

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E": DELHI

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

ITA.No.2592/Del./2016  
Assessment Year 2010-2011

M/s. Era Infra Engineering Ltd., C-56/41, Sector – 62, Noida – 201 301. U.P. PAN AAACE1268K	vs.,	The DCIT, Central Circle – 17, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Himanshu Sharma, C.A. Shri Saurabh Jain, C.A.
For Revenue :	Ms. Pratima M. Biswas, CIT-DR

Date of Hearing :	15.01.2020
Date of Pronouncement :	21.01.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 31.03.2016, for the A.Y. 2010-2011, on the following grounds :

1. *“On the Facts & Circumstances of the case, the learned CIT(A) erred in upholding the addition of*

*Rs.4,39,90,559/- without considering the submissions filed by the appellant during the appellate proceedings. The addition sustained by the Learned CIT (Appeal) without appreciating the facts & submission is totally arbitrary and has no basis as the same was made only on the basis of the information received from ITO, Mehsana, without examine the facts as an quasi judicial Authority.*

- 2. That the Ld. CIT(A) erred in upholding the disallowance made by the Ld. Assessing Officer amounting to Rs.22,28,600/- alleging the same as bogus purchases made from CNS Trade Links Pvt. Ltd. on suspicion and arbitrarily without any evidence on record.*
- 3. That the lower authority erred on the facts of the case & as per law, in making addition in the returned income which is not referable to the incriminating material found in consequence to search on it on 16.11.2010.*

*4. That the Ld. CIT(A) erred in upholding the assessment u/s.153A/143(3) of the Act without giving reasonable opportunity of being heard to the appellant.”*

2. Briefly the facts of the case are that a search and seizure operation under section 132 of the I.T. Act, 1961 was conducted at the business/residential premises of the assessee on 16.11.2010. The assessee belongs to M/s. Era Infra Engineering Group of Cases. The A.O. issued statutory notice under section 153A and called for the details from the assessee. The A.O. noted that assessee is engaged in business of Civil Construction activities on contract basis. As per the information submitted by the assessee company, during the year under consideration, the assessee has entered into transactions with M/s. Safeco Projects Pvt. Ltd., of Rs.439.91 lakhs. The assessee was asked to provide complete details. The assessee has submitted that during the year, the assessee company had received work orders from M/s. Suzlon Infrastructure Services Ltd., for preparation and re-surfacing of roads and other civil works

at their different sites for a total contract value of Rs.486.31 lakhs. The above contracts were further awarded to M/s. Safeco Projects Pvt. Ltd., on back to back basis for total contract values of Rs.439.91 lakhs. The assessee company has shown the amount paid to M/s. Safeco Projects Pvt. Ltd., as contract expenses in its books of account. Likewise amount received from M/s. GHCL Ltd., and M/s. Suzlon Infrastructure Services Ltd., has been shown under the head "contract receipts". The assessee has shown profit on M/s. Safeco Projects Pvt. Ltd., at Rs.46,40,711/-. The A.O. noted that survey operation was carried out at Kolkata in the case of M/s. Safeco Projects Pvt. Ltd., by the Income Tax Officer (Inv.), Mehsana while making enquiries in the case of M/s. Sadbhav Engineering Ltd., Ahmedabad. The report of ITO, Mehsana was forwarded to DGIT (Inv.) New Delhi by the DDIT (Inv.) Unit-IV(1), Ahmedabad through letter dated 24.01.2011. As per the report of ITO (Inv.) Mehsana, a statement of the Director of M/s. Safeco Projects Pvt. Ltd., Shri Aditya Chirmar was recorded on 05.10.2010 where he was asked whether he has any experience in construction

activity or any professional person to handle the construction work. He has categorically stated that neither in his individual capacity nor does the company M/s. Safeco Projects Pvt. Ltd., have any expertise to handle construction work. He has categorically stated that no construction work has been carried-out in his company M/s. Safeco Projects Pvt. Ltd. He has also admitted that he and his Company are involved in providing accommodation entries. The A.O. in view of these facts noted that no work has been executed by M/s. Safeco Projects Pvt. Ltd., and the expenses claimed by assessee-company are bogus. The assessee has further submitted that Company has received contracts from M/s. Suzlon Infrastructure Services Ltd., which were sub-contracted to M/s. Safeco Projects Pvt. Ltd., and ultimately the beneficiaries in the case are M/s. Suzlon Infrastructure Services Ltd., A report was sent to the Addl. DIT (Inv.), Ahmedabad where M/s. Suzlon Infrastructure Services Ltd., is assessed, by the Addl. DIT (Inv), Unit-IV, New Delhi that the beneficiary in this case is M/s. Suzlon Infrastructure Services Ltd. During the assessment proceedings,

information has been requisitioned from the Directorate of Investigation, Ahmedabad regarding action taken on information shared. No reply has been received. The A.O, therefore, noted that assessee booked these expenses which are bogus and since ultimate beneficiary in this transaction is M/s. Suzlon Infrastructure Services Ltd., and no information have been received with respect to any action has been taken against them, therefore, to protect the interests of Revenue, the A.O. made the addition of Rs.4,39,90,559/- in the hands of assessee-company on protective basis. The A.O. further noted that as per information received from the O/o. DIT (Inv.), New Delhi, the details of which have been received from Investigation Wing, Mumbai that assessee has booked bogus expenses from M/s. CNS Trade Links Pvt. Ltd., of Rs.22,28,600/-. This fact has been admitted by the concerned provider of bogus bills in his statement. The A.O. accordingly made addition of Rs.22,28,600/-. The assessee challenged both these additions before the Ld. CIT(A), which have been confirmed

by the Ld. CIT(A) and the appeal of assessee has been dismissed.

3. We have heard the Learned Representatives of both the parties and perused the material on record. This appeal was heard with appeal for the A.Y. 2009-2010 which is decided vide separate Order having different facts. Some clarification was required, therefore, this appeal was fixed on 15.01.2020 and was finally heard on the same day.

4. The assessee in this appeal has challenged the Orders of the authorities below that there is no incriminating material found during the course of search on assessee on 16.11.2010. However, the record shows that at page-73 assessee has filed copy of the acknowledgment of filing of the return of income for the assessment year under appeal i.e., 2010-2011 under section 139(1) on 08.10.2010. Thus, on the date of search such return was pending and as such, A.O. was justified in passing the Order under section 153A r.w.s. 143(3) even if no incriminating material was found during the course of search. This ground of appeal of assessee is dismissed.

5. Learned Counsel for the Assessee as regards the remaining grounds submitted that both the additions have been made by the authorities below on the basis of statement recorded at the back of assessee of Shri Aditya Chirman, Director of M/s. Safeco Projects Pvt. Ltd., and some entry provider of bogus bills. However, no such statement have been confronted to assessee and no right of cross-examination have been provided to assessee. He has, therefore, submitted that Order have been passed by the authorities below without giving reasonable opportunity of being heard to the assessee. Learned Counsel for the Assessee, therefore, submitted that it is also not clear as to in which case the addition have been made on substantive basis. Therefore, the matter requires re-consideration at the level of the A.O.

6. The Ld. D.R. in view of these facts also suggested that since she is not able to get information as to in whose case substantive addition have been made and as to what happened to substantive addition, therefore, matter may be

remanded to the file of A.O. for passing the Order afresh, as per Law.

7. Considering the facts of the case in the light of submissions of the both the parties, we are of the view that the matter in issue on merits requires re-consideration at the level of the A.O. It is not in dispute that addition on protective basis was made of Rs.4,39,90,559/- on the basis of statement of Shri Aditya Chirman, Director of M/s. Safeco Projects Pvt. Ltd. The A.O. did not get any information as to in whose case substantive addition have been made. This fact is also not clarified by the Ld. D.R. during the course of arguments. The other addition of Rs.22,28,600/- is made on the basis of statement of some entry provider of bogus bills. Even his name is not mentioned in the assessment order. It, therefore, appears that both these statements were used against the assessee for making the additions. It is not clear from the Order whether such statements were provided to assessee for explanation or any right of cross-examination have been given to assessee to cross-examine these witnesses. In this

view of the matter both the parties rightly suggested that the matter may be directed to the file of A.O. for re-consideration of the issues. In this view of the matter, we set aside the Orders of the authorities below and restore both the additions to the file of A.O. with a direction to re-decide the same by giving reasonable, sufficient opportunity of being heard to the assessee. The A.O. shall provide copies of all statements and incriminating material to the assessee for explanation and in case any right of cross-examination is exercised by the assessee, the A.O. shall produce all such persons whose statements have been recorded at the back of the assessee for cross-examination on behalf of the assessee. The A.O. shall also verify and mention the relevant facts in the assessment order as to in whose hands substantive assessment have been made. In case, no substantive assessment addition is made in any of the hands of the person, there may not be any justification to make protective assessment in the hands of the assessee. We further clarify that assessee shall not be put to disadvantageous position while passing the Order afresh as

per Law as have already been passed above. In view of these facts, A.O. is directed to pass the Order afresh as per the directions in this Order, as per Law. In view of the above, appeal of assessee is allowed for statistical purposes.

8. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 21<sup>st</sup> January, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar, ITAT, Delhi Benches,  
Delhi.