

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.7603/Del./2017
Assessment Year: 2013-14

Sh. Ashok Kumar, C-31, Satyawati Colony, Ashok Vihar, Phase-II, New Delhi	Vs.	ACIT, Circle-36(1), New Delhi
PAN :AALPK9775H		
(Appellant)		(Respondent)

Appellant by	Shri Pratap Gupta, CA
Respondent by	Shri Ashok Gautam, Sr.DR

Date of hearing	22.03.2021
Date of pronouncement	27.04.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 16/10/2017 passed by the learned CIT(Appeals)-12, New Delhi [in short "The Ld. CIT(A)"] for assessment year 2013-14 raising following grounds:

1. *The ld. CIT(A) without appreciating the correct facts of the case and ignoring the various case law relied upon is not justified in law and facts and circumstances of the case in confirming the addition of Rs.48,01,597/- made by learned Assessing Officer on account of alleged bogus purchases without pointing out any*

defect in the stock register and quantitative information furnished and rejecting the sales made.

2. *Assessee has every right to made, add, delete, modify or alter any grounds of appeal at the time of hearing.*

2. Briefly stated facts of the case are that the assessee filed return of income on 30/09/2013, declaring total income of ₹ 35,53,238/-. The scrutiny assessments under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 29/03/2016 after making disallowance of purchase expenses of ₹ 48,01,597/-. On further appeal, the learned CIT(A) upheld the disallowance. Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

2. Before us, the parties appeared through Video Conferencing facility and filed paper-book through email.

3. Facts in brief qua the issue in dispute are that out of the total purchases, purchases made from following parties were questioned by the Assessing Officer:

1. *M/s Micro International at H. No. 125, Ground Floor, Khasra No. 760, Village Siraspur, Delhi - 1100042.*
2. *M/s Apex Traders, at 72/136, Siraspur, New Delhi - 110042.*
3. *M/s Silver Line (India) at Flat NO. 113, 1st Floor, House No. 1, 13-Block, Panchwati, Azadpur, Delhi - 110033.*
4. *M/s Reema Ploymers Pvt. Ltd. at 208, Nitika Tower - I, Commercial Complex, Azadpur, Delhi-110033.*

4. The Assessing Officer observed that notices issued under section 133(6) of the Act were returned back in case of the first two parties. In case of party at Serial No. 3, no reply was received back. The reply received in case of fourth party was not found tenable by the Assessing Officer. In view of the observations, the

Assessing Officer asked the assessee to produce those parties. But, the assessee failed to produce those parties and filed only document available in his books of accounts i.e. purchase bills and ledger accounts of those parties in the books of the assessee. Regarding the purchase bills, the Assessing Officer observed that same were identically computer-generated and appeared not to be genuine. Therefore, again the Assessing Officer asked the assessee to produce those parties to whom notice under section 133(6) of the Act was issued. The Assessing Officer also attempted to verify the genuineness of the parties through Inspector of his office. The Inspector reported that M/s Micro International and M/s Apex Traders could not be located as no such addresses existed. Regarding M/s Silver Line (India), the Inspector reported that an NGO named "Pehala Kadam" was running its operation at the given address for last 2 ½ year and said party did not exist at that address.

4.1 The Authorised Representative of the assessee was confronted with the report of the Inspector and the assessee was again asked to produce those parties. The assessee insisted that purchases were made from dealers registered with VAT Department of Delhi, who must have verified their addresses. As the assessee failed to produce those parties, and purchase bills were not found genuine by the Assessing Officer, he disallowed the purchases amounting to ₹ 48,01,597 from following three parties:

Sl. No.	Name of the Party	Amount of Purchases in Rs.
1.	M/s. Micro International	20,74,222
2.	M/s. Apex Traders	4,10,550

3.	M/s. Silver Line (India)	23,16,825
	Total	48,01,597

4.2 Before the Ld. CIT(A), the assessee reiterated the same submission that those parties were registered with VAT and therefore, the assessee was not required to produce those parties before the Assessing Officer and it is for the Assessing Officer to find out their addresses either from the bank or from the Registrar of companies. The Ld. CIT(A) upheld the disallowance observing as under:

“5.3.3 The submission of the Appellant has been quoted verbatim in the body of this order. The arguments taken by the Appellant are being evaluated and examined in the light of the investigation carried out by the Assessing Officer and the provisions of law. The Assessee has submitted that the return of notices u/s 133(6) issued to M/s Micro International and M/s Apex Traders by the postal authorities is not clear. In this connection, the Assessing Officer has clearly mentioned in the Assessment Order that the addresses given by the Assessee are not correct. The Assessee has taken recourse of registration with the VAT Department. In this respect it is observed that not only VAT Department, even the Income Tax Department issues PAN Cards. But the Appellant does not take such arguments. This is difficult to say at this level that the proper inquiry was conducted by the VAT Department before the issue of TIN No. Even if it is assumed that at some point of time the parties managed to get VAT No. registered, by showing their address at a particular place, the reason for non existence of those addresses on subsequent inquiry is not explained at all. If the postal authorities are wrong and the Inspector of the Income Tax Department cannot trace these parties on the given addresses, it is not explained by the Appellant what effort has been made by it to locate these parties and report to the Assessing Officer for inquiry. Obviously, the Appellant is trying to shift the blame on the Assessing Officer whereas the fact remains that the onus to prove the genuineness of the purchases was on the Assessee and the primary responsibility was to give correct address of the parties. The submission of the Appellant that inquiries are conducted after 3 years from the dates of transaction is again not comprehensible because one party may change its address in the span of 3 years but how is it possible that all 3 parties are not available? The Appellant has stated that the ground for rejecting the purchase from M/s Silver Line (India) is vague as she has only written with respect to the reply received from this party - ‘Not

tenable'. Though the Assessing Officer has not elaborated the reasons for not finding the reply tenable, the Appellant fails to give the complete whereabouts of this party for inquiry. The Appellant has failed to prove the genuineness of purchases on the given facts. When the Assessing Officer was trying to locate the parties on the given addresses and was failing to do so, the Assessee was only blaming the Assessing Officer on one pretext or other instead of cooperating with her in finding correct addresses and whereabouts of the parties and informing the same to the Assessing Officer to facilitate the examination. In another argument, the Appellant has stated that the goods purchased from these parties were subsequently sold and the Assessing Officer has accepted the sales. Therefore, she is not justified in treating the purchases as bogus expense. With regard to this argument, it is held that the Assessing Officer has accepted the sales in terms of value shown by the Assessee. There was no requirement on the part of the Assessing Officer to doubt the value of the sales. The onus was on the Assessee to furnish the quantitative details of purchases and quantitative details of sales and justify the rates at which the sales were made. This exercise has obviously not been done by the Assessee. Therefore, the Assessee cannot justify the declared value of the purchases in the Profit & Loss Account. The decisions relied on by the Appellant are distinguishable on facts. The facts of the quoted cases are different from those of the Assessee."

5. Before us, the learned Counsel of the assessee submitted that the lower authorities are not justified in sustaining the disallowance of purchases, where corresponding sales have not been doubted. According to him, it is undisputed that no sales can be made without corresponding purchases, no purchases can be disallowed in the case of the assessee without disturbing the sales. He submitted that there is very marginal decrease in the gross profit and net profit in the year under consideration as compared to earlier year. The learned Counsel also submitted that no books of accounts have been rejected by the Assessing Officer. He submitted that merely because the supplier had not appeared before the Assessing Officer, it cannot be concluded that purchases were not made by the assessee and in support of

the above proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Nikunj Eximp Enterprises (P) Ltd in ITA 5604 of 2010.

6. The Learned DR, on the other hand, relied on the order of the lower authorities and submitted that the assessee has not supported corresponding sales with the help of the stock register. He submitted that in the case relied upon by the assessee, the tax payer filed letter from the suppliers with stock reconciliation, however, in the instant case, neither confirmation, nor any stock reconciliation statements has been filed and therefore, the case relied upon is distinguishable.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the instant case, the Assessing Officer has disallowed the purchases of Rs. 48,01,597 shown by the assessee from three parties. According to the Assessing Officer, the bills issued by those parties are computer-generated identical bills and in his opinion same were not genuine. Further, on verification through notice under section 133(6) of the Act and through Inspector of his office, those parties were found not in existence at the addresses provided by the assessee. Therefore, for verification of the purchases, the Assessing Officer asked the assessee to produce all the parties before him. But the assessee only supplied copy of purchase bills and ledger accounts of those parties in the books of accounts maintained by the assessee. The fact of returned back of the notice u/s 133(6) and parties not found during verification by the Inspector were duly informed to the assessee, however, no attempt was made by the assessee to provide their current

addresses to the Assessing Officer and the assessee only reiterated that those parties were duly registered with VAT and the Assessing Officer might obtain their address from banks or Registrar of Companies. Despite specifically being asked to produce those parties for verification of their purchases, no attempt was made by the assessee to produce those parties. The Ld. CIT(A) has also observed that no quantitative details of purchases and sales were provided by the assessee. In such circumstances, we are of the opinion that the purchases claimed by the assessee are not free from doubt. The assessee has to demonstrate sales corresponding to the purchases. In the case relied upon by the assessee, the sales were made to government department and thus sales were not doubted, but the instant case it has not been brought on record, whether the sales are made to the government Department or export sales. If the sales corresponding to the purchases are not demonstrated, then possibility of the entire purchases being doubtful cannot be denied. If the corresponding sales are demonstrated, then even if delivery of goods from purchase parties is not established, then possibility of purchase of goods in cash from another parties, cannot be denied. In the facts and circumstances of the case, we are of the opinion that without reconciliation of purchases and corresponding sales with the help of the stock register, sustaining the disallowance of entire purchases is not justified. Therefore, we restore this issue back to the file of the Assessing Officer for deciding afresh with the direction to the assessee to file stock reconsideration statement along with relevant invoices of

sales, documents in support of delivery of the goods from purchase parties.

7.1 The assessee shall also produce relevant purchase parties along with their confirmation. The Assessing Officer may carry out inquiries as deemed fit in the facts and circumstances of the case and pass order after providing adequate opportunity of being heard to the assessee. The ground raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 27th April, 2021

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

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

Dated: 27th April, 2021.

RK/-(DIDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi