

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.8275/Del/2019  
Assessment Year: 2014-15

Manju Sharma,  
WZ-43B, Meenakshi Garden,  
New Delhi.

Vs ITO,  
Ward-45(5),  
New Delhi.

PAN: AATPS2170A

(Appellant)

(Respondent)

Assessee by	:	Shri Krishnan Sampath, Advocate
Revenue by	:	Ms Rinku Singh, Sr. DR
Date of Hearing	:	03.11.2020
Date of Pronouncement	:	23.11.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 05.09.2019 passed by the Id. CIT(A)-15, New Delhi, relating to assessment year 2014-15.

2. Facts of the case, in brief, are that the assessee is an individual and is proprietor of M/s Eastern Galaxy which is engaged in the business of export of handicrafts and decorative items. She filed her return of income on 29.11.2014 declaring taxable income of Rs.47,10,000/-. The case of the assessee was selected

for limited scrutiny under CASS with the reason that there is "Large increase in sundry creditors with respect to turnover as compared to preceding year."

3. The AO, during the course of assessment proceedings, observed that the assessee has shown total sales of Rs.5,56,39,544/- and purchase of Rs.5,39,91,884/- whereas the sundry creditors are shown at Rs.6,71,74,832/- . The AO asked the assessee vide query No.8 of his first notice u/s 142(1) dated 19.04.2016 to furnish the list of sundry creditors and debtors and their ledger accounts with confirmation containing PAN and latest address.

4. However, the assessee vide her letter dated 05.07.2016 submitted only the names of sundry creditors and amounts outstanding as on 31.03.2014. The other details called for by the AO were not furnished. Therefore, the AO vide order sheet entry dated 05.07.2016 asked the assessee to justify/reconcile/confirm the CASS reasons with respect to assessee's ITR.

5. In response to this, 7 confirmations were filed vide letter dated 19.07.2016 and 6 confirmations were filed on 26.07.2016 but without any supporting documents i.e. even without mentioning PAN No. of the party from whom confirmation has been taken. Therefore, the AO vide order sheet entry dated 26.07.2016 asked the AR to produce the creditors.

6. The AO observed from the documentary evidences filed before him that the confirmations filed bear signature of some person whose identity could not be

proved as no ITR, PAN No., identity proof, confirmation of ledger account or Bank account statement were enclosed along with confirmations filed. Further, he found that in the year under consideration, no payments have been made to M/s Indian Crafts, Irshad Khan, Lalmiyan, Riyazuddin and Shakeel (M/s Shakeel Zari Art) and these persons do not file any ITR meaning thereby under the presumption that their income were below the taxable limit. Accordingly, vide letter dated 23.11.2016, the AO sought directions of the JCIT, Range-45, New Delhi u/s 144A of Act.

7. Vide letter dated 21.12.2016 the JCIT, Range - 45 directed the AO to make local enquiries through Inspector in 6 cases where the sales made during the year were exceeding Rs. 10 lakhs and to issue summons u/s 131 for personal attendance and also for calling PAN/ITR with complete annexures, complete books of accounts with purchase and sale vouchers, ledger account of Smt. Manju Sharma in the books of creditors and ledger accounts of other parties in the books of creditors, bank account and any other information considered useful.

8. Accordingly, under the directions issued by the JCIT, the AO deputed the ward Inspectors namely Sh. Ankur Gupta and Sh, Manssh Sangwan to conduct enquiry in these 6 cases and to serve summons u/s 131 dated 21.12.2016 to these sundry creditors for their personal attendance on 26.12.2016 and to file Bank Statements for F.Y. 2013-14, ITR along with Balance sheet, PAN Card or Aadhar

Card, Ledger accounts with copies of sale bills, Ledger accounts of sale made to other parties, complete Books of account.

9. After conducting the field enquiries, the ward Inspectors submitted their report on 23.12.2016, submitting therein that Sh. Lalmiyan, Sh. Mohd, Younus and Sh. Shakeel denied of having issued bills to the assessee. Further, Sh. Riyazudin, Sh. Ovais Khan and Sh. Irshad Khan were not found on the specified addresses. Since, the identity, creditworthiness and genuineness of the transactions with these 6 persons could not be established, therefore, the AO vide show cause notice dated 23.12.2016 asked the assessee to explain as to why the credit balance outstanding against the name of these 6 creditors amounting to Rs, 3,20,92,833/- be not added back to declared total income u/s 68 of I.Tax Act.

10. Later on, in response to summons u/s 131 of I.Tax Act, statement of Sh. Ovais Khan, Mohd. Younus, Sh. Shakeel were recorded on oath and vide order sheet entry dated 26.12.2016, copy of their statements were shown to the AR of the assessee and Sh. Keshav Dutt Sharma, husband of the assessee who were present there for confrontation/ cross examination of the persons whose statements have been recorded. However, no confrontation/ cross-examination of these parties were done by them. Finally, vide order sheet entry dated 26.12.2016, the assessee's AR was asked to produce the remaining 3 creditors for verification namely Sh. Riyazuddin, Sh. Irshad Khan and Sh. Lalmiyan on 28.12.2016 at 11.00 AM with supporting documents mentioned in summons u/s 131 dated 21.12.2016.

11. The AO vide final show cause notice dated 29.12.2016 again giving the brief facts of the case and thereafter, highlighting the non- verification of sundry creditors, asked to assessee to show cause as to why the balance amount shown outstanding against the name of these 6 creditors amounting to Rs. 3,20,92,833/- be not added back and the case was fixed for hearing on 30.12.2016 at 11.00 AM.

12. In spite of being allowed opportunity to produce the 6 creditors afresh for verification, the assessee refused to produce them except Sh. Ovais Khan. At the time of service of summons u/s 131 of I.Tax Act dated 21.12.2016 Sh. Ovais Khan was not found at the address provided by the assessee i.e. Mohalla Deepur, Village Khadagunj, Distt. Shajaanpur, U.P. However, he appeared on 26.12.2016 for recording his statement when address was stated as 39, Lodhi Tola, Purana Sahar, Bareilly, U.P. Further, in response to Q.No. 16, he denied of having made any Stamp put on the bill and stated that he has not signed in the confirmation dated 19.09.2016 filed by the assessee in this office on 26.09.2016. Also he could not confirm that the amount of Rs. 16,50,000/- is to be received by him from the assessee. Also in the Affidavit dated 05.08.2017, he could not mention how much amount is to be receivable or payable by him to the assessee. Therefore, taking into consideration the fact that only 50% of credit amount shown outstanding by the assessee as on 31.03.2014 has been added back by the AO in his assessment order i.e. AO made addition of Rs. 8,25,000/- only, the AO did not find it prudent to call Sh. Ovais Khan for verification.

13. The AO accordingly made an addition of Rs.3,05,34,283/- u/s 68 of the IT Act, 1961 on account of unverified/non-existent /bogus creditors by observing as under:-

Keeping in view of the facts and circumstances of the case and the statements of the creditors and documents and submissions place on record, the total income of the assessee is determined as under:

1. Sh. Shakeel, Shakeel Zari Art- Rs.81,24,743/- As per his statement recorded on oath, he did not know Manju Sharma and he has no dealing with Manju Sharma. The Husband and the A.R. of the Assessee also denied having known to him and have any dealings with him vide note sheet entry dated 26.12.2016. Accordingly vide note sheet entry dated 26.12.2016 the husband and A.R. of the assessee were asked to produce Sh. Shakeel for personal deposition and examination on oath. However, till 30.12.2016 they have neither produced Shakeel nor filed any documents as asked for vide show cause notice dated 29.12.2016. In the absence of examination/verification, the identity, genuineness of transactions and creditworthiness of the creditor is not proved as per section 68 of the Act by the assessee.
2. Sh. Riyazuddin -Rs.76,54,635/- summons u/s 131 of the Act could not be served on him as per above inspector report and the assessee has also failed to produce the creditor for personal deposition as asked for vide note sheet entry dated 26.12.2016 and show cause dated 29.12.2016. The Husband and A.R. of the assessee also did not produce the creditor for personal examination on oath and also did not submit any bill/voucher and details of documents as asked for vide show cause dated 29.12.2016 to prove the genuineness of the transaction as asked for vide note sheet entry dated 26.12.2016 and show cause dated 29.12.2016. Hence, in the absence of examination/verification, the identity, genuineness of transactions and creditworthiness of the creditor is not proved as per section 68 of the Act by the assessee.
3. Irshad Khan-Rs.65,31,250/- summons u/s 131 of the Act could not be served on him as per above inspector report and also no compliance/reply has been received from him vide this office summons dated 21.12.2016 sent to- him by speed post no. ED070048711IN. The husband and AR of the assessee also did not produce the creditor for personal examination on oath and also did not submit any bill/voucher and details of documents as asked for vide show cause dated 29.12.2016 to prove the genuineness of the transaction as asked for vide note sheet entry dated 26.12.2016 and show cause dated 29.12.2016. Hence, in the absence of examination/verification, the identity, genuineness of transactions and

creditworthiness of the creditor is not proved as per section 68 of the Act by the assessee.

4. Lalmiyan- 66,65,105/-The ledger A/c of Lalmiyan bears the heading LALMIYAN, the heading in the copy of bill/cash memo bears the name LALMIYAN, whereas the signatures below spelled as "Lalmian". Also in the copy of the PAN CARD provided the signatures spelled as Lalmiyan. Also, as per the Inspectors report, the person does not file any ITR as he has income below taxable income. Also, summons u/s 131 of the Act dated 21.12.2016 was -served on him, but no reply/compliance has been made by him. The Husband and A.R. of the assessee also did not produce the creditor for personal examination on oath and also did not submit any bill/voucher and details of documents as asked for vide show cause dated 29.12.2016 to prove the genuineness of the transaction as asked for vide notesheet entry dated 26.12.2016 and show cause dated 29.12.2016. Hence, in the absence of examination/verification, the identity, genuineness of transactions and creditworthiness of the creditor is not proved as per section 68 of the Act by the assessee.
5. Mohd. Younus-14,67,100/- On perusal of the bank statement of Md. Younus, there are credit entries of substantial amount and these payments have been received through RTGS/NEFT from Eastern Galaxy. However, no bank detail for A.Y. 2014-15/ bill/ invoices has been submitted for the verification of payments in cash to Mohd. Younus in subsequent years as revealed from their ledger a/c. Hence, it is not certain whether these payments have been actually paid to Mohd. Younus or not or that any transaction of purchase and sale has been carried out. Therefore, I treat that 50% of these purchases in F.Y.2013-14 as unverifiable/ bogus.
6. Ovais Khan- 16,50,002 -Cr perusal of the bank statement of the assessee for F.Y.2015-16, there are payments through RTSS N5FT from Eastern Galaxy to Ovais Khan. However, Ovais Khan did not confirm the confirmation sent to this office from the Eastern Galaxy of the amount of Rs.16,50,000 for F.Y. 2013-14. However, no bank detail for A.Y. 2014-15, bills/invoices has been submitted for the verification of payments in cash to Ovais Khan in subsequent years as revealed from their ledger a/c. Hence, it is not certain whether these payments have been actually paid to Ovais Khan or not or that any transaction of purchase and sale has been carried out. Also Mohd. Younus did not give any bill to its customers. Therefore, I treat that 50% of these purchases in F.Y.2013-14 as unverifiable/ bogus.

Section 68 of the Act states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing officer, satisfactory, the sum so

credited may be charged to income tax as the income of the assessee of that previous year.

In view of the above enquiries and verification conducted by this office in respect of the above creditors and also after giving the assessee an opportunity of being heard from time to time it has been found that these creditors are either bogus or the liability shown by the assessee against them has not been proved by the assessee in terms of identity, creditworthiness and genuineness of these creditors. Since the assessee' has failed to discharge the onus cast upon her in respect of sundry creditors amounting to Rs.3,05,34,283/- which have been found credited in the books of accounts maintained by assessee ,these are being charged to Income Tax u/s 68 of the Income Tax Act, 1961 for A.Y. 2014-15ö

14. In appeal, the Id.CIT(A) relying on various decisions confirmed the addition made by the AO u/s 68. The relevant final observation of the Id.CIT(A) is as under:-

ö4.9 Therefore, in the light of the present set of facts and circumstances of the case it is inferred that the appellant had largely failed on all accounts, as and when it comes to establishing the creditworthiness of the third party to whom the various amounts were recorded as payable in the books of accounts. As seen from the facts above, the chain of events herein clearly do not inspire confidence as being genuine and are shrouded in mystery, as to why the so-called creditors, who do not have even filed their income tax returns (and even PAN in some cases) could enter into such high value of transactions as claimed by the appellant. In the absence of the same, the creditors fail the test of creditworthiness and the transactions fail the test of genuineness, Therefore, Therefore, considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO and accordingly, the addition of Rs. 3,05,34,283/- made by the AO while disallowing the sundry creditors as genuine, is hereby confirmed.ö

14.1. While holding as above, the Id.CIT(A) relied on the following decisions:-

- i) Oriental Wire Industries (P) Ltd. vs. CIT (1981), 131 ITR 688 (Cal);
- ii) Bharati (P) Ltd. vs. CIT (1978) 111 ITR 951 (Cal);
- iii) Prakash Textile Agency vs. CIT (1980) 121 ITR 890 (Cal)

- iv) CIT v. K.M. Mahim (1995) 81 Taxman 222 (Ker.);
- v) CIT vs. Precision Finance (P) Ltd. (1994) 208 ITR 465;
- vi) Gumani Ram Siri Ram vs. CIT (1975) 98 ITR 337 (P&H);
- vii) Roshan Di Hatti (1977) 107 ITR 938 (SC);
- viii) Aravali Trading Co. vs. ITO (2010) 187 Taxman 338 (Raj);
- ix) CIT vs. Mihir Kanti Hazra (2015) 61 taxmann.com 315 (Cal);
- x) Pr. CIT-7, Delhi vs. Bikram Singh (2017) 85 taxmann.com 104 (Del);
- xi) Papneja Traders vs. CIT (2012) 20 taxmann.com 752 (P&H);
- xii) T.P. Abdulla vs. ACIT, Central Cir (Kozhikode) (2012) 20 taxmann.com 402 (Ker);
- xiii) Mukesh Shaw vs. ITO (2012) 18 taxmann.com 18 (Jharkhand);
- xiv) Acron Finance (P) Ltd. vs. CIT (2011) 13 taxmann.com 69 (P&H);
- xv) Pr. CIT (Central-1) vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48 (SC);

15. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

01. On the facts and in the circumstances of the case and in law, the CIT(A) erred in passing a completely non-speaking order, without adjudicating the grounds of appeal as raised before him and without even making reference to 664 pages of evidence as before him.

2. On the facts and in the circumstances of the case and in law, the CIT( A) erred in not examining the issues in appeal and simply copy pasting parts of the Remand Report dated 24.11.2017 and thereafter making sundry references to case law.

3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in not even paying heed to observations of the Assessing Officer in the Remand Report dated 24.11.2017, wherein the AO himself has admitted:

a. That export sales made by the assessee were duly scrutinized and found to be genuine and;

b. Evidence as to payment made to the creditors in the subsequent years had also not been refuted.

4. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in confirming the addition of Rs. 3,05,34,283/- in respect of trade creditors.

5. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in not adjudicating Grounds 1, 2, 3,4 and 5 as raised before him.

The Assessee seeks leave to add to, alter, forego, or otherwise modify all or any of the grounds of appeal as taken herein above.ö

16. The Id. Counsel for the assessee strongly challenged the order of the CIT(A) in upholding the addition made by the AO. Referring to page 1-267 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to the consignment-wise details of export sales such as shipping bills, invoice, invoice summary and packing list, etc. Referring to page 268 to 309 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to the realization certificate in respect of export sales. Referring to page 310 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to the reconciliation chart of shipping bills with invoice. Referring to pages 311 to 349 of the paper book, the Id. Counsel drew the attention of the Bench to the quarterly VAT returns filed for the subject assessment year. Referring to pages 350 to 353 of the paper book, the Id. Counsel drew the attention of the Bench to the stock summary and

item-wise flow of inventory. Referring to pages 354 to 366 of the paper book, the Id. Counsel drew the attention of the Bench to the quantitative details of purchases made by the assessee.

17. The Id. Counsel for the assessee submitted that during the course of assessment proceedings, the assessee had given the list of creditors with their addresses and has explained the reason for increase in creditors. It was explained that sales as well as the purchases had increased over corresponding periods in earlier years. It was explained that since payments from debtors were delayed, the creditors could not be paid. He submitted that after receipt from the debtors belatedly, the creditors were subsequently paid much before the completion of the assessment. Although such details were filed before the AO, however, the AO did not take all these things into account and made addition u/s 68 of the Act.

18. The Id. Counsel submitted that the AO has not rejected the books of account of the assessee and the sales has been accepted. He accordingly submitted that once the sales has been accepted and the assessee has filed the quantitative details of all purchases, sales, opening stock and closing stock item-wise and quantity-wise and the items were exported out of the country, therefore, merely because certain creditors, who are illiterate persons not knowing the intricacies of the tax laws, has made some adverse statements or expressed their ignorance about the various entries, the same cannot be a ground to make huge addition by disregarding the purchases. He submitted that without purchases there cannot be

any sales. He further submitted that the entire goods are exported out of the country after thorough inspection by the competent authorities.

19. Referring to the decision of the Honøble Bombay High Court in the case of PCIT vs. Jakharia Fabric (P) Ltd., 118 taxmann.com 406, he submitted that in that case, information was received by the AO to the effect that eight parties from whom purchases were made by the assessee were engaged in job work of dyeing of fabrics were hawala dealers who had issued bogus bills and the AO treated the aforesaid purchases as bogus purchases and accordingly addition was made to the total income of the assessee. The Commissioner (Appeals) noted that without purchase of materials, it was not possible for the assessee to complete job work of dyeing and, thus, the entire purchases could not be added as bogus and profit element embedded in such transaction had to be added to the total income of the assessee. Since profit estimation ranged from 12.5% to 25%, Commissioner (Appeals) took the view that 17.5% as profit element would meet ends of justice and accordingly he directed the AO to estimate the profit at 17.5% of the total alleged bogus purchases and, thereafter, to delete the balance addition. The Tribunal concurred with the said view. The Honøble High Court upheld the order of the Tribunal and the appeal filed by the Revenue was dismissed.

20. Referring to the decision of the Honøble Gujarat High Court in the case of Principal Commissioner of Income Tax, Vadodara 2 vs. Synbiotics Ltd., reported in 106 taxmann.com 316 (Gujarat), he submitted that in that case, the assessee was

engaged in the business of manufacturing and marketing of various bulk drugs and pharmaceutical preparations. During that assessment year, the assessee incurred expenditure for purchase of chemicals for production of products. During the course of search carried out at the premises of one FHR in which it was found that the said party was running ten concerns which were mainly used for issuing bogus purchase bills and the assessee had also purchased chemicals from one of its concerns. The AO, invoking the provisions of section 69C, made addition to the total income of the assessee on account of bogus purchases. The CIT(A) noted that the assessee, during the relevant assessment year had yielded profit ratio of 107.95% and it was impossible to generate anything from thin air, thus, the assessee had produced goods by utilizing such bulk drugs purchased by it. The Tribunal upheld the action of the AO. On further appeal by the Revenue, the Honorable High Court dismissed the appeal of the Revenue holding that since conclusion arrived at by the Tribunal was based upon a finding of fact that there was corresponding sales in respect of alleged bogus purchases, the order of the Tribunal could not be said to give rise to any substantial question of law warranting interference.

21. Referring to the decision of the Honorable Delhi High Court in the case of CIT vs. Sunrise Tooling System (P) Ltd., 47 taxmann.com 20, he submitted that the AO in that case made addition to assessee's total income on the basis of statement of Director of Company that certain amount represented non-existent or bogus

transaction. In appeal, the Tribunal took note of statement of :-Dø and retraction made later on. It was also noted that said statement was recorded in course of survey under section 133A and, consequently, did not have any evidentiary value. The Tribunal, thus, deleted the addition made by the authorities below. The Honøble High Court, while dismissing the appeal filed by the Revenue, upheld the order of the Tribunal. It held that the Tribunal has passed the order after taking note of materials before Revenue authorities which included assessee's books of account. Besides, the Tribunal also noted that the authorities below had not even rejected the books of the assessee while treating the transaction in question to be bogus. It was accordingly held that the Tribunal has rightly deleted the addition made by the AO and sustained by the CIT(A).

22. Referring to the decision of the Honøble Supreme Court in the case of CIT vs. Century Plyboards (I) Ltd., reported in 103 taxmann.com 179 (SC), he submitted that in that case, after completion of the assessment, the Commissioner received a complaint from Director General that assessee had entered into bogus purchase transactions with one :-Dø. On the basis of the said complaint, the CIT(A) passed a revisional order setting aside the assessment. In appeal proceedings, the Tribunal, having noticed copies of invoices and challans, proof of payments, bank statements, transportation payments, vouchers for movement of goods and like documents, concluded that transactions between assessee and :-Dø were not bogus or fraudulent. Accordingly, the order passed u/s 263 by the CIT was set aside.

The Honøble High Court upheld the order passed by the Tribunal. The Honøble Supreme Court dismissed the SLP filed against the decision of the Honøble High Court by the Revenue.

23. So far as the decisions relied on by the Id.CIT(A) are concerned, he submitted that all these decisions relied on by the Id.CIT(A) relate to loans taken by the assessee and the assessee failed to substantiate the three ingredients of section 68 of the IT Act. However, in the instant case, there is no such cash transaction and the assessee has purchased the goods from these parties and has made payments to them in subsequent years before the completion of assessment. There is nothing on record to show that such payments made to them has come back to the assessee directly or indirectly. The sales of the assessee has been accepted and the books of account have not been rejected. Therefore, the order of the CIT(A) sustaining the addition made by the AO has to be set aside and the grounds raised by the assessee should be deleted.

24. The Id. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that the assessee in the instant case has shown unsubstantiated sundry creditors of Rs.6.71 crores on a total turnover of Rs.5.56 crores and purchase of Rs.5.40 crores. The AO has made the addition on account of bogus liability against sundry creditors because the assessee could not substantiate the identity and credit worthiness of the sundry creditors and genuineness of the transactions. He submitted that while deciding the issue we

should go to the substance of the case and not the form of the case. The AO in the instant case has made extensive enquiries and made the additions which has been sustained by the CIT(A) after obtaining a remand report from the AO. He submitted that the assessee has miserably failed to substantiate the purchases from the six creditors to the tune of Rs.3.05 crores and, therefore, the addition made by the AO and sustained by the CIT(A) is fully justified. He further submitted that even though the assessee was given opportunity to cross-examine three of the sundry creditors, however, the assessee did not avail of the opportunity and, therefore, the assessee cannot make any plea that she was not given the opportunity to cross-examine.

25. The Id. Counsel, in his rejoinder, drew the attention of the Bench to the copy of the remand report and submitted that the AO himself has accepted in the remand report that the assessee has filed the bills of goods purchased from the six creditors, freight charges paid for purchases, details of freight charges of Rs.3.96 lakhs debited to the Profits & Loss Account and has also given a finding that the assessee has paid the amount outstanding against the name of six sundry creditors as on 31.03.2004 in subsequent assessment years either by way of cheque/RTGS/NEFT or by making cash payment. He has further given a finding that provisions of section 40(a)(3) are not applicable to the cash payments where it has exceeded the limit of Rs.20,000/- in view of Rule 60DD(f) of IT Rules vide Notification No.97/2008 dated 10.10.2008. Further, the assessee, in the instant case, has

produced three of these six creditors before the AO. He further submitted that due to threat by the inspectors who visited the business premises of those creditors who are illiterate persons and village artisans and are not maintaining any regular books of account, they could not give proper replies to the AO as wanted by him. However, the chain of events indicate that the assessee had made purchases from the six creditors, maintained proper stock register giving date-wise and quantity-wise purchase and sale of goods and the entire sales were exported out of the country, therefore, making such huge addition is not only unjustified but also will ruin the business of the assessee. He accordingly submitted that the order passed by the CIT(A) should be reversed and the grounds raised by the assessee should be allowed.

26. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.3,05,34,283/- u/s 68 of the IT Act being unverified/non-existent /bogus sundry creditors in the books of the assessee in respect of six creditors on the ground that the assessee could not substantiate the identity and credit worthiness of the creditors and the genuineness of the transaction. We find, the Id.CIT(A) upheld the action of the AO. It is the submission of the Id. Counsel for the assessee that the assessee has maintained full quantity-wise details of the purchases from the above parties and the sales, which

are export sales, have gone through various inspections by the Customs Department and the sales have been accepted by the AO himself. Further, the books of account of the assessee have not been rejected. The assessee has made the payments to the above parties in the subsequent assessment years which has been acknowledged by the AO in the remand report. Further, the assessee has produced three of the six creditors before the AO. Therefore, under the circumstances, the addition u/s 68 of the Act in respect of the trade creditors is not justified.

27. We find some force in the above argument of the Id. Counsel. It has been an undisputed fact that the books of account of the assessee have not been rejected and the sales of the assessee has been accepted. The assessee, in the instant case is maintaining stock register giving item-wise and quantity-wise items purchased, sold, opening stock and closing stock. Further, out of the six creditors, the assessee has produced three creditors, namely, S/Shri Ovais Khan, Mohd. Younus and Shakeel, whose statements were recorded u/s 131 of the IT Act. Although the statements recorded during the course of assessment proceedings from the above three creditors are not in favour of the assessee, however, during the remand proceedings, on being asked by the AO, the assessee has produced bills of goods purchased from the six sundry creditors, freight charges paid for purchases, details of freight charges, ledger account of these parties for subsequent assessment years highlighting the payments, etc. It is also pertinent to mention here that the AO

himself in the remand report has accepted that the assessee has paid the amount outstanding against the names of six sundry creditors as on 31.03.2014 in subsequent assessment years either by way of cheque/RTGS/NEFT or by making cash payments. The relevant observation of the AO in the remand report reads as under:-

öDuring the course of remand proceedings, the assessee was asked to furnish the bills of goods purchased from the 6 sundry creditors, freight charges paid for purchases, details of freight charges of Rs.3.96 lakhs debited in Trading account. Further, ledger accounts of these creditors for subsequent assessment years highlighting the payments made in subsequent years, item-wise purchases and sales made were called for. The same was filed by the assessee vide letters dated 11.09.2017, 26.09.2017 and 14.11.2017.

On verification of details/documents submitted by the assessee in Remand proceedings, it is noticed that the assessee has paid the amount outstanding against the name of 6 sundry creditors as on 31.03.2014 in subsequent assessment years either by way of cheque/RTGS/NEFT or by making cash payments. Though the cash payments made were exceeding Rs.20,000/-, however, the same were claimed to be exempt under Rule 6DD(f) of I.Tax rules and in view of Notification No.97/2008 dated 10.10.2008. Except this, the assessee could not bring on record any documentary evidence to rebut the arguments put forth by the Assessing Officer in the assessment order passed for the year under consideration on 30.12.2016.ö

27.1 Thus, it is seen that the payments have been made by the assessee to the creditors in subsequent years and there is nothing on record to show that such payments made to the above parties have come back to the assessee in some form or the other.

28. As mentioned earlier, the books of account of the assessee has not been rejected and the addition u/s 68 of the Act has been made in respect of six creditors from whom the assessee has purchased goods, but, no payments have been made to

those parties during the impugned assessment year and the assessee was unable to produce the above six parties before the AO during remand proceedings although three of them were produced before the AO during assessment proceedings. Under these circumstances, it is to be seen as to whether addition can be made of the whole of the amount or profit embedded in these purchases can be added to the total income of the assessee.

29. We find, somewhat identical issue had come up before the Honøble Bombay High Court in the case of PCIT vs. Jakharia Fabric (P) Ltd., 118 taxmann.com 406. In that case, information was received by the AO to the effect that eight parties from whom purchases were made by the assessee were hawala dealers who had issued bogus bills and the AO treated the aforesaid purchases as bogus purchases and accordingly addition was made to the total income of the assessee. The CIT (A) noted that without purchase of materials, it was not possible for the assessee to complete job work of dyeing and, thus, the entire purchases could not be added as bogus and profit element embedded in such transaction had to be added to the total income of the assessee. Since profit estimation ranged from 12.5% to 25%, the CIT (A) took the view that 17.5% as profit element would meet the ends of justice and he accordingly he directed the AO to estimate the profit at 17.5% of the total alleged bogus purchases and, thereafter, to delete the balance addition. The Tribunal concurred with the said view. On further appeal by the Revenue, the

Hon'ble High Court upheld the order of the Tribunal and the appeal filed by the Revenue was dismissed by observing as under:-

10. Submissions made have been considered.

11. In the assessment proceedings Assessing Officer had relied upon information obtained from the Investigation Wing of the Department at Mumbai which in turn had obtained the information from the Sales Tax Department, Government of Maharashtra. The information was to the effect that the eight parties from whom the purchases were allegedly made were alleged hawala dealers who had issued bogus bills totalling Rs.1,14,92,970.00.

12. In the appellate proceedings before the first appellate authority, it was held as under :-

"2.15 The facts in the present case shows that the appellant was not in a position to prove the existence of the suppliers. The suppliers were found to be engaged in providing bogus bills without actual delivery of goods. Moreover few of the suppliers are not regular parties and they were found to have supplied only during the year and there were no supply either in the earlier year or in the subsequent year from such parties. This circumstantial evidence also prove the bogus nature of the transaction. On careful analysis of the finding of Hon'ble High Court of Gujarat in the above mentioned cases, I am of the firm view that without purchase of materials it was not possible for the appellant to complete the job work of Priya Soparkar 6 10 itxa 1354-17-0 dying. As mentioned above the AO had never disputed or examined the aspect of job work receipts. Hence I am of the firm belief that the appellant had made cash purchases from other parties which were not recorded in the books. The appellant took only bills from these 8 parties as accommodation to explain the purchases. Therefore the entire purchase from these 8 parties cannot be added as bogus and what needs to be taxed is the profit element embedded in such transaction. The appellant carryout only the job work of dying the cloths on a contract basis. Estimation ranging from 12.5% to 25% has been upheld by the Hon'ble Gujarat High Court depending upon the nature of the business. As held in the case of Simit P. Sheth (supra) no uniform yardstick could be applied to estimate the rate of profit and it vary with the nature of business. Taking all the facts into consideration and the findings of the Hon'ble Courts on this issue, I am of the view that estimation of 17.5% of profit would meet the ends of justice. Therefore, I direct the AO to estimate profit of 17.5% on the total alleged bogus purchase which works out to Rs.20,11,270(17.5% of Rs.1,14,92,970/-). The appellant get the relief of the balance Rs.94,81,700/-. The grounds raised are partly Allowed."

13. Thus as can be seen from the above, CIT (A) had relied upon the decision of the Gujarat High Court in Simit P. Sheth (Supra) and took the view that entire purchases from the eight parties could not be added as bogus but what needed to be added to the total income of the assessee was the profit element embedded in such transaction. CIT (A) noted that assessee carried out only the job work of designing the clothes on contract basis; profit estimation ranged from 12.5% to 25%. In the circumstances of the case, CIT(A) took the view that taking of 17.5% as the profit would meet the Priya Soparkar 7 10 itxa 1354-17-o ends of justice. Accordingly, Assessing Officer was directed to estimate profit of 17.5% on the total alleged bogus purchases and thereafter, to delete the balance amount of addition.

14. In further appeal Tribunal referred to the above finding of the CIT(A), whereafter it was held as under:-

"6. Thus, from the aforesaid analysis, conclusions and findings recorded by the Ld. CIT(A), it is evident that total purchases were wrongly disallowed by the Assessing Officer. The Ld.CIT (A) took a reasonable view whereby the disallowance was sustained to the extent of estimated inflation in the amount of purchases made by the assessee. The disallowance sustained by the Ld. CIT(A) @ 17.5% of the purchases have been accepted by the assessee with a view to bury the litigation. Nothing has been brought before us by the Ld.DR to contradict the findings recorded by the Ld.CIT(A). The assessee's counsel has also placed reliance upon the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. (supra) wherein similar issue has been decided on identical lines by the Hon'ble Bombay High Court. In our view, no intervention is required in the findings of Ld.CIT(A) and, therefore, the same is confirmed. The grounds raised by the revenue are dismissed."

15. Thus, Tribunal concurred with the view taken by the CIT(A) that the Assessing Officer had erred in disallowing the entire total purchases and adding the same to the total income of the assessee. View taken by the CIT(A) that 17.5% of the purchases be added to the total income of the assessee as the profit element was a reasonable one. It was also noted that the said percentage was accepted by the Priya Soparkar 8 10 itxa 1354-17-o assessee with a view to close the litigation. Nothing was brought on record by the Revenue to contradict the findings recorded by the CIT(A). Tribunal had also referred to the decision of this court in CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 6129. Infact, this court has also held following the decision of Nikunj Eximp Enterprises Pvt. Ltd. that the revenue is required to furnish the information received from the Sales Tax Department or from the Investigation Wing of the Department to the assessee allowing the assessee to test the veracity of such information otherwise such information could not be relied upon. This court in the case of Principal Commissioner of Income Tax Vs.

Vaman International Pvt. Ltd., Income Tax Appeal No.1940 of 2017, decided on January 29, 2020 held as under:-

"17.1. Thus, from the above, it is seen that Tribunal had returned a finding of fact that the assessee had filed copies of purchase bills, copies of purchase/sale invoices, challan cum tax invoices in respect of the purchases, extracts of stock ledger showing entry/exit of the materials purchased, copies of bank statements to show that payment for such purchases were made through regular banking channels, etc., to establish the genuineness of the purchases. Thereafter, Tribunal held that Assessing Officer could not bring on record any material evidence to show that the purchases were bogus. Mere reliance by the Assessing Officer on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition under Section 69C of the Act. Tribunal has also held that if the Assessing Officer had doubted the genuineness of the purchases, it was incumbent Priya Soparkar 9 10 itxa 1354-17-o upon the Assessing Officer to have caused further enquiries in the matter to ascertain genuineness or otherwise of the transaction and to have given an opportunity to the assessee to examine/cross-examine those two parties vis-a-vis the statements made by them before the Sales Tax Department. Without causing such further enquiries in respect of the purchases, it was not open to the Assessing Officer to make the addition under Section 69C of the Act.

18. We are in agreement with the view expressed by the Tribunal. In fact, Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities.

19. This Court in the case of Commissioner of Income Tax -1, Mumbai v/s. Nikunj Eximp Enterprises(P.) Ltd., 372 ITR 619; wherein an identical fact situation arose did not interfere with the order passed by the Tribunal and held that no substantial question of law arose from such order. It was held that merely because the suppliers had not appeared before the Assessing Officer, no conclusion could be arrived at that the purchases were not made by the assessee."

16. Today while dealing with Income Tax Appeal No.1330 of 2017 (Principal Commissioner of Income Tax Vs. Rishabhdev Tachnocable Limited), we have held as under:

"19. On thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. The lower appellate authorities had enhanced the quantum of purchases much beyond that of the Assessing Officer i.e., from Rs.24,18,06,385.00 to Rs.65,65,30,470.00 but having found that the purchases corresponded to sales which were reflected in the returns of the assessee in sales tax proceedings and in addition, were also recorded in the

books of accounts with payments made through account payee cheques, Priya Soparkar 10 10 itxa 1354-17-o the purchases were accepted by the two appellate authorities and following judicial dictum decided to add the profit percentage on such purchases to the income of the assessee. While the CIT (A) had assessed profit at 2% which was added to the income of the assessee, Tribunal made further addition of 3% profit, thereby protecting the interest of the Revenue. We have also considered the two decisions relied upon by learned standing counsel and we find that facts of the present case are clearly distinguishable from the facts of those two cases to warrant application of the legal principles enunciated in the two cited decisions.

20. In Bholanath Polyfab Limited (supra), Gujarat High Court was also confronted with a similar issue. In that case Tribunal was of the opinion that the purchases might have been made from bogus parties but the purchases themselves were not bogus. Considering the fact situation, Tribunal was of the opinion that not the entire amount of purchases but the profit margin embedded in such amount would be subjected to tax. Gujarat High Court upheld the finding of the Tribunal. It was held that whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal had concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.

21. We are in respectful agreement with the view expressed by the Gujarat High Court."

16. On thorough consideration of the matter, we do not find any error or infirmity in the finding returned by the Tribunal. No substantial question of law arises from such finding returned by the Tribunal. Accordingly, the appeal is dismissed. However, there shall be no order as to cost.ö

30. We find, similar issued had come up before the Honøble Delhi High Court in the case of CIT vs. Sunrise Tooling System (P) Ltd., 47 taxmann.com 20. In that case the AO during assessment proceedings made addition to assessee's total income on the basis of statement of Director of Company that certain amount represented non-existent or bogus transaction. In appeal, the Tribunal took note of statement of :-Dø and retraction made later on. It was also noted that said statement was recorded in course of survey under section 133A and, consequently, did not

have any evidentiary value. The Tribunal, thus, deleted the addition made by the authorities below. The Honøble High Court noticed from records that the Tribunal passed this order after taking note of materials before Revenue authorities which included assessee's books of account. Besides, the Tribunal also noted that the authorities below had not even rejected the books of the assessee while treating the transaction in question to be bogus. Accordingly the order of the Tribunal was upheld by the Honøble High Court. The relevant observation of the Honøble High Court at para 5 of the order reads as under:-

“5. This Court is of the opinion that the ITAT cannot be faulted in its approach in rendering the findings of fact. Although the learned counsel for the Revenue endeavoured to submit that the ITAT fell into error in overlooking and discounting the statement of D.K. Jain on the ground that it was retracted, the discussion quoted above would show that the ITAT took note of the materials before the AO and the CIT (A), which included the assessee's books of accounts as well as the Sales Tax records of Shree Laxmi Industrial Corporation. These established firmly and conclusively that the claim of the assessee that it had purchased goods from Shree Laxmi Industrial Corporation were borne out. The ITAT also noted - and we agree with that approach entirely - that the income-tax authorities had not even rejected the books of the assessee even while finding the claim as genuine transaction to be bogus.”

31. We find, the Honøble Gujarat High Court has also decided somewhat similar issue in the case of Principal Commissioner of Income Tax, Vadodara 2 vs. Synbiotics Ltd. (supra) In that case, the assessee was engaged in the business of manufacturing and marketing of various bulk drugs and pharmaceutical preparations. During that assessment year, the assessee incurred expenditure for purchase of chemicals for production of products. A search was carried out at the premises of one FHR in which it was found that the said party was running ten

concerns which were mainly used for issuing bogus purchase bills and the assessee had also purchased chemicals from one of its concerns. The AO, invoking the provisions of section 69C, made addition to the total income of the assessee on account of bogus purchases. The CIT(A) noted that it was impossible to generate profit ratio of 107.95% and, thus, the assessee had produced goods by utilizing such bulk drugs purchased by it. In the light of the finding of fact, he restricted the addition on account of bogus purchase to 25%. The Tribunal upheld the action of the CIT(A). On further appeal by the Revenue, the Honorable High Court dismissed the appeal of the Revenue by observing as under:-

14. In the light of the rival submissions, the question that arises for consideration is whether the restriction of disallowance in respect of bogus purchases to 25% thereof is justified.

15. As can be seen from the order passed by the Commissioner (Appeals), he, after appreciating the material on record, has recorded a finding of fact to the effect that the assessee had produced goods by utilising such bulk drugs and it is in the light of such finding of fact recorded by him that he has restricted the disallowance on account of bogus purchases to 25%. The Tribunal has not disturbed such finding of fact recorded by the Commissioner (Appeals). A perusal of the proposed questions shows that the appellant has neither challenged the concurrent finding of fact recorded by the Commissioner (Appeals) and the Tribunal, nor has it been pleaded that the findings of fact recorded by the Tribunal are perverse. The Tribunal has concurred with the finding of fact recorded by the Commissioner (Appeals) that the assessee had produced goods by utilising bulk drugs and has followed the decision of this court in the case of N.K. Industries Ltd. {supra}, wherein the court has relied upon its earlier decision in Vijay Proteins Ltd. {supra}, wherein it has been held thus:ô

16. It is a matter of fact that the goods were not received from the parties from whom it is shown to have been purchased but, such material was received from a different source which is exclusively within the knowledge of the assessee and none else. Therefore, it is evident that the assessee had inflated the expenditure in question by showing higher amount of purchase price through the fictitious invoices in the names of 33 bogus suppliers.

Considering the overall factual scenario, the Tribunal was justified in disallowing 25% of the purchase price."

16. This court in *Sanjay Oilcake Industries v. CIT* 120091 316ITR274 (Guj.), on which reliance has been placed in the case of *Vijay Proteins Ltd.* {supra}, recorded the findings of the Tribunal, wherein the Tribunal had concurred with the action of the Commissioner (Appeals) for confirming 25% of the amount claimed as fair and reasonable. The Tribunal found that the parties from whom the purchases were shown to have been made were perhaps creation of the assessee itself for the purpose of banking purchases into books of account because the purchases with bills were not feasible. Thus, the said parties become conduit pipes between the assessee firm and the sellers of the raw materials. Under the circumstances, it was not impossible for the assessee to inflate the prices of raw materials. The Tribunal, accordingly, held that an addition of 25% for extra price paid by the assessee than over and above the prevalent price is fair and reasonable and, accordingly, confirmed the findings of the Commissioner (Appeals). This court concurred with the findings of the Commissioner (Appeals) and the Tribunal and held that the estimate made by the two appellate authorities did not warrant interference as even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law.

17. In the facts of the present case, the Tribunal, having concurrently found that there were corresponding sales in respect of the bogus purchases, was wholly justified in confirming the order passed by the Commissioner (Appeals) in restricting the bogus purchases to 25% of the bogus purchases. Since the Tribunal as well as the Commissioner (Appeals), have merely followed the decision of the jurisdictional High Court, no infirmity can be found in the impugned order passed by the Tribunal warranting interference. However, it may be clarified that the quantum of deduction, namely, 25% cannot be said to be a fixed standard, inasmuch as, in the case of *Sanjay Oilcake Industries* {supra} what the court has held was that the extent of restriction was merely an estimate and that an estimate cannot give rise to a question of law. Nonetheless, having regard to the facts and circumstances of this case, this court does not find any warrant for interference.

18. Insofar as the decision of the Bombay High Court in the case of *Shoreline Hotel (P.) Ltd.* {supra} is concerned, the controversy involved in the said case was as regards the validity of exercise of power under section 263 of the Act and while the case involved bogus purchases, no principle has been enunciated in that regard. Moreover, in the facts of the said case, the assessee was engaged in running a hotel and there were no corresponding sales against those purchases. The said decision, therefore, would have no applicability to the facts of the present case.

19. In the light of the above discussion, the conclusion arrived at by the Tribunal being based upon a finding of fact, namely, that there were corresponding sales in respect of the bogus purchases, the impugned order passed by the Tribunal cannot be said to give rise to any question of law, much less, a substantial question of law warranting interference. The appeals, therefore, fail and are, accordingly, dismissed.ö

32. Since, in the instant case, the sales made by the assessee has been accepted and the books of account have not been rejected and the assessee has made the payments to the sundry creditors in the subsequent years and there is nothing on record to suggest that the money so paid has come back to the assessee directly or indirectly in any form, therefore, making addition of the entire amount payable to the six sundry creditors in the instant case in our opinion is highly unjustified. However, the assessee also cannot get scot free by not producing the sundry creditors and making purchases from parties who are not maintaining proper records or who have made adverse statements and, therefore, the assessee cannot be equated with another assessee who is maintaining records meticulously and not making purchase from grey market. Since the assessee in the instant case is showing GP rate of less than 4%, therefore, considering the totality of the facts of the case, we are of the considered opinion that adoption of GP rate of 16% on such unsubstantiated purchases from the six creditors will meet the ends of justice. We, therefore, direct the AO to adopt GP rate of 16% on such purchases of Rs.3,05,34,283/- from the six creditors which comes to Rs.48,85,485/- as against the addition of the entire amount payable to the six parties u/s 68 of the IT Act.

Thus, the addition is restricted to Rs.48,85,485/- as against Rs.3,05,34,283/- made by the AO and sustained by the CIT(A).

33. So far as the decisions relied on by the Id.CIT(A) and the Id. DR are concerned, all those decisions relate to addition u/s 68 of the Act where loans or advances have been obtained by the respective assessees and they could not substantiate with evidence to the satisfaction of the AO regarding the three ingredients of section 68 of the Act. However, in the instant case, there is no such cash loan or advances from the six parties and the amount outstanding against their names represent outstandings payable for purchase of goods. Further such goods have been sold and such sales has been accepted and books of account have not been rejected. Further the payments have been made to them in the subsequent assessment years, a finding given by the AO in the remand proceedings. Therefore, those decisions are distinguishable and not applicable to the facts of the present case.

34. In view of the above discussion, we direct the AO to restrict the addition to Rs.48,85,485/- as against Rs.3,05,34,283/- made by him and sustained by the CIT(A). The grounds raised by the assessee are accordingly partly allowed.

35. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 23.11.2020.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 23<sup>rd</sup> November, 2020.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi