

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2523/Del./2016
(ASSESSMENT YEAR : 2007-08)**

Shri Surender Kumar Rastogi, vs. ITO, Ward 63 (3),
5907, Basti Harphool Singh, New Delhi.
Sadar Bazar,
Delhi – 110 066.

(PAN : AAEPR8413L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Gupta, CA

REVENUE BY : Dr. Vijay Kumar Chadha, Senior DR

Date of Hearing : 11.09.2019

Date of Order : 07.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Surender Kumar Rastogi (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 18.03.2016 passed by the Commissioner of Income-tax (Appeals)-20, New Delhi qua the assessment year 2007-08 on the grounds inter alia that :-

"1. The Ld. CIT(A) has erred both in law and on facts in upholding the assumption of jurisdiction by the AO u/s 147 of the I T Act based on mere information passed on by the Investigation Wing of the Department with the no supporting

material so as to allow the AO to independently apply his mind on such information.

2. The Ld CIT (A) has clearly erred in law and on the facts and circumstances of the case in upholding the addition of Rs.20,47,818/- without providing opportunity of cross examination of the person whose testimony was relied by the AO to make addition and also not following the decision taken by the Ld CIT (A) in AY 2006-07 on the identical facts of the case.

3. The Ld CIT (A) has upheld the addition of Rs.20,47,818/- on the basis alleged bogus purchases ignoring the fact the appellant had maintained the itemwise quantitative records of stock and the stock shown as purchase has either been sold or the same appears as closing stock both part of credit side in P & L Account as part of business income.

4. The Ld CIT (A) has erred both on facts and in law in enhancing the income of the appellant by Rs.4,19,901/- on hypothetical basis, assumptions, surmises and conjectures unsupported with the any material on record.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Return of income for the year under consideration is filed by the assessee at an income of Rs.96,650/- which was processed under section 143 (1) of the Income-tax Act, 1961 (for short ‘the Act’) at the declared returned income. Subsequently, on the basis of information received from ACIT, Central Circle 10, Jhandewalan Extension, New Delhi vide letter dated 13.03.2013 along with Compact Disc (CD) wherein the list of parties to whom the bogus purchases/accommodation entries provided by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain were recorded, proceedings u/s 147/148 of the Act have been initiated. After recording reasons that Rs.20,47,818/- has escaped assessment in the case of M/s. Tarun Metal Co., Prop. Surender Kumar Rastogi, assessee in this case.

Consequently, notice u/s 148 of the Act was issued. On the basis of statements got recorded with ACIT, Central Circle 10, Jhandewalan Extension, New Delhi by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain that they are engaged in the business of providing accommodation entries through their firm and Vishesh Gupta categorically stated that his proprietary concerns, M/s. Shree Shyam Trading Company and Shree Shyam Traders are engaged in the metal trading and 95% of his business was to issue bogus purchase bills/accommodation entry bills at the commission of 20 to 50 paise per Rs.100/-. Assessing Officer (AO) proceeded to conclude that aforesaid four persons through their 11 firms controlled and managed by Rakesh Gupta and Vishesh Gupta and their family members have provided bogus bills / accommodation entry bills to the assessee after paying requisite accommodation entry charges and the modus operandi has been duly explained by Rakesh Gupta and Vishesh Gupta in their reply to question no.5 of their statement recorded on oath by the ACIT, Central Circle 10, Jhandewalan Extension, New Delhi during the assessment proceedings. On failure of the assessee to provide proper details and books of account in response to the show-cause notice, AO proceeded to made addition of Rs.20,47,818/- on account of purchases of Rs.20,47,818/- made from Shyam Trading Co. and Shree Goverdhan International being bogus purchases obtained by the assessee as explained by Rakesh Gupta and Vishesh Gupta at the time of recording

their statement before ACIT, Central Circle 10, Jhandewalan Extension, New Delhi and thereby assessed the total income at Rs.21,44,470-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition with further enhancement of income of the assessee to the tune of Rs.4,19,901/- by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, Id. AR for the assessee contended that the case of the assessee qua reopening as well as on merit is duly covered in *assessee's own case vide order dated 30.11.2016 passed in ITA No.407/Del/2016 for AY 2006-07*. However, on the other hand, Id. DR for the Revenue by relying upon the order passed by the Id. CIT (A) contended that the facts of the present case are different to that of AY 2006-07 and as such is not a covered case.

6. Perusal of order passed by the coordinate Bench of the Tribunal in *assessee's own case for AY 2006-07* (supra) apparently shows that the reasons for reopening in the present case as well as the case of the assessee for AY 2006-07 are verbatim same. For ready perusal, reasons recorded in AY 2006-07 and in AY 2007-08 are extracted as under :-

“Reasons recorded for reopening in case of Tarun Metal Co., Prop. Surrender Kumar Rastogi for AY 2006-07”

A letter bearing F.No.Addl.CIT/(Hq)/(Coord.)/Accommodation entry/2012-13/15016 dated 26.03.2013 was received from the Office of the Chief CIT, Delhi-I, New Delhi therein forwarding letter bearing F.No. CIT(C)-II/2012-13/3898 dated 19.03.2013 received from the CIT, Central-II, New Delhi along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain and directing this office to take necessary action as per section 148 in respect of entries pertaining to AY 2006-07, which is time barring on 31.3.2013.

The information provided by the CIT, Central-II New Delhi vide his letter dated 19,03.2013 reads as under :-

"Kindly find enclosed herewith letter dated 13,03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above.

2. The assessment of search cases of Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry providers has been obtained by the A.O.

3. The list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh. Vishesh Gupta. Hard copy of the list is enclosed as Annexure A, duly signed by Sh. Vishesh Gupta. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

4. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty-seven paper entities. The list of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list 'C'.

5. *The soft copy of the information in respect to annexure A, B & C is also enclosed.*

6. *The information of accommodation entry includes A. Y. 2006-07 also, which is a time barring year for taking action u/s 148.*

7. *This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)."*

On examining the list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Valbhav Jain pertaining to A.Y. 2006-07, it is noticed that the following accommodation entries have been taken by the assessee namely M/s Tarun Metal Co. :-

| <i>Sl. 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> |
|----------------|--|--|--------------------------------------|
| <i>1.</i> | <i>Shree Bankey Bihari Trading Co.</i> | <i>M/s Tarun Metal Co.</i> | <i>Rs.14,32,039</i> |
| <i>2.</i> | <i>Vishnu Trading Co.</i> | <i>- Do -</i> | <i>Rs.4,31,203</i> |
| | | <i>Total amount of entries =</i> | <i>Rs.18,63,242</i> |

Since Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of search proceedings, u/s 153A of I.Tax Act have admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle-10, New Delhi, therefore, it is fair to conclude that M/s. Tarun Metal Company whose name is appearing in the said list, has taken accommodation entries from Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to AY 2006-07.

In view of the above, I have reasons to believe that income chargeable to tax of M/s. Tarun Metal Company amounting to Rs.18,63,242/- for the F.Y. 2005-06 relevant to A.Y. 2006-07 has escaped assessment and it is a fit case for initiation of proceedings u/s 147 of the Act.

Proposal in the prescribed form for the AY 2006-07 (F.Y. 2005-06) is submitted herewith for kind consideration and necessary approval u/s 151(2) of the I.Tax Act, 1961 as the same is getting barred by limitation on 31.3.2013.

If approved, notice u/s 148 of the Act may be issued."

“Reasons recorded for reopening in case of Tarun Metal Co., Prop. Surrender Kumar Rastogi for AY 2007-08

Reasons for the belief that the Income has escaped assessment in the case of M/s. Tarun Metal Co., Prop. Sh. Surrender Kumar Rastogi for the assessment year 2007-08

A letter bearing F.No.Addl.CIT/(Hq)/(Coord.)/Accommodation entry/2012-13/15016 dated 26.03.2013 was received from the Office of the Chief Commissioner of I.Tax, Delhi, New Delhi therein forwarding letter bearing F.No. CIT(C)-II/2012-13/3898 dated 19.03.2013 received from the Commissioner of I.Tax, Central-II, New Delhi along with a CD containing the details of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain in the shape of bogus purchases and directing this office to take necessary action as per section 148 in respect of entries pertaining to A.Y. 2006-07, which were going to be barred by limitation on 31.03.2013. The information provided by the CIT, Central-H. New Delhi vide his letter dated 19,03.2013 reads as under :-

"Kindly find enclosed herewith letter dated 13,03.2013 of ACIT, Central Circle-10 duly forwarded by the Addl. CIT, Central Range-IV, along with its enclosures on the subject mentioned above.

2. *The assessment of search cases of Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh. Vaibhav Jain are under process with the ACIT, Central Circle-10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry providers has been obtained by the A.O.*

3. *The list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh. Vishesh Gupta. Hard copy of the list is enclosed as Annexure A, duly signed by Sh. Vishesh Gupta. The list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.*

4. *Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty-seven paper entities. The list of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise*

bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh. Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list 'C'.

5. The soft copy of the information in respect to annexure A, B & C is also enclosed.

6. The information of accommodation entry includes A. Y. 2006-07 also, which is a time barring year for taking action u/s 148.

7. This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)."

It is evident from the assessment order passed by the ACIT, Central Circle-10, New Delhi on 28.03.2013 that Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of search proceedings, in post search proceedings and in assessment proceedings u/s 153A of I.Tax Act admitted that they have given accommodation entries to the parties whose lists have been provided by them to the ACIT, Central Circle-10, New Delhi. Therefore, the assessment of the Firms/concerns/Individuals for AY. 2006-07, whose names were appearing in the said list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain were reopened u/s 147 of I.Tax Act and notices u/s 148 of I.Tax Act were issued.

After making necessary verification and disposing off the objections filed by most of the assessee's against reopening of their case u/s 147 of I.Tax Act and after considering the replies/details/documents furnished by the assessee's in their respective cases, including the case of the assessee, it was held that no satisfactory explanation about the sources of bogus purchases made from Sh. Rakesh Gupta and Sh. Vishesh Gupta could be furnished. Hence keeping in view the provisions of section 69C of I.Tax Act read with section 4, 5 and 14 of I.Tax Act, the amount of such bogus purchases were treated as deemed income of the assessee for A.Y. 2006-07.

Since the accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain in the shape of bogus purchases were treated as deemed income of the assessee's for A. Y 2006-07 and in the said list, names of the concerns/persons who have taken accommodation entries in the shape of bogus purchases in subsequent assessment years were also appearing, including A.Y.2007-08, therefore, this office is of the firm view that these

cases also need to be reopened u/s 147 of I. Tax Act. Accordingly, on examining the list of accommodation entries provided by Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Sh. Valbhav Jain pertaining to A.Y. 2007-08, it is noticed that the following accommodation entries have been taken by the assessee namely M/s Tarun Metal Co. in A.Y. 2007-08:-

| Sl. No. | Accommodation entry provided by | Name of party to whom Accommodation entry is provided | Amount of Accommodation entry |
|----------------|--|--|--------------------------------------|
| 1. | <i>Shree Shyam Trading Company</i> | <i>M/s Tarun Metal Co.</i> | <i>Rs.15,04,725</i> |
| 2. | <i>Shree Goverdhan International</i> | <i>M/s Tarun Metal Co.</i> | <i>Rs.5,43,093/-</i> |
| | | Total amount of entries = | Rs.20,47,818 |

Also the details of Income tax Return filed by M/s Tarun Metal Co. for A.Y. 2007-08 and processing done u/s 143(1) of I.Tax Act thereof were taken out from ITD System. On examining the same, it is noticed that the assessee had filed his Income Tax Return for the A.Y. 2007-08 relating to the F.Y. 2006-07 on 28.10.2007 declaring an income of Rs. 96,650/- only. Further, no scrutiny assessment was done in A.Y. 2007-08. Therefore, I have reasons to believe that income chargeable to tax amounting to Rs. 20,47,818/-for the F.Y. 2006-07 relevant to A.Y. 2007-08 has escaped assessment and it is a fit case for initiation of proceedings u/s 147 of the Act.”

7. Coordinate Bench of the Tribunal in *assessee’s own case for AY 2006-07* (supra) held the reopening bad in law on account of non-application of mind by the AO by returning following findings :-

“5.1. A perusal of the reasons demonstrate that there is non application of mind by the Ld.A.O. On similar set of reasons arising from the very same material the ITAT Delhi. Bench in ITA no.1365/Del/2005 etc. in the case of Krinhna Material Stores held as follows.

"10. On careful consideration and vigilant perusal of the orders of the Tribunal including that of the Unique Metal Industries [supra] the AO had recorded similarly worded reasons and name of the parties form which the assessee alleged to have made bogus purchases were also same except the amount mentioned therein in the reasons

recorded in the tabular form are same as in the case of the present assessee. Therefore, we have no alternative but to follow the decisions of the Tribunal in the case Unique Metal Industries [supra] and other as mentioned hereinabove.

Therefore, we are of the considered opinion that the initiation of reassessment proceedings as well as issuance of notice u/s 148 of the Act was not valid and the same was void ab initio-and thus we quash the same and subsequently the assessment order passed in pursuance thereto is also quashed. Accordingly, ground nos.2 and 3 of the assessee are allowed.”

8. Following the order passed by the coordinate Bench of the Tribunal in *assessee's own case for AY 2006-07* (supra) in which assessment was reopened on the similar set of facts without application of mind, bare perusal of the assessment order itself goes to prove that the entire investigation as to recording statements and taking affidavits of Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain has been conducted by the ACIT, Central Circle 10, Jhandewalan Extension, New Delhi and the said investigation has been adopted by the AO of this case without applying his mind and without getting their statement corroborated from the further material. So, in view of the matter, we are of the considered view that reopening in this case itself is bad in law, hence ordered to be quashed.

9. Furthermore, on the similar set of facts, addition made by the AO in AY 2006-07 was deleted on merits on the ground that AO was not empowered to made addition treating the entire purchases or part of the purchases as income particularly when purchases have not been declared

as bogus. Furthermore, in the absence of rejection of books of account by the AO, no addition can be made by overlooking the trading results shown by the assessee. For ready perusal, finding of coordinate Bench of the Tribunal in AY 2006-07 are extracted as under :-

5.2. Even on merits the issue is covered in favour of the assessee by the ITAT order (supra) at paras 11 to 14 held as follows :

“On merits :-

11. The remaining issues on merits are sustenance of addition made by the ld. CIT (A) to the extent of 20% purchases made by the assessee during F.Y.2005-06 pertaining to A.Y. 2006-07, from the order of the Tribunal in the case of Unique Metal Industries [supra] dated 30.11.2015 and other cases of the Tribunal, we note that the Tribunal has followed the findings given by the coordinate bench of the Tribunal in the order dated 28.10.2015 in the case of Unique Metal Industries [supra].

The relevant operative finding of the order of the Tribunal in the case of Radhey Shyam (supra) reads as under :-

“7. Now coming to the merit about the sustenance of the addition by the CIT(A) @ 20% of the purchases made by the assessee from Shri Bankey Bihari Trading Co., after hearing the rival submissions and going through the order of the Tribunal, I noted that this Tribunal vide its order dated 28.10.2015 in the case of Unique Metal Industries (supra), deleted similar addition by observing in para 27 as under:

"27. As regards the addition of 20% sustained by the Ld. CIT I am of the view that since purchases are not bogus the addition on this account cannot be sustained. Even otherwise the addition of 20% on the facts and circumstances is apparently too high. The ld. CIT (A) having held that tax has to be levied on real income and the profit cannot be ascertained without deducting the cost of purchases from the sales as otherwise it amount to levy of tax on gross receipt, she ought to have applied profit rate in this nature of trade. Estimating profit @ 20% by taking into consideration the or visions of section 40A(3) will not lead to determination of correct real income. Section 40A(3) is meant for a different purpose when the assessee has made purchases in cash. This provision cannot be applied in such cases. Once the purchases are held to be bogus then the trading results declared by the assessee cannot be accepted and right course in such case

is to reject books of accounts and profit has to be estimated by applying a comparative profit rate in the same trade. Though there can be a little guess work in estimating profit rate but such profit rate cannot be punitive.

12. However, we may point out that the ld. DR has vehemently supported the addition made by the AO and sustained by the ld. CIT (A) and concluded that the ld. CIT(A) has quite correct in holding that since the purchases are bogus, therefore, the addition to the extent of 20% of purchases has to be sustained. On specific query from the Bench, the ld. OR could not bring to our notice any cogent or relevant material or evidence which may compel us to take a different view which could lead us to not to follow the decision of the coordinate benches of the Tribunal in the case of Unique Metal Industries [supra] and other relevant orders. We therefore, respectfully following the decision of the Tribunal in the case of Unique Metal Industries [supra] which deleted the addition, as sustained by the ld. CIT(A) being 20% of the purchases made by the assessee during the relevant F.Y. Consequently, the grounds of the assessee on merits are also allowed.

13. As a result, the appeal of the assessee in ITA No.1365/Del/2015 in the case of Krishna Metal Store vs. ITO are allowed.

14. Since the ld. OR has fairly accepted that the facts and circumstances in the case of Unique Metal Industries [supra] are quite similar to the facts and circumstances in ITA NO.1365/Del/2015 in the case of Krishna Metal Store vs. ITO in all the other five appeals viz:

- 1. ITA No.1378/Del/2015 (2006-07) Bhardwaj Metal (India)*
- 2. ITA No.1369/Del/2015 (2006-07) Laxmi Dhatu Bhandar*
- 3. ITA No.1379/Del/2015 (2006-07) Krishan Lal & Sons*
- 4. ITA No.1380/Del/2015 (2006-07) Kakkar Bartan Store*
- 5. ITA No.1366/Del/2015 (2006-07) Kashmir Metal Store*

Therefore, our conclusion drawn by the earlier part of this order in the case of Krishna Metal Store Vs. ITO [supra] would apply mutatis mutandis to all the other five appeals as well.

Consequently, the legal grounds as well as grounds on merits in all the other above mentioned five appeals are also allowed.”

10. Ld. DR for the Revenue drew our attention towards the assessment order wherein the AO has categorically recorded that books

of account have not been produced by the assessee. However, the Id. AR for the assessee to repel this contention and findings returned by the AO that books of account have not been produced, drew our attention towards letter dated 02.03.2015, available at pages 57 to 60 of the paper book acknowledged by the AO, having been received in para 16 of the assessment order, wherein the assessee has categorically mentioned at page 59 para (g) and para (h) that :

“(g) Books of account along with vouchers/supporting bills are produced for your kind examination sir.

“(h) The copy of account of the parties in question as per ledger account of the assessee is enclosed herewith.”

have been filed. So, the AO has made the assessment on the basis of incorrect facts. So, when the books of accounts have not been rejected after having cross checked, no addition can be made by ignoring the trading results shown by the assessee.

11. So far as question of making enhancement of income by the Id. CIT (A) is concerned, it is contended by the Id. AR for the assessee that while enhancing the income of the assessee, the Id. CIT (A) has failed to consider the reply filed by the assessee, available at pages 116 & 117 of the paper book, stating therein that during the assessment proceedings, books of account and other connecting evidence was produced before the AO along with itemized stock showing day-to-day movement/handling of stocks was also perused by AO, who has not pointed out any defect in the books of account and stock register

produced. We are of the considered view that in these circumstances, enhancing the income by the ld. CIT (A) by estimating the gross profit is not sustainable in the eyes of law.

12. In view of what has been discussed above and following the decision rendered by the coordinate Bench of the Tribunal for AY 2006-07, we are of the considered view that when reopening in this case is bad in law addition made by the AO and confirmed by the ld. CIT (A) is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 7th day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 7th day of October, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**