

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

ITA No. 2874/Del/2018 : Asstt. Year : 2008-09

Virendra Kumar Gupta, Prop. Sanjay Metal Udyog, 3858, Gali Barna, Sadar Bazar, Delhi-110006	Vs	ACIT, Circle-63(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAPG4216E		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing : 16.07.2019	Date of Pronouncement : 01.08.2019
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ORDER

This appeal by the assessee has been directed against the order of Id. CIT(A)-27, New Delhi dated 15.02.2018 for assessment year 2008-09, challenging the reopening of the assessment u/s 148 of the Income Tax Act, 1961 and addition of Rs.5,62,363/- on account of bogus purchases.

2. Briefly the facts of the case are that in this case original return of income was filed on 29.09.2008, declaring an income of Rs.1,45,050/-. Subsequently, a letter was received from the office of Chief Commissioner of Income Tax, Delhi dated 19.03.2013 along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain and directed to take action in the matter. It is reported in the information that assessment of search cases in case of these persons are under process with the Income Tax department. A list of accommodation entry recipients have been received from these persons for providing bogus accommodation entry

through 37 paper entities. The information was taken on record and on examination of the accommodation entries provided by the above persons, it was noted by the AO that assessee has received bogus entries for a sum of Rs.22,49,454/-. The detail of same is noted in the assessment order as under:

<i>S. No.</i>	<i>Accommodation entry provided by</i>	<i>Name of party to whom Accommodation entry is provided</i>	<i>Amount of Accommodation entry</i>
1.	<i>M/s Pashupati Enterprises</i>	<i>M/s Sanjay Metal Udyog</i>	<i>11,27,565/-</i>
2.	<i>Shree Goverthan International</i>	<i>M/s Sanjay Metal Udyog</i>	<i>5,43,302/-</i>
3.	<i>Shree Bankey Bihari Trading Co.</i>	<i>M/s Sanjay Metal Udyog</i>	<i>5,78,587/-</i>
		<i>Total</i>	<i>22,49,454/-</i>

3. The Assessing Officer accordingly reopened the assessment u/s 148 of the Act. The AO also noted that assessment order has been passed in the case of Sh. Vishesh Gupta in which addition have been made on account of commission earned by him for providing accommodation entries and ultimately commission income have been added to his income. The AO also referred to statement of Sh. Rakesh Gupta & Sh. Vishesh Gupta record during the search in which they have confirmed provided accommodation entries. The assessee pleaded before the AO that he has made genuine purchases and in support of the same he has produced invoices relating to purchases, copy of bank statement relating to payment made, copy of the stock register, Cartage Account Ledger along with freight paid for bringing the aluminum scrap to godown etc. Affidavit of Sh. Rakesh Gupta was also filed to substantiate that assessee made genuine purchases. The AO, however, did not accept contention of the assessee and disbelieve the evidences placed on record. The AO made addition of Rs.22,49,454/- on account of bogus purchases from the aforesaid three parties.

4. The assessee challenged the addition before Id. CIT(A), the written submission of the assessee is reproduced in the appellate order in which the assessee reiterated submission made before the AO. It was submitted that assessee made purchases and sale in the ordinary course of business, payment have been made through banking channel, books of account are audited and supported by purchase and sales invoices. There is a complete tally of the quantity in the books and entries are recorded in the stock register and further sales have been made to identified parties. The AO relied upon by the statement of the above persons stated to be entry provider but they were not subjected to cross examination on behalf of the assessee. Therefore, reopening of the assessment is bad in law as well as addition is liable to be deleted.

5. The Id. CIT(A) noted that assessee field copy of the judgment of ITAT in the case of the assessee for assessment year 2006-07 in which the Tribunal on identical facts confirmed the reopening of the assessment and restricted the addition @ 25% of the total purchases. The Id. CIT(A) following the order of the Tribunal in the case of the assessee restricted the addition to 25% of the bogus purchases and restricted addition of Rs.5,62,363/-. The appeal of the assessee was partly allowed.

6. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that issue is covered by order of ITAT in the case of M/s Unique Metal Industries Vs ITO in ITA No. 1372/Del/2015 dated 28.10.2015 in which reopening have been quashed as well as issue on merit have been decided in favour of the assessee. The Id. Counsel for the assessee submitted that assessee made genuine purchases which are supported by the documentary evidences and that on the identical facts in the name of the same parties and same entry provider, the Tribunal in various cases have deleted the same addition as well as quashed reopening of the assessment. Such decisions are as follows:

- *Unique Metal Industries Vs ITO, ITA No. 1372/Del/2015 dated 28.10.2015*

- *M/s Radhey Shyam & Co. Vs ITO, ITA No. 1429/Del/2015 dated 30.11.2015*
- *M/s Kishan Lal Gambhir & Sons Vs ITO, ITA No. 1376/Del/2015 dated 02.12.2015*
- *M/s Punjab Metal Store Vs ITO, ITA No. 1512/Del/2015 dated 02.12.2015*
- *M/s Karshni Metal Store Vs ITO, ITA No. 1365/Del/2015 dated 23.03.2016*
- *M/s Nayar Metal Co. Vs ITO, ITA No. 1374/Del/2015 dated 31.03.2016*

7. He has submitted that the AO and Id. CIT(A) have not brought any evidence and material on record. Since the statement of the entry provider which have been relied upon by the authorities below were not subjected to cross examination on behalf of the assessee, therefore, entire addition is liable to be deleted.

8. On the other hand, the Id. DR relied upon the orders of the authorities below and submitted that Id. CIT(A) has correctly followed the order of the Tribunal in the case of the assessee for restricting the addition to 25% of the purchases.

9. I have considered the rival submissions and perused the materials available on record. The assessee pleaded that purchases have been supported by documentary evidences and subjected to banking channel as well. The purchases so made have been sold to identified parties which is also supported by the documents on record. The assessee also pleaded that in the similar cases for receiving accommodation entries from the same parties, ITAT Delhi bench in various cases referred to above have not only quashed the reopening of the assessment but also deleted the addition on merit on identical facts. The decision are referred to above. The Id. CIT(A), however, have no occasion to consider these decisions. He has followed the order of ITAT in the case of the same assessee for assessment year 2006-07 for restricting the addition to 25% of the bogus purchases. The Id. CIT(A) did not decide the issue on merit. The Id. CIT(A) has also not given any finding whether the statement relied upon by the AO of the alleged entry provider have been subjected to cross examination on behalf of the assessee. Therefore, all these facts requires reconsideration at the level of the Id. CIT(A) in the

light of the decisions referred to above in this case, I, accordingly, set aside the order of the Id. CIT(A) and restore the matter in issue to the file of Id. CIT(A) with a direction to re-decide the appeal of assessee to the extent of reopening of the assessment and addition confirmed of Rs.5,62,363/- by giving reasonable and sufficient opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Court.

Sd/-
(Bhavnesb Saini)
JUDICIAL MEMBER

Dated: 01/08/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR