

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 2217/DEL/2016 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

ACIT Circle 62(1) New Delhi (APPELLANT)	Vs	Hans Raj Dhankar B-37, Ashok Vihar New Delhi AAFPD0344P (RESPONDENT)
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Appellant by	Sh. Gaurav Pundir, Sr. DR
Respondent by	Sh. Kapil Goel, Adv

Date of Hearing	29.07.2021
Date of Pronouncement	21.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 26/02/2016 passed by CIT(A)-20, Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

“1. In the facts and circumstances of the case, the Ld.CIT(A) has erred in reducing the addition from Rs. 3,25,35,521/- to Rs.9,76,321/- made by the A.O on a/c of bogus purchases as the assessee failed to substantiate his claim during the assessment proceedings.”

3. The assessee is a proprietor engaged in the business of Civil Construction Activities in the name and style of M/s H R Builders. Return of income was filed by the assessee for the Assessment Year 2012-13 on 30/09/2012

declaring a total income of Rs,3,43,41,837/- u/s 139 of the Income Tax Act, 1961. The Assessing Officer asked the assessee to produce comparative GP/NP Chart for last three assessment years. During the year under consideration, the assessee has shown net profit of Rs. 3,44,41,838/- on total turnover of Rs.59,87,31,901/- showing net profit rate of 5.75% which is slightly decreased from previous year net profit of Rs. 5,14,19,208/- on total turnover of Rs. 89,71,37,753/- showing net profit rate of 5.86% in comparison to previous year. The Assessing Officer made addition u/s 40(a)(ia) amounting to Rs.11,24,186/-, addition on account of bogus purchase amounting to Rs. 3,25,35,521/-, disallowance out of wages and salaries expenses amounting to Rs.2,00,000/-, disallowance out of telephone expenses amounting to Rs. 34,111/-, addition on account of interest allowed u/s 244A amounting to Rs.84,882/- and disallowance out of car, vehicle expenses amounting to Rs. 4,06,957/-.

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

5. The Ld. DR relied upon the assessment order and further submitted that merely giving confirmations cannot be called as proper evidence. In-fact, in certain documents, the confirmations were not signed and the bills were not filed. Thus, the evidences are in doubt. Thus, the deletion of the addition was not proper and justified.

6. The Ld. AR submitted that return u/s 139 was filed on 30/09/2012 with total income of Rs. 3,43,41,837/-. During the assessment proceedings, the Assessing Officer admitted that assessee declared NP of 5.75% which broadly tallies with past history of the assessee and has accepted his scrutiny assessment. The Ld. AR placed chart of NP ratio from Ay 2006-07 to 2014-15 where all years are assessed u/s 143(3) and NP ratio from 2.04% to 6.02% is accepted and all orders u/s 143(3) were placed before us deleting addition of purchases made by the Assessing officer by the Tribunal as well as CIT(A). In

assessee's won case. The Ld. AR further submitted that audited books of accounts were never doubted and never rejected u/s 145 of the Act. There is no trading (sale/purchase) outside the books detected by the Assessing Officer. All purchases of construction related material were used in civil construction activities/business of assessee to generate the Revenue/gross receipts which are verified by the CIT(A). The Assessing Officer without adequate show cause notice and in violation of principles of natural justice and made huge addition of Rs.3,25,35,521/- in three baskets of

- (1) Purchases from parties without full address;
- (2) Purchases from parties not relied u/s 133 (6) &
- (3) Purchases from parties not found alleged in Inspector Report which were never confronted to assessee during the assessment proceedings on account of alleged bogus purchases. Thus, making profit picture of assessee completely distorted which assessee could not earn in the business as per revenue's own admission in Section 143(3) assessments.

The Ld. AR further submitted that the factum of payment made through banking channel is thoroughly undoubted and well accepted facts. The CIT(A) has made the addition of the amounts which did not pertain to period under consideration which is stated to be Rs. 99,76,726/- which is emerging from replies and books available to the Assessing Officer during assessment proceedings. The CIT(A) admitted the additional evidence after due compliance to procedure of Rule 46 A. Thus, after making exhaustive examination of each purchases individually, the CIT(A) accepted assessee's version that all purchases are true as per law which is wrongly added by the Assessing Officer in assessment order. Thus, the Ld. AR submitted that once receipts are accepted then purchases made to achieve them cannot be lightly doubted and bunked as none genuine on basis of conjectures and surmises as acceptance of receipts implies that purchase are to be made. The payment was made through banking channel and no material to prove that the same has not for

genuine business purposes. The Ld. AR further submitted that Revenue though has objected to additional evidence but did not comment any adverse to the effect of evidence. The Ld. AR relied upon the decision of Hon'ble Delhi High Court in case of Sunrise Tooling Systems Pvt. Ltd. 361 ITR 206. Hon'ble Bombay High Court decision in case of Babu Lal C Vorama Vs. ITO 282 ITR 251, Bombay High Court decision in case of M/s Nikunj Eximp Enterprises 372 ITR 619, Gujarat High Court's decision in case of CIT Vs. M. K. Brothers 163 ITR 249, Mather and Platt India Ltd. Vs. CIT 168 ITR 493 (Cal) & M/s Diagnostics Vs. CIT 334 ITR 111 (Cal). The Ld. AR also relied upon the decision of the Delhi High Court in case of Bansal Stripes Pvt. Ltd. (ITA No. 103/2021 order dated 26/3/2021)).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee during the appellate proceedings before the CIT(A) has filed details in respect of identity of the party, address of party, PAN details, mode of payment through banking channel along with copy of bank accounts as well as confirmations of the said accounts except in the case of purchases made from M/s Apex Marketing Company for an amount of Rs.9,76,321/- and the rest of the evidences related to each party were produced which was never doubted by the Assessing Officer when called for remand report. The CIT(A) has given a categorical finding that the revenue has accepted the transactions from such parties in the past and the assessee had made purchases on regular basis and these were regular parties from preceding years. In fact the Assessing Officer has taken cognizance of the opening balances of the purchases pertaining to earlier years which were not corresponding to year under consideration while making the addition. After perusal of the evidences it is found that the assessee has filed proper details before the Assessing Officer and has proved identity, genuineness and creditworthiness of the parties except the purchases made from M/s Apex Marketing Company. Thus, the CIT(A) was correct in reducing the addition to the extent of Rs. 9,766,321/-. Therefore, the appeal

of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 21st Day of September, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 21/09/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI