

**IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH, KOLKATA**  
(श्री ए.टी. वर्की, न्यायिक सदस्य)  
[Before Shri A. T. Varkey, JM]

**I.T.A. No. 314/Kol/2020**  
Assessment Year:2011-12

Asha Spring & Engineering Co. (PAN: AAOFA8421H)	Vs.	Income-tax Officer, Kolkata	Ward-46(1),
Appellant		Respondent	

Date of Virtual Hearing	02.02.2021
Date of Pronouncement	05.02.2021
For the Appellant	Ms. Pinki Shaw, ACA
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

**ORDER**

This is an appeal preferred by the assessee against the order of the Ld.CIT(A)-14, Kolkata dated 21.01.2020 for AY 2011-12.

2. Though the assessee has raised as many as 13 (thirteen) grounds of appeal, the Ld. AR of the assessee Ms. Pinki Shaw at the time of hearing brought to my notice ground no. 5 which reads as under:

*“5. That in the facts and circumstances of the case, the Hon’ble CIT(Appeal) was not justified in law in sustaining the rate of G.P. restricted to 28.69% on impugned purchases i.e. Rs.1.99,203/- out of Rs.6,94,330/- is liable to be deleted.”*

3. Brief facts of the case as noted by the AO are that he received a letter from the Pr. DIT (Inv.), Kolkata dated 05.07.2016 informing that Shri Sanjiw Kumar Singh, the ‘Bill Master’ was engaged in providing accommodation entries in the form of bogus bills to various parties in lieu of commission. According to the content of the letter, the AO noted that a survey operation was conducted in the case of Shri Sanjiw Kumar Singh which was later converted into search and certain incriminating documents were seized from which it came to light that he was involved in providing accommodation entries in the form of bogus bills in lieu of commission. According to the information, Shri Sanjiw Kumar Singh was

operating paper concerns and the modus operandi of providing accommodation entries was admitted by him. As per the information, the assessee was involved in getting accommodation entries through seven paper concerns of Shri Sanjiw Kumar Singh viz., M/s. Durga Sales, M/s. Gangotri Trading Company, M/s. Jayshree Sales Corporation, M/s. Kasturi Metal Trading Pvt. Ltd., M/s. Meal & Alloy Syndicate, M/s. Tarama Merchants Pvt. Ltd. and M/s. Vasukinath Enterprises from whom the assessee has shown to have purchased goods worth Rs.2,88,323/-, Rs.36,651/-, Rs.1,34,558/-, Rs.74,583/-, Rs.2,78,022/-, Rs.40,629/- and Rs.1,29,887/- respectively. According to AO, based on this information, he reopened the assessment of the assessee ; and the AO acknowledges that the assessee had filed audited Balance Sheet, P&L Account, bank statement etc. However, according to AO, the assessee failed to furnish the required details called for by him. Therefore, he added the amount of Rs.6,94,330/- which the assessee had shown to have purchased goods from the aforesaid concerns, as unaccounted income in the hands of the assessee and taxed u/s. 68 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who gave partial relief to the assessee by noting as under:

*"Therefore, after considering the factual matrix of the case, it appears that the AO in the assessment order had treated the entire alleged purchase as bogus but has not rejected the books of account which is essentially means that he has accepted the sales. Under such circumstances, the Hon'ble Courts have taken a view that the entire unverified purchases are not rendered vulnerable for addition, only the element of profit embedded from such purchase should be considered for addition. The appellant had disclosed a GP of 28.69% for the AY 2011-12. Therefore, it would be reasonable to limit undisclosed profit embedded in the bogus purchase to 28.69% at Rs.1,99,203/-. The addition of Rs.6,94,336/- is restricted to Rs.1,99,203/-. This ground of appeal partly succeeds and is therefore partly allowed."*

Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is in appeal before me.

4. Assailing the action of the Ld. CIT(A), the Ld. AR of the assessee Ms. Pinki Shaw submitted that the assessee had been able to discharge the onus upon it to show that the purchases made by the assessee from the seven concerns (supra) were genuine. According to Ld. AR, the assessee had filed all the documents to substantiate that the purchases are genuine and supporting documents like sample copy of the invoices from seven concerns

have been filed which is placed at pages 11 to 36 of paper book and she drew our attention specifically to pages 11, 15, 16, 17, 18, 20, 21, 24 and 25 which are the sample invoices/bills showing that purchases have been made from each of the seven concerns named (supra). The Ld. AR drew my attention to the sample copy of invoice of one concern and pointed out that VAT has been paid, buyers' as well as the sellers' VAT/CST nos. were given and the payments have been made through banking channels. The Ld. AR drew my attention to pages 37 to 44 of the paper book wherein the copies of confirmation of transaction by the said seven parties are given. The Ld. AR also drew my attention to page 77 and 78 of the paper book which are the photo copies of acknowledgment of sales tax return and page 78 shown the quantitative stock statement for the relevant year. So, according to the Ld. AR, the assessee has discharged the onus upon it to prove the genuineness of the purchase made from the seven parties by producing the primary documents. According to Ld. AR, the AO erred in believing the third party information to draw adverse view against the seven concerns/assessee. Further, the action of AO is bad for not providing the assessee, a copy of the statement of Sri Sanjiw Kumar Singh which was supposed to have been recorded u/s. 133A/132 of the Act ; and moreover, no opportunity to test his statement by cross examination was provided to the assessee. Therefore, relying on the decision of the Hon'ble Supreme Court in the case of CIT-7, New Delhi Vs. M/s. Odeon Builders Pvt. Ltd., in Review Petition (C) Diary No. 22394 of 2019 in Civil Appeal Nos.9604 & 9605 of 2018 dated 21.08.2019, the Ld. AR pleaded that no addition ought to have been made on this issue. According to Ld. AR since the books of the assessee which are audited has not been rejected and the AO has accepted purchases and sales no separate addition was warranted, so the Ld. CIT(A) rightly deleted the same. However, according to Ld. AR, the Ld. CIT(A) erred in law by restricting the addition to Rs.1,99,203/- by adding G.P percentage of 28.69% to Rs.6,94,336/- . Therefore, she pleaded that the addition sustained by Ld. CIT(A) should be deleted.

5. Per contra, the Ld. DR vehemently opposed the submission of the Ld. AR and submitted that the assessee failed to provide the details before the AO and even before the Ld. CIT(A) it was not disputed that these were bogus purchases, therefore, the Ld. CIT(A)

has rightly added the GP shown by the assessee i.e. @28.69% of the bogus purchases, which action of Ld. CIT(A) should not be disturbed.

6. Having heard rival submissions and after perusal of the records, it is noted that based on the information given by DDIT (Inv.) that pursuant to a search/survey conducted on Shri Sanjiw Kumar Singh (3<sup>rd</sup> party) and statements recorded u/s. 132(4) of the Act, the AO has reopened the assessment of the assessee and alleged that since the assessee has shown to have made purchases of Rs.6,94,330/- from 7 (seven) parties connected with Shri Sanjiw Kumar Singh and since he [Shri Sanjiw Kumar Singh] has accepted that he is providing accommodation entries in the form of purchase bills etc.; and since the assessee had made purchases of goods from these concerns to the tune of Rs.6,94,330/-, the AO made the entire addition of Rs.6,94,330/-. On appeal, Ld. CIT(A) restricted the addition to GP percentage @ 28.69% of the bogus purchases of Rs.6,94,330/- at Rs.1,99,230/-. This action of Ld. CIT(A) is under challenge. It is noted that the assessee's accounts are audited. The assessee in order to prove the genuineness of the purchases from the seven concerns (supra) have filed the copies of invoices from which the VAT/CST of the buyers and sellers are evident; and the VAT has been paid by the assessee ;and the payments have been made through banking channel ; and all the 7 (seven) parties have confirmed the transactions. Thus, the assessee has discharged the onus of proof by adducing the primary evidence to substantiate the purchase transactions from these seven (7) concerns. Therefore, in such a scenario, the AO could have disbelieved the transaction only on the basis of reliable material to disprove the same. In this case the AO took the support of the statement given by Shri Sanjiw Kumar Singh in third party action to take an adverse view against the assessee. In such a situation, the AO ought to have confronted the assessee with the statement of Shri Sanjiw Kumar Singh or material against the assessee ; and not kept the assessee in dark if he intended to use it against the assessee. Moreover the AO has not found any infirmity with the documents filed by the assessee to prove the transactions. So, other than the third party statement, which was not even examined by the AO and without providing a copy to assessee and the statement not tested on the touch-stone of cross-examination, cannot be the basis to draw adverse inference against the assessee. Therefore,

no addition was warranted. To come to my aforesaid decision, I rely on the decision of the Hon'ble Supreme Court in the case of CIT Vs. M/s. Odeon Builders Pvt. Ltd. (supra) wherein the Hon'ble Supreme court has held as under:

*"We have perused the review petition and find that the tax effect in this case is above Rs.1 crore, that is, Rs.6,59,27,298/-. Ordinarily, therefore, we would have recalled our order dated 17th September, 2018, since the order was passed only on the basis that the tax effect in this case is less than Rs.1 crore.*

*However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs.19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:*

*"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs.19,39,60,866/-, is directed to be deleted."*

*The ITAT by its judgment dated 16<sup>th</sup> May, 2014 relied on the self same reasoning and dismissed the appeal of the revenue. Likewise, the High court by the impugned judgment dated 5<sup>th</sup> July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT."*

7. Respectfully following the ratio laid by the Hon'ble Supreme Court, I am inclined to delete the addition of Rs. 1,99,230/-. Therefore, the appeal of the assessee is allowed.

8. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 5<sup>th</sup> February, 2021.

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 5<sup>th</sup> February, 2021

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Asha Spring & Engineering Co., Ichapur, Kamardanga, Battala, Howrah-711104.
2. Respondent – ITO, Ward-46(1), Kolkata.
3. CIT(A)-14, Kolkata (sent through e-mal)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar