

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA. No.3255/DEL/2019
Assessment Years 2008-09

Parminder Singh H.No. 869, Sector-04, Gurgaon, Haryana 122001	v.	ITO Ward 3(2) Gurgaon
PAN: ABOPS7722E		
(Appellant)		(Respondent)

Appellant by:	Shri Rajiv, FCA		
Respondent by:	Shri Jagdish Singh Dahia, Sr. DR		
Date of hearing:	29	06	2020
Date of pronouncement:	20	07	2020

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 23.01.2019, passed by the Ld. CIT (Appeals)-1, Gurgaon for the quantum of assessment passed u/s 143(3)/147. In various grounds of appeal, the assessee has challenged disallowance of purchase of Rs. 13,09,552/- made from M/s Maa Durga Trading Company.

2. The facts in brief are that the assessee is engaged in the business of manufacturing and job work of industrial tools and machine components. The return of income was filed for the A.Y. 2008-09 at an income of Rs. 2,12,440/- on 30.09.2008. Later on, assessee's case was reopened u/s 147 and notice u/s 148 was issued on 27.03.2015. The reason for reopening was that, as per information received to the Assessing Officer that the assessee has obtained accommodation entries of bogus purchases for Rs. 13,09,552/- from M/s Maa Durga Trading Company. Assessing

Officer in the assessment order has noted that assessee has not responded to various notices though he has filed certain details. The AO has also issued notice u/s 133(6) to M/s Maa Durga Trading Company and also to other parties from whom assessee has purchased materials during the relevant year. However, he has not discussed as to what was the reply and confirmation received from the said parties. As regards purchases made from M/s Maa Durga Trading Company, he observed that assessee has failed to produce supporting evidences of purchases but did not discussed what details assessee has furnished, and accordingly, he passed an assessment order u/s 144/147 treating the entire purchase of Rs. 13,09,552/- as bogus.

3. Before the Ld. CIT (A), the assessee objected to the various observations of the AO and submitted that all the supporting evidences pertaining to purchase made from M/s Maa Durga Trading Company were furnished before the AO, including the copies of bills, transit challans, VAT assessment order, ledger accounts of purchases and ledger account of M/s Maa Durga Trading Company. The case was remanded to the AO to submit his report. In his report, AO stated that information was called upon u/s 133(6) regarding genuineness of the purchase made by the assessee from the said party on the address mentioned in the purchase bill furnished by the assessee. However, the said notice returned “un-served” and assessee was asked during the assessment proceedings to explain the genuineness of the said purchase. Again a notice u/s 133(6) was issued to the M/s Maa Durga Trading Company on the same address mentioned in the bill, however the said notice returned back un-delivered stating “incomplete address”. The entire report of the AO hinges upon the

fact that the notice issued u/s 133(6) remained un-complied with. The Ld. CIT (A) then asked the assessee to furnish the following details:

- (i) *Copy of account of M/s Maa Durga Trading Company in your books of account for FY 2007-08.*
- (ii) *Copies of bills received by you from M/s Maa Durga Trading Company for the purchases made by you during the year 2007-08.*
- (iii) *Evidences of transportation of goods from M/s Maa Durga Trading Company to your business premises.*
- (iv) *Details of payments made by you to M/s Maa Durga Trading Company from 01.04.2007 onwards in the following format: -*

<i>Date</i>	<i>Amount</i>	<i>Mode</i>	<i>Bank name and branch in case of cheque payment</i>

- (v) *Evidences of utilization of material purchased from M/s Maa Durga Trading Company in your business.*
- (vi) *Details of similar items purchased from any other person during the year.*
- (vii) *Copy of item wise register showing the receipt and utilization of material purchased from M/s Maa Durga Trading Company for the period 01.04.2007 to 31.03.2008.*

4. In response, the assessee has filed the above details, including summary of stock register, etc. However, the Ld. CIT (A) held that the evidence of material purchased from M/s Maa Durga Trading Company was not furnished and it was merely stated that same can be verified from the stock register. The Ld. CIT (A) from the perusal of the details furnished by the assessee has noted month-wise purchase and sale which has been incorporated at page 7 of the appellate order, and thereafter has drawn various inferences and dismissed the assessee's appeal after observing and holding as under:

“4.11 From the aforesaid details of purchase and sale, it is seen that there is no opening balance and closing balance of any stock. The purchases made in the month of April are shown at Rs. 1,69,220/- whereas the sale made in the month of April are shown at Rs. 2,88,456/-. Even if it is assumed that all the items purchased by the appellant in the month of April were sold in the month of April itself and no item was carried forward even then the profit arising on account of sales in the month of April works out to Rs. 1,19,236/- which is 70% of the cost of purchases. Similarly, the purchases made in the month of May have been shown at Rs. 2,81,654/- and the sales have been shown at Rs. 3,53,955/-. Showing the profit of Rs. 72,301/- which is almost 25% of the cost of purchases. It is further seen that in the month of March the total sales have been shown at Rs. 4,88,891/- as against purchases of Rs. 4,56,776/- and no amount of closing stock has been shown implying thereby that all the purchases made till 31.03.2008 were sold. Even if it is assumed that no amount of stock was available out of the earlier purchases as on 01.03.2008, the figures imply that the appellant had incurred a loss of Rs. 67,885/- in the month of March, 2008. Similar variation can be noted in the other monthly figures also. Such huge variations in the figures of profit clearly imply that the figures of purchase and sale shown by the appellant are not correct and genuine.

4.12 As pointed out above in spite of specific query raised by me, the appellant failed to furnish day to day stock register or the evidence of utilization of purchases made from M/s Maa Durga Trading Company.

4.13 During the course of appellate proceedings, the AR of the appellant also filed copies of purchase bills from M/s Maa Durga Trading Company and purchase bills of some of the purchases from other persons. It is seen that there are huge variation in the cost of items purchased from M/s Maa Durga Trading Company and from other persons e.g. Alloy Steel has been purchased from M/s Maa Durga Trading Company by bills dated 18.12.2007, 22.11.2007, 24.12.2007 and

18.01.20078 @ 1,10,000/- per Metric ton whereas Alloy Steel has been purchased from Balaji Steels @ Rs. 38 per kg. vide bill dated 30.06.2007 and @ Rs. 56 per kg vide bill dated 18.06.2007 from M/s Venus Industrial Corporation. It is, therefore, evident that the documents filed by the appellant are not reliable and the appellant is manipulating his accounts by adjusting bogus purchases and sales. The addition made by the Assessing Officer is accordingly, confirmed. The grounds of appeal are dismissed.”

5. Before us, the Ld. Counsel for the assessee submitted that all the evidences regarding purchase made from M/s Maa Durga Trading Company was furnished like, purchase and sale bills and ledger account, copy of transit challan issued by VAT Dept., Haryana indicating purchase made from the same party, details of payment made through cheques, assessment order of VAT, copy of ledger account of the supplier, copy of stock summary, item-wise register for purchase of raw material from various suppliers and statement of accounts. None of these documents have been considered by the AO which was duly filed before him vide reply dated 07.09.2015, copy of which has been placed at the PB at pages 4 & 5. Again further details were furnished before Assessing Officer vide reply dated 14.09.2015, the copy of which has been placed at PB at pages 8 & 9. Regarding non service of notice u/s 133(6), the Ld. Counsel submitted that purchases were made in the year 2007 and notice u/s 133(6) was issued after the gap of 8 years. The assessee has given the then existing address as mentioned in the bill and thereafter assessee did not had any transaction in subsequent years, hence it was difficult for the assessee to give the current address. He further submitted that assessee is in the business of job work of industrial tools and machine components and is also engaged in the manufacturing for

the same items for which he has purchased alloy steel. Entire quantitative details of purchase of raw material and consumed were furnished, the copy of which at pages 51 & 52 of the PB.

6. He further submitted that, even Ld. CIT (A) has misappreciated the facts and there was a gap of 16 months between the last hearing and the passing of the order. He also explained as to how the various observation of the Ld. CIT (A) is incorrect. Insofar as the observation regarding opening balance and lack of furnishing of complete ledger account, he pointed out that before the Ld. CIT (A) the assessee had filed complete account. First of all, he pointed out that the Ld. CIT (A) has observed that entire entry has not been given, is not correct, as there was only difference of one entry of 13th March which too was furnished to him and was specifically shown that the payment was made through cheques and there is absolutely no difference in the opening and closing stock in accounts as shown in the balance sheet. He further submitted that Ld. CIT (A) has drawn an erroneous presumption on sale and purchase account that there was no opening stock, because it is revenue account and there is no opening and closing account in revenue account and assessee has given stock register, in which there is an opening stock which is evident from pages 52 to 54. He has also pointed out that there was an opening stock of Rs. 89,000/- which has not been taken into account by the Ld. CIT(A) and trading account shows closing stock of Rs. 47,000/-. Further, observation of Ld. CIT (A) that the assessee has purchased steel @ 110 per kg, whereas from the other parties assessee has purchased at a very lesser price, is also misconceived. He clarified that there are various quality of alloys and he has made purchases of similar quality of steel alloys from

Venus Industrial Corporation @ 110 per kg and even from M/s Maa Durga Trading Company assessee has purchased as low as @ Rs. 32 and @ Rs. 35 per kg. This shows that there are various kinds of alloys that are used. The assessee's GP rate was 20.11% and net profit of 6.80%. He further submitted that once trading account and books of account have not been rejected, then no addition of trading account can be made especially when purchases have been made through cheques. Apart from that, the genuineness of the purchase is established by the fact that VAT Dept. of Haryana had issued a transit challan alongwith related invoice which reflects the purchases made from M/s Maa Durga Trading Company and even the VAT assessment order for purchase and sale have been accepted. Once sales have been accepted another items of the trading account then there cannot be an addition on account of purchases.

7. Ld. DR in his written submission has reiterated the observation and finding of the AO and CIT (A) has incorporated above. He submitted that once the notice u/s 133(6) have not been served, then genuineness of the purchases would not be established.

8. I have heard the rival submissions and also perused the relevant finding given in the impugned order as well as material referred to at the time of hearing. Admittedly, the assessee is engaged in the business of job work and also carrying out separate manufacturing for industrial tools and machine components for which the raw material is alloys steels. Insofar as the controversy regarding the purchases made from M/s Maa Durga Trading Company, the assessee before the AO had furnished; a) month-wise detail of sale and purchase with complete name and address

and the bank statement to show the source of purchase, i.e., through account payee cheques; b) complete books of account alongwith sale and purchase invoices; c) copies of bills/transit challan for purchases made from M/s Maa Durga Trading Company issued by VAT Department, Haryana; d) Dharam Kanta slip; e) VAT assessment order; f) ledger account of purchases, etc.

9. Apart from these facts, the assessee has also filed stock summary of all the raw materials purchased during the year and also items shown in the purchase register. Assessee had shown sales from manufacturing at Rs. 51,60,236/- and income from job work charges at Rs. 21,93,607/-. The dispute regarding the purchase of alloy steel from M/s Maa Durga Trading Company is on manufacturing account. Neither the stock register nor any items of purchase and sales have been disputed by the Assessing Officer, except for purchases made from M/s Maa Durga Trading Company for sums aggregating to Rs. 13,09,552/-, which has been made solely on the reason that notice u/s 133(6) issued to the said party remain un-served. If the assessee has made purchases in the year 2007 and notice u/s 133(6) is issued after a gap of 8 years on the address mentioned in the then invoice and if it has not been served then cannot be held that the purchase is bogus. Had the assessee not corroborated the purchase from other documentary evidences, perhaps then adverse inference could have been drawn. One of the clinching evidence is the transit challan issued by VAT Department, Haryana along with the purchase invoice which clearly proves that purchases made from the said party was actually delivered to the assessee and the payment has been made through account payee cheque, i.e., the source of purchase is from the books only. If the purchases are

recorded in the books and it corresponds with the quantity of items manufactured and consequent sale, then entire purchase cannot be held to be bogus, otherwise it will affect the GP gross profit hugely.

10. The Ld. CIT (A) in his order has tried to find out certain defects in the accounts and pointed out, firstly, that there is no opening and closing balance sheet of stock and, therefore, the GP in the month of April is very high on the cost of purchase and similarly he has pointed out huge variation of the GP rate on the monthly basis. Secondly, he has pointed out the difference between the rates per metric ton all the alloys steel purchased by the M/s Maa Durga Trading Company and other parties. He has also incorporated the sales and purchase account, wherein he has observed that there is no opening balance. As discussed above, it has been pointed out from the records furnished even before the CIT (A) that the revenue account of sale and purchase does not contain opening balance of stock as it is reflected in summary of stock statement which he pointed out from page 52 of the PB that there was opening balance duly recorded in the books and the opening balance along with the purchase is fully tallied with the balance sheet. Hence not only the sales got verified but also the closing stock. It is clearly evident that Ld. CIT(A) has not taken into account the stock statement of the items which clearly shows that there was an opening balance of Rs. 89,000/- and at the year end there is closing stock of Rs. 47,000/-. If, on the credit side of the trading account, sales and closing stock are verifiable and the opening stock is also reflected in the books of account, purchases and the other quantitative details are tallying with the books of accounts and purchases, then there cannot be any inference that

purchases made and shown by the assessee are bogus. As regards the difference of rates the Ld. AR has already pointed out that assessee had purchased different quality of steel alloys the rate of which was Rs. 110 per kg from different party also and from M/s Maa Durga Trading Company the assessee had purchased steel alloy @ Rs. 32 and @ Rs. 35 and also Rs. 110 per kg. Therefore, such an inference drawn by the CIT (A) is divorced from the facts and material on the record. Thus, under the facts and circumstances when purchases are duly accepted by the VAT Department including the sales and manufacturing account and the quantity utilized for the manufacturing has not been disputed and trading account and books of account have not been rejected, then no separate addition on account of purchase cannot be made. Accordingly, the addition made by the AO on account of purchases of Rs. 13,09,552/- is deleted.

11. In the result appeal of the assessee is allowed.

Order pronounced in the open Court on 20th July, 2020.

**Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER**

DATED: 20/07/2020.

Kavita Arora, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar