

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 6448/DEL/2015 (A.Y 2011-12)**

**I.T.A. No. 440/DEL/2016 (A.Y 2012-13)**

**(THROUGH VIDEO CONFERENCING)**

ACIT Central Circle-14, Room NO. 354, ARA Centre, E-2, Jhandewalan Extn. New Delhi <b>(APPELLANT)</b>	Vs	Imperial Housing Ventures P. Ltd. 205, Welcome Plaza, S-551, School Block, Shakarpur Delhi AACCI2023E <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Sunita Singh, CIT(DR) ITA No. 6448/Del/2015 Sh. M. Barnwal, Sr. DR. ITA No. 440/Del/2016</b>
<b>Respondent by</b>	<b>Sh. Salil Aggarwal, Adv</b>

<b>Date of Hearing</b>	<b>20.08.2020</b>
<b>Date of Pronouncement</b>	<b>26 .08.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the Revenue against orders dated 4/11/2015 & 29/09/2015 passed by CIT (A)- XXVI, New Delhi for assessment year 2012-13 & 2011-12 respectively.

2. The grounds of appeal are as under:-

**I.T.A. No. 6448/DEL/2015(A.Y. 2011-12)**

1. *The CIT(A) erred in facts and in law in deleting the addition of Rs. 7,17,95,500 made by the AO on account of unexplained expenditure in*

*complete disregard of the system of accounting and the applicable accounting standards as it is mandatorily required to follow such system of accounting and the accounting standards.*

*2. The CIT(A) erred in facts and in law in allowing the appeal of the assessee without appreciating the fact that the entities from which purchases have shown to be made are bogus and nonexistent.*

*3. The CIT(A), being a fact finding authority, has further erred in facts and in law in accepting the contentions of the assessee without getting the facts verified regarding the existence of M/s Ganesh Traders and M/s Trade Link during the course of appellate proceedings as mandated by the Hon'ble High Court of Delhi in the case of Jansampark Advertising.*

*4. The CIT(A), has further erred in facts and in law in accepting the contentions of the assessee without giving an opportunity to the AO to rebut the submission made by the assessee during the course of appellate proceedings.*

*5. (a) The order of the Ld CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

**I.T.A. No. 440/DEL/2016 (A.Y. 2012-13)**

*“1. That the CIT (A) has erred on facts and in law in deleting the addition of Rs.7,17,95,500/- made by the AO on account o unexplained expenditure in complete disregard of the system o accounting and the applicable accounting standards as it is mandatorily required to follow such system of accounting and the accounting standards.*

*2. That the CIT (A) has erred on facts and in law in allowing that appeal of the assessee without appreciating the fact that the entities from which the purchases have shown to be made are found bogus and non existing.*

*3. That the CIT (A) being a fact finding authority has further erred in facts and in law in accepting the contentions of the assessee without getting the*

*facts verified regarding the existence of M/s Ganesh Traders and M/s Trade Link during the course of appellate proceedings as mandated by the Hon'ble High Court of Delhi in the case of Jansampark Advertising.*

*4. That the CIT (A) has further erred in facts and in law in accepting the contentions of the assessee without giving an opportunity to the AO to rebut the submissions made by the assessee during the course of appellate proceedings.”*

3. We are taking up first Assessment Year 2011-12 first, as there is a substantive assessment in this assessment year. A search and seizure action u/s 132 of the Income Tax Act, 1961 was carried out in the case of Paras Group of cases on 9/9/2010 by the Directorate of Income Tax (Investigation), New Delhi. The assessee company was incorporated on 29/12/2009. Notice u/143 (2) of the Income Tax Act, 1961 was issued on 12/02/2013. In response to the said notice, a copy of the return declaring at 'NIL' income for the Assessment Year 2011-12 was filed. In response to statutory notice on 11/1/2013 Chartered Accountant/Authorized Representative of the assessee company attended the assessment proceedings. During the course of search from the residence of Shri Harmeet Singh Oberoi, certain documents were found and seized which are described as Annexure-A1. On the perusal of bills found and seized, the Assessing Officer observed that the TMT Bars are claimed to be purchase from M/s Ganesh Traders and M/s Trade Link. Inspectors were sent to make enquiries about the genuineness of the purchase of TMT Bar as the said documents were purchased bills for purchase of TMT Bars issued by M/s Ganesh Traders and M/s Trade Link. The said documents also include the Kanta receipts as well as transportation documentation. The Investigation Wing caused enquires through the Inspectors to verify the genuineness of purchase of TMT Bars. It was reported with respect to M/s Ganesh Traders that the shop was closed having Sign Board of M/s Ganesh Traders. It was reported by the neighbours that the shop was closed for the last six months and was rarely visited. It was also highlighted that no other

shop was open on that day in Tyagi Market. It was reported with respect to M/s Trade Link that the said firm did not operate from the impugned premises. It was also reported by Inspectors that Durga Transport Company who had transported the Bars was also not found at the given address. The issue regarding discovery of purchase bills in respect of TMT Bars was confronted to Director of the assessee Company and he submitted that the said purchases had been paid through banking channels and goods had been received as evidence by Dharam Kanta receipts as well as transport documents. The bills were lying with Shri Harmeet Singh Oberoi for the purposes of verification of weight and quality of the products. The Assessing Officer observed that the purchases had not been debited in the profit and loss account during the year under consideration as the said documents were seized at the time of search operation. The Assessing Officer after referring to the statement of Shri Harmeet Singh Oberoi, the Director of the assessee company recorded on 5/3/2013 came to the conclusion that the impugned material had not only been purchased but also delivered at site. It was also emphasized by the Assessing Officer that documents seized during the course of search operation established beyond doubt that material been purchased as well as delivered to the assessee, at its site as the documents seized including bill/cash memo, transporters slip and the weighing slip. The Assessing Officer concluded that the assessee inconvenience with some suppliers had purchased TMT Bars which could not be explained. Thus, the Assessing Officer made addition on Rs.7,17,95,500/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR. submitted that the seized documents were found from the residence of the Director of the assessee company. No evidence whatsoever was produced in respect of the purchase except the fake evidence/substantially shows that the documents were not proper. The Ld. DR submitted that the

CIT(A) erred in deleting the addition and accepting the contention of the assessee without getting the facts verified regarding the existence of M/s Ganesh Traders and M/s Trade Link during the course of appellate proceedings, as maintained by the Hon'ble High Court in case of CIT vs. Jansampark Advertising and Marketing Pvt. Ltd. in ITA No. 525/2014 order dated 11.03.2015.

6. The Ld. AR relied upon the order of the CIT(A). The Ld. AR further submitted that all the documentary evidence about the purchases were before the Assessing Officer but the same was not taken into account. All the documents are genuine and verifiable from the bank statements of the assessee as all the payment was made through banking channel only. The fact that the said documents were seized and was not in the present Assessment Year i.e. 2011-12 is justified as quantification has to be proper. The Ld. AR submitted that in subsequent Assessment Year 2012-13, the said purchases were reflected. Thus, the CIT(A) was right in allowing the appeal.

7. We have heard both the parties and perused the material available on record. The CIT(A) for Assessment Year 2011-12 held as under:-

*“6. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR, during the assessment as well as reassessment proceedings. It is seen that same addition on account of alleged unexplained purchases/expenditure u/s 69C has been made by the AO for AY 11-12 and AY 12-13. It has been the contention of the appellant that the amount of Rs 7,17,95,500 had been recorded in the books of accounts as advance to the suppliers but the said receipt of goods had not been debited in the P&L a/c as purchases for the year under consideration. The reasons for the same have been submitted being on account of the said documents being subject matter of seizure during search operation and non-availability of the same at the relevant time. The AO for AY 12-13 has accepted the factual claim of the appellant to the effect that the purchases in question had been debited*

*in the P&L a/c for AY 12-13 and not AY 11-12. It is quite obvious that the same amount cannot be a subject matter of debit in both the AYs and has to be considered for disallowance or allowance in respect of the year in which the same is debited to P&L a/c. Even if the goods in question had been paid for any AY 11-12, treated as advance in the books of accounts, the same have not affected the taxable income for AY 11-12. The disallowance of the same in the AY 11-12 would amount to making a disallowance for which no claim of allowance exists as per the books of accounts. Therefore, the allowability of the impugned expenditure has to be in the AY 12-13.*

*7. The issue whether the purchases in question had been actually made or not is not a matter of dispute as the AO has recorded number of times in the assessment order that the impugned goods had been purchased as well as delivered at the site. The observations of the AO, in this regard, had been reproduced as under:-*

*"The statement of Sh Harmeet Singh Oberoi recorded during the assessment proceedings (on 05.03.2013) further establishes the fact that material was not only purchased but delivered also at the site, (page no 12 of Assessment order)*

*The very documents seized during the search also establishes beyond doubt that the material was purchased as well as delivered at the site. The documents seized are in the form of set of three essential documents which are required for delivery of consignments or goods i.e. Bill/Cash Memo, Bilty (Transporters Slip) and Kanta parchi (Weighing Slip), (page no 13 of Assessment order)*

*Though it has been established that these entities are non-existing and bogus but still the statement of the then director of the company Shri Harmeet and very nature of document (i.e. bill, bilty and kacha parchi) strongly suggest that material has been delivered at site." (page no 14 of Assessment order)*

*8. It is also a matter of fact that payment for impugned purchases had been made by account payee cheques to the sellers namely, M/s Ganesh Traders*

*and M/s Trade Link. The inquiries! conducted by the investigation wing show that the impugned sellers did not seem to have any regular and running business as shop of M/s Ganesh Traders was found to be closed and M/s Trade Link premises could not be located at all. In the situation when the goods allegedly purchased have been admittedly delivered to the purchaser that is the appellant and payment made thereof through banking channels, the non-availability/tracability of the sellers cannot lead to the conclusion that impugned purchases had not been made at all. When the goods in question have been received at site, obviously, there would be a supplier. The onus on the appellant with reference to the purchases debited in P&L a/c is to ensure that the payment in question is made for goods purchased and the same has been established as detailed above. The AO has neither doubted the receipt of goods by the appellant nor the payment made for the same through banking channels. The mere fact that the impugned sellers could not be available at the given addresses is not sufficient basis to disallow the impugned purchases as unexplained u/s 69C. It is also important to appreciate here that the appellant group of cases had been subjected to search operation on 09.09.2010 i.e. the same financial year in which the impugned payments had been made for the said purchases. The search proceedings have not led to discovery of any evidence either in the form of incriminating documents of unaccounted assets to evidence the possibility of receipt of payments made for purchase in the form of cash. It only means that a casual presumption, especially in the present case' where search has taken place, cannot be made with regard to the impugned purchases being bogus as the goods in question have been received at the site and payments thereof have been made in account payee cheques and no evidence of amount of said purchases being received in cash has been found. In the circumstances, the action of the AO in making the impugned addition u/s 69C could only be termed as on the basis of conjectures and surmises.*

*9. The addition made is, therefore, directed to be deleted.*

*In the result, the appeal is allowed.”*

Thus, there is a clear finding that purchases were actually made and the same was not disputed by the Revenue Authorities at any point of time. From the perusal of the assessment order, these purchases were reflected in subsequent Assessment Year i.e. 2012-13, the purchases were shown by the assessee in subsequent year. In fact, during the search no incriminating documents were found. The Assessing Officer proceeded on the basis of mere assumption that purchases were bogus despite knowing the fact that the purchases were reflected in the books of accounts for A.Y. 2012-13. The Assessee established before the Assessing Officer that the purchases were genuine and the Assessing Officer has also accepted the same, therefore, Section 69C will not be applicable in the present case for making such additions. Hence, the CIT(A) correctly deleted the addition. Thus, appeal filed by Revenue for A.Y. 2011-12 is dismissed.

8. As regards Assessment Year 2012-13, since the assessee has shown the purchases and the quantification is based on the evidences/documents placed on record. The CIT(A) was right in deleting the protective assessment as in both the years, the purchases cannot be held unexplained u/s 69C in light of the observations made hereinabove para while giving finding to A.Y. 2011-12 by us. Thus, the Revenue's appeal for A.Y. 2012-13 is dismissed.

9. In result, both the appeals of the Revenue are dismissed.

**Order pronounced in the Open Court on this 26<sup>th</sup> Day of AUGUST, 2020**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 26/08/2020  
R. Naheed \*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

