account of disallowance of interest paid to bank u/s 36(1)(iii) as assessee had made loans/advances to person/parties who were close relatives to the directors/promoters of the assessee company, but no interest was charged in view of the Hon'ble High Court's judgment in the case of CIT v/s Abhishek Industries Ltd/ 2006/ 2861/ITR.

3. CIT(A) has erred in deleting the addition of Rs.81,00,000/- and Rs. 2,10,131/- made on account of difference in sale & purchases with M/s N K B Infrastructure Ltd as assessee company has shown sales of Rs. 5,25,47,280/- to M/s N K B Infrastructure Pvt. Ltd. Whereas the audit report of concerned parties shown purchases of Rs. 6,06,47,280/-. The assessee had failed to reconcile the accounts and pointed out that this was a clerical mistake by the auditor. The assessee failed to produce any documentary evidence regarding the claim. Further, both the audit reports were made by the same Auditor and such clerical mistake in both reports may not be merely a clerical mistake.

4. CIT(A) has erred in deleting the addition of Rs. 12,44,561/- made on account of disallowance of loading and unloading expenses as it was found during assessment proceedings that vouchers no. was not mentioned on the vouchers claiming expenses for Loading & unloading expenses. The complete name of persons and their addresses to whom these payments were made was not there. The details of vehicles have not been given on-the vouchers and the sites, where this loading and unloading was done has also not been mentioned. So, genuineness and authenticity of expenses could not be established."

2. The appellant is a Private Limited Company which was incorporated on 16-04-2007. The appellant has filed its return of income in ITR-6 declaring total income of Rs 17,15,160/- which was enhanced to Rs 1,53,71,870/- during assessment u/s 143(3) of the Act.

3. The first ground relate to addition of Rs.27,84,750/- on account of purchase from the sister concern namely, Gupta Transport Company. During the assessment proceedings, it was found that the assessee has not made payments for such purchasers and only one invoice has been submitted pertain to the purchase of 11850 tonnes of GSB/bajri/stone. The AO held that the invoice dated 29.02.2012 cannot be accepted as genuine as it requires approximately around 228 trucks to carry this material as maximum 52 tonnes of material can be loaded in one truck. It was also held that the firm M/s Gupta Transport Company is a transport firm as name & style suggests whereas

the purchases has been shown of GSB/Bajri/Stone from this firm.

4. The Id. CIT(A) deleted the addition on the ground that purchases have been amply supported by ledgers, invoices, ITR of the concerned party. The party selling the materials was a sister concern but that would not make a transaction fictitious in the absence of any evidence. Moreover, there would have been no TIN because the party was exempted under Rajasthan VAT Act. Such queries were never raised by the AO during the proceedings. As far as the volume of purchases of 11850 tonnes of material purportedly made in a single day is concerned, the AO did not verify the challan which spanned over a period of a 15 days.

5. During arguments, before us, the assessee has taken number of arguments to prove the genuineness of the purchases. It was argued that the ledger copy of the Gupta Transport Company for the period of 01-04-2011 to 31-03-2012 was duly furnished. The copy of account showing trade payable of Rs 24,63,860/- & Invoice related to M/s Gupta Transport Co. shows the nature of transactions. The Id. AR also relied on the order of the Co-ordinate Bench of ITAT Delhi in the case of AC1T, Circle 4(1), New Delhi. Vs. Luminous Holdings Pvt. Ltd., 1TA No.4850/Del /2011, wherein it was held that, since onus lay on the assessee has duly been discharged in this case by furnishing necessary material and evidence before the authorities below which is supported by all documentary evidence in the shape of ITR and balance sheets etc., the CIT(A) while considering all the aspects of the case is found to

come to a just and appropriate conclusion to delete the impugned addition made by the Assessing Officer. Neither any contrary material has been placed on record by the department nor any infirmity of law has been pointed out or noticed by this bench in the order of Ld. CIT (A). While the Id. AR vehemently argued that 11850 tonnes could not have been transported in a single day which requires approximately 250 trucks.

6. Heard the arguments of both the parties and perused the material available on record.

7. In the instant case, the Revenue alleged that the supplying company was not in the business of dealing with GSB/bajri/stone and no documentary evidences were filed regarding the transport which require about 228 trucks. The observation of the AO found to be incorrect based on the facts on record viz. that the supplying company as per the partnership deed is in the business of dealing with GSB/bajri/stone. The important factor to be considered here is that the material was transported for a period of 15 days and as against the allegation of the AO that the material was transported in a single day which is humanely impossible. The AO did not bring any evidence on record except the allegations. The evidence such as non-transport of material, non-availability/non-existence of trucks has not been enquired into which is primary for making the addition. The returns of Gupta Transport Company was also filed at the same place at Rewari which have not been examined by the Assessing Officer. The application of the TIN is also not a relevant factor as the assessee is exempted under Rajasthan VAT Act. The Assessing Officer has not rejected the books of account and the closing

stock has also been accepted. The AO has misled himself with the thought that the entire material was transported in a single day while the fact is that the material was transported over a period of 15 days. Keeping in view, all the factual material as narrated above, we hereby decline to interfere with the order of Id. CIT(A).

8. Ground No. 2 pertains to disallowance of interest amount paid to bank u/s 36(1)(iii) of the Act. The assessee has paid interest of Rs. 13,17,273/- on loans of Rs. 2,64,31,427/- mostly @ 12% whereas interest free advances are at Rs. 1,34,31,525/- on which interest @12% works out at Rs. 16,11,783/-. Hence the entire interest of Rs. 13,17,273/- claimed to be paid on loans is disallowed. From the records, it is found that the assessee had interest free borrowings of Rs.352,85,886/- whereas the interest free advances given are of Rs.134,31,525/-. Thus, the interest free advances given are far less than interest free advances given. Hence, keeping in view in the judgment of the Hon'ble Allahabad High Court in the case of Radico Khaitan Ltd. 274 ITR 354 and also keeping in view, the fact that the Revenue has accepted these transactions and no interest was disallowed in the earlier years for the similar advances which have been outstanding, we hereby hold that no addition is warranted u/s 36(1)(iii) of the Act.

9. Ground No. 3 pertains to addition on account of non-reconciliation of amounts as per the accounts. The AO held that as per the information available in the Audit Report regarding the payments made to related parties u/s 40A(2)(b) of the Act reveals that the assessee company had shown sales amounting to Rs. 5,25,47,280- to M/s N.K.B. infrastructure Pvt. Ltd. during

the year under scrutiny. A similar information was available in the Audit Report of the M/s N.K.B. infrastructure Pvt. Ltd. where purchases from the assessee company were shown at Rs. 6,06,47,280/-. The case of M/s NKB Infrastructure was under scrutiny with the DCIT, Circle, Rewari. This discrepancy was noticed when DCIT, Circle, Rewari sought the information from this office regarding sales and purchases made by the assessee company with M/s NKB Infrastructure Ltd. The AO held that the issue was discussed in details with the assessee but he failed to reconcile the accounts and pointed out that this is a clerical mistake by the Auditor. The addition was made in the premise that the assessee failed to submit any documentary evidence regarding the claim. Further, it was held by the AO that both the audit reports were prepared by the same CA and such mistakes from qualified professional in both reports may not be merely a clerical mistake. The difference in sales of Rs. 81,00,000/- (60647280-52547280) is added to the income of the assessee as income from undisclosed sources.

10. Similarly, it was held that the assessee company had shown purchases amounting to Rs. 48,09,225/- from M/s N.K.B. infrastructure Pvt. Ltd. during the year under scrutiny. A similar information was available in the Audit Report of the M/s N.K.B. infrastructure Pvt. Ltd. where sales to the assessee company were shown at Rs. 50,19,356/-. The AO held that the issue was discussed in details with the assessee but failed to reconcile the accounts and pointed out that this is a clerical mistake by the Auditor. Since, the assessee failed to submit any documentary evidence regarding the claim the AO added the difference in purchase of Rs. 2,10,131/- (5019356- 4809225) to

the income of the assessee as unexplained investment in purchases made from above company.

The Id. CIT(A) deleted the addition.

11. Before us, the Id. DR argued that the differences in the accounts cannot be coincidental but it is a part of scheme to avoid the due taxes. It was argued that no documentary evidence to prove that the entries were wrongly posted were produced before the Revenue so as to claim the genuinity of the mistake.

12. On the other hand, the Id. AR argued that the mistake occurred due to entries related to job work carried out by the assessee was shown by PL & Sons Infrastructure and Rs.45,00,000/- was a bank entry which have been corrected subsequently. Further, regarding the purchases from NKB Infrastructure Pvt. Ltd., there was no difference between the purchases as per NKB Infrastructure Pvt. Ltd. and purchases as per the PL & Sons Infrastructure remained same at Rs.525,47,280/-. Regarding the discrepancy of Rs.2,10,311/- it was submitted that there was no difference between purchases as per books of PL & Sons Infrastructure and NKB Infrastructure Pvt. Ltd.

13. We have gone through the details and also the order of the Id. CIT(A) on this issue. For ready reference, the relevant part is reproduced in toto.

"Addition of Rs 81,00,000/- and Rs 2,10,131/- on Account of Difference in Sales and Purchases With M/s. N.K.B. Infrastructure Pvt. Ltd. The A.O. erroneously made an addition of Rs 81,00,000/- and Rs 2,10,131/- on account of difference in sales and purchases with M/s. NKB Infrastructure Pvt. Ltd. This addition was totally based on surmises and conjectures. The A.O. restricted himself only with the Audit report of the appellant's sister concern styled as M/s. NKB Infrastructure Pvt. Ltd. It was wrongly mentioned in the

impugned order that this issue was discussed in details with the assessee. The appellant was never confronted with the issues on the basis of which the additions were made. No opportunity of being heard was given which is against the natural justice. If the opportunity of being heard was given the appellant could have explain the facts in its right and legal perspective. It is respectfully stated that in the concerned year two sister concerns styled as M/s. NKB Infrastructure Pvt. Ltd. (Appellant Co.) and M/s. P L & Sons Infrastructure Pvt. Ltd. were assessed u/s. 143(3) of the Act by the Ld. DCIT, Circle, Rewari and ITO, Ward-2, Rewari respectively. The Ld. DCIT has made the addition on the basis of mismatching of related parties annexure in the audit report which were prepared by same auditor for both companies. The copies of the related party transaction chart in question of both companies are enclosed herewith for your good self's reference.

(i) ACCEPTANCE AND CONFIRMATION BY AUDITOR (SANIEEV BHARGAVA & ASSOCIATES)

It is respectfully stated that the difference in the related parties chart in the audit report was due to the clerical error on the part of the auditor and not on the part of the appellant. Now the contention of the appellant has been proved as the auditor namely Sanjeev Bhargava partner in Sanjeev Bhargava & Associates himself accepted and explained before the Ld. DCIT in the case of other co. styled as M/s. N.K.B. Infrastructure Pvt. Ltd. that the discrepancy occurred because of clerical mistake on his part evident with his written submissions dated 06-04-2015 duly stamped by the Ld. DCIT's office. He himself appeared before the Ld. DCIT and stated that, "There was no intention of the auditor to manipulate profit of the company as all the above figure are tallied in the books of the assessee i.e. M/s. NKB Infrastructure Pvt. Ltd. and M/s. P L & Sons Infrastructure Pvt. Ltd. as there is no loss to the revenue". ..In view of the above submissions it is clear as crystal that there was no discrepancy or manipulation of accounts on the part of the appellant. It is just a typing mistake on the part of the auditor which was duly reconciled with the aid of the documentary evidences submitted before the Ld. DCIT. Therefore, this addition deserve to be deleted. Both the officers have erroneously added the differences in purchases and sale in the income of both companies.

(ii) No Discrepancies in Transactions with "M/s. NKB Infrastructure Pvt. Ltd."

The A.O. has made the additions on account of the difference in sales of Rs 81,00,000/- and purchases of Rs 2,10,131 /- with "M/s. NKB Infrastructure Pvt. Ltd." The details of the transactions along with remarks of auditor are produced as under:

<i>Sr. No.</i>	<i>Nature of Transactions</i>	<i>As per pt no. 18 of the Audit Report of M/s. NKB Infrastructure Pvt. Ltd.</i>	<i>as per details of audit report of Appellant</i>	<i>Discrepancies noted</i>	<i>Remarks of the Auditor</i>
1.	Sales to M/s. NKB Infrastructure (P) Ltd.	6,51,47,280/-	5,25,47,280/-	1,26,00,000/- (As fictitious purchases).	This incurred due to entries on was of 81.00

					Lacs related to job work carried out by the appellant which was shown by the P & L Sons Infrastructure Pvt. Ltd. and 45.00 Lacs was a bank/contar entry. The later was mistake in the audit report due to a clerical error.
2.	Purchase from M/s. NKB Infrastructure (P) Ltd.	50,19,356/-	48,09,225/-	2,10,131/- (As income from unexplained Investment).	This was a typing mistake.

(i) Discrepancy at Sr. No. 1:Rs.81,00,000/- Difference in Sales with M/s. NKB Infrastructure (P) Ltd.

It is humbly submitted that there is no difference in sales of Rs.81,00,000/- with M/s. NKB Infrastructure Pvt. Ltd. in the concerned year. Attention of your good self is invited towards the following details:

Sr. No.	Purchases as per the books of M/s. NKB Infrastructure Pvt. Ltd.	Sales as. per the books of M/s. PL & Sons Infrastructure Pvt. Ltd.	Difference	Closing Balance in Rs.
1.	Rs 5,25,47,280.00	Rs 5,25,47,280.00	NIL	72,53,335.00

On perusal of the captioned table it would be seen that there is no difference between the purchases and sales of the companies. In order to strengthen the contention of the assessee the detail of purchase and sales of the respective parties account are enclosed herewith as Annexure: 20 & 21 for your good self's ready reference.

The above contention can be verified from the fact that on perusal of the transaction chart of M/s. PL & Sons Infrastructure Pvt. Ltd. it would be seen that even the auditor himself mentioned the closing balance of Rs 72,53,335/- as Amount Receivable at year end. The relevant schedules of the audited balance sheet showing the closing balances of both companies are attached as Annexure-22 & 23. The confirmed ledgers of both companies showing the closing balance as Rs 72,53,335/- for your Honor's ready reference.

Kind attention of your good self is invited that on perusal of the ledgers of both companies it would be seen that the closing balance as Rs 72,53,335/- have been duly tallied with the audited balance sheet of M/s. PL & Sons Infrastructure Pvt. Ltd. and M/s. NKB Infrastructure Pvt. Ltd. and with their vice versa ledgers.

It is further stated that in the transaction chart of M/s. NKB Infrastructure Pvt. Ltd. the auditor has wrongly mentioned the following figures:

Sr. No.	Incorrect Amount in Rs	Incorrect Particulars	Correct Amount in Rs	Correct Particulars
1.	10,141,100.00	Purchases from Gwalda	81,00,000.00	Job Work Carriage Charges
2.	50,506,180.00	Purchases	5,25,47,280.00	Purchases
Total	60647280.00		60647280.00	

The above mistake was due to the fact that purchase from one of the branch at village Gwalda had not been taken in the purchase figure of the related party transactions and Rs 81.00 Lacs was wrongly added from the job work charges and Rs 45.00 Lacs was a bank/contra entry. The later was mistake in the audit report due to a clerical error.

(i) Discrepancy at Sr. No. 2: Undisclosed Purchases From M/s. NKB Infrastructure (P) Ltd. for Rs 2,10,311/-

It is humbly submitted that there is no purchases for Rs 2,10,311/- from M/s. NKB Infrastructure Pvt. Ltd. in the concerned year. Attention of your good self is invited towards the following details:

Sr. No.	Sales as per the books of M/s. NKB Infrastructure Pvt. Ltd.	Purchases as per the books of M/s. PL & Sons Infrastructure Pvt. Ltd.	Difference	Closing Balance
1.	Rs 50,19,356.00	Rs 50,19,356.00	NIL	Rs 72,53,335.00

On perusal of the captioned table it would be seen that there is no difference between the sales and purchases of the companies. In order to strengthen the contention of the assessee the copies of the confirmed purchase ledger from M/s. PL & Sons Infrastructure Pvt. Ltd. and the assessee co. are enclosed herewith as Annexure-20 & 21 for your good self's ready reference.

It is further stated that in the transaction chart of M/s. PL & Sons Infrastructure Pvt. Ltd., the auditor has wrongly mentioned the figures of the purchases as Rs. 48,09,225/- instead of the correct figure i.e. Rs 50,19,356/-. The above contention can be verified from the fact that on perusal of the transaction chart of M/s. PL & Sons Infrastructure Pvt. Ltd. it would be seen that even the auditor himself mentioned the closing balance of Rs.72,53,335/- as Amount Receivable at year end. The relevant schedules of the audited balance sheet showing the closing balances of both companies are attached as Annexure: 22 & 23. The confirmed ledgers of both companies showing the closing balance as Rs. 72,53,335/- for your Honor's ready reference.

Kind attention of your good self is invited that on perusal of the ledgers of both companies it would be seen that the closing balance as Rs.72,53,335/- have been duly tallied with the audited balance sheet of M/s. PL & Sons Infrastructure Pvt. Ltd. and M/s. NKB Infrastructure Pvt. Ltd. and with their vice versa ledgers.

In view of the above submission it clear as crystal that there is no difference in sales and purchases with M/s. NKB Infrastructure Pvt. Ltd. Therefore, the addition deserves to be deleted especially when the auditor himself admitted that it was a clerical typing mistake on his part and not on the part of the appellant.

There was a clerical error admitted to by the Auditor during the assessment proceedings in M/s NKB Infrastructure Pvt. Ltd. a sister concern. Documentary evidence filed shows that fact. Therefore, these additions are uncalled for and I delete the same. This ground of appeal is allowed".

14. After examination of the record and on hearing the arguments, since the Id. CIT(A) has deleted the addition after due examination and reconciliation of accounts, we hereby decline to interfere with the order of Id. CIT(A).

15. Ground No. 4 pertains to disallowance on account of loading and unloading expenses which has been taken up before the Id. CIT(A) stands un-adjudicated by the lower authorities and hence, the matter is remanded back to the file of the Id. CIT(A) to adjudicate on this issue.

In ITA No. 4143/Del/2016 :

16. The Revenue has raised the following grounds:

"1. CIT(A) has erred in deleting the addition of Rs. 2,78,10,131/- made on account of discrepancies found in transactions with M/s P.L. & Sons Infrastructure (P) Ltd. as the AO has verified from the ITO, Ward-2, Rewari and as per report received from the ITO, Ward-2, it was seen that the M/s P. L & Sons Infrastructure had not submitted any details to the department regarding transaction with assessee company i.e. M/s NKB Infrastructure Ltd. It clearly shows that the assessee has hidden the details from the department. The assessee has plainly stated that the error, if any, found by the department is merely a clerical mistake on the part of auditor. However, no written or signed reply by the auditor explaining the reason for gross error has been produced by the assessee and if at all, the auditor has committed the mistake, then the assessee should have taken remedial action in time either by carrying out remedial measure as per companies Act or ICAI standards, but here this matter has come to knowledge only after examination of facts & details by the department.

2. CIT(A) has erred in deleting the addition of Rs. 10,00,000/- made on account of disallowance of unverifiable expenses as the majority of bills were cash bills, in which some were found to be computer

generated cash invoices, delivery challans were not attached with bills and some bills were not even signed. The assessee was show caused as to why a lumpsum disallowance estimated worth Rs. 10,00,000/- may not be made, the assessee did not file any reply.

3. CIT(A) has erred in deleting the addition of Rs, 44,500/- made by way o disallowance of the claim of assessee company u/s 80G, as on verification of supporting documents in support of its claim, these have been found in the name of Sh. N.K. Gupta and not in the name of assessee company.

4. CIT(A) has erred in deleting the addition of Rs. 27,000/- made on account of excess interest paid to Smt. Angoori Devi & Smt. Mamta as such the financial condition and goodwill of the assessee is good enough to seek loan from the bank at prevailing rates, which is less than the rate paid to said parties."

17. The ground no. 1 pertains to reconciliation of accounts and discrepancy found in transaction with PL & Sons Infrastructure Ltd. which is related to ground no. 3 in the appeal no. 4142/Del/2016 which has been adjudicated above. Hence, this ground taken up by the Revenue is treated as dismissed.

18. Ground No. 2 pertains to deletion of the disallowance of un-verifiable expenses of Rs.10,00,000/- by the Id. CIT(A). The Id. AO disallowed the expenses on the grounds that there was some discrepancies like majority of the bills were cash bills, some were computer generated bills and unsigned bills. Owing to the un-verifiable nature of the expenses, the AO disallowed lumpsum amount of Rs.10,00,000/-.

19. Before us, the Id. DR argued that since the bills have not been properly maintained, the only way to treat this issue is disallowance of expenses on adhoc basis.

20. The Id. AR argued that the addition was made without mentioning the details of disallowed expenses. Although, bills were duly examined and appellant company has duly audited the accounts along with the bills u/s 44AB of the Act. Since, the

matter involves examination of bills with relevant to the expenses incurred by the assessee, we hold that the interest of justice will be made to the matter is remanded to the file of the Assessing Officer for verification of the expenses afresh and take a decision in accordance with the provision of the Income Tax Act.

21. In the result, the appeals are partly allowed.

(Order pronounced in the open Court on 11.07.2019)

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 11/07/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR