

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.6561/Del./2019
Assessment Year 2015-2016

Vrindavan International Trade Private Limited, 565, G. Floor, Gandhi Cloth Market, Chandni Chowk, New Delhi – 110 006. PAN AAECV7845D	vs.	The Income Tax Officer, Ward – 26(4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Saxena, Advocate & Ms. Sumangla Saxena, Advocate
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	26.08.2021
Date of Pronouncement :	30.09.2021

ORDER

This appeal filed by the Assessee is directed against the Order Dated 28.06.2019 of the Ld. CIT(A)-28, New Delhi, relating to the A.Y. 2015-2016.

2. Facts of the case, in brief are that the assessee is a Company and engaged in the business of trading in clothes. It filed its return of income on 30.09.2015 declaring total income of Rs.2,25,633/-. During the course of

assessment proceedings, the A.O. noted that assessee has made purchases of Rs.41,29,01,230/- from the following 12 parties :

Name of the Proprietor	Name of the Firm	Amount of Purchase
Sh. Dileep	M/s Action Asia Trading	4,84,44,798/-
	M/s Star Trade Agencies	3,14,01,095/-
Sh. Jata shankar Mishra	M/s Shree Ram Fab	3,30,98,035/-
	M/s Keshav Trader	2,63,97,353/-
Sh. Jitender Sharma	M/s Kartik Trading Co	3,58,56,475/-
	M/s Nitin Agencies	2,47,68,549/-
Sh. Panne Lal	M/s Best Fabric Mart	2,31,40,106/-
	M/s Pannelal Trading Co	2,31,46,209/-
Sh. Prem shankar mishra	M/s Shivaji Clothing Empire	2,61,08,013/-
Sh. Purshotam	M/s Masters International	7,28,01,669/-
	M/s Purshottam Enterprises	4,42,20,811/-
Sh. Raj Kishor Gupta	M/s Excel Trader	2,30,18,117/-
Total		41,24,01,230

2.1. In order to verify the purchases, the A.O. issued notice under section 133(6) of the I.T. Act to the vendors through speed post asking them to provide the details of sales transactions made by them with the assessee during the F.Y. 2014-2015. However, all the notices were returned back undelivered with the postal remark *“No such firm in this Market or No such Firm or Incomplete address”*. The A.O. thereafter, deputed the Ward Inspector to serve these notices, but, he was also unable to search the above firms. The A.O. thereafter asked the assessee to produce the

proprietors of these firms. Summons under section 131 of the I.T. Act was also issued and served on the Directors Shri Manoj Gupta and Shri Puneet Gupta on 23.10.2017 fixing the case for hearing on 31.10.2017 and 01.11.2017. However, neither the assessee appeared nor any reply was filed. The assessee also failed to produce the Proprietors of the Firms from which purchases were made. The A.O, therefore, again confronted the same to the assessee. Since the assessee did not produce the books of account nor made compliances to the show cause notice issued by the A.O, the A.O. rejected the books of account under section 145(3) of the I.T. Act, 1961. He observed that the 12 firms from which the assessee has shown to have purchased the goods are not existing but are bogus. These firms, according to the A.O. are created by the assessee himself to generate bogus bills. The A.O. analysed the modus operandi adopted by the assessee and confronted the same to the assessee. Finally, the assessee appeared before the A.O. on 22.12.2007 and filed an affidavit wherein to finalise the on going income tax proceedings and to buy peace of mind the assessee offered

to declare 0.5% of the turnover as net profit which comes to Rs.18.40 lakhs [i.e., Rs.20.64 lakhs (Less) Rs.2.25 lakhs already declared]. Therefore, the A.O. adopted the profit rate at 0.5% of the bogus bills as commission earned by the assessee. The A.O. held that assessee has earned commission income of Rs.20,64,853/- which has not been disclosed in the income tax return. Since the assessee has already disclosed income of Rs.2,25,633/-, the A.O. made addition of Rs.18,39,223/- to the total income of the assessee under section 68 of the I.T. Act, 1961 being the difference. The A.O. further made addition of Rs.1 lakh to the total income of the assessee being the share capital received treating the same as income from undisclosed sources under section 68 of the I.T. Act, 1961. Thus the A.O. determined the total income of the assessee at Rs.21,64,860/- as against Rs.2,25,633/- returned by the assessee.

2.2. In appeal, the Ld. CIT(A) upheld both the additions made by the A.O. So far as the addition of Rs.18,39,223/- made by the A.O. under section 68 of the

I.T. Act, the Ld. CIT(A) sustained the addition by observing as under :

“4. I have considered the facts of the case, basis of additions made by AO and submissions of the appellant. So far as the 2nd and 4th grounds related to the addition of Rs. 18,39,223/- are concerned, it can be seen from the assessment order that during the assessment proceedings, appellnat failed to provide any details in respect of purchases of Rs. 41,24,01,230/- from 12 parties. The notices issued u/s 133(6) of IT Act were also returned back with the remarks that no such parties exist in the market. The ITI deputed by AO to enquire into about these firms was also not able to search their whereabouts. The summons issued to the directors of the appellant company and instruction of AO to appellant to attend the proceedings and to produce proprietors of these firms also resulted in non-compliance. The cheques issued to these parties and invoices issued by them also had several infirmities as discussed by AO in the assessment order. All these

facts clearly establish that the purchases shown by appellant amounting to Rs. 41,24,01,230/- are bogus and merely accommodation entries. Probably the appellant also was knowing and was sure about this fact and that was the reason, he admitted by filing affidavit that these purchases are bogus and not verifiable and in view of that, he expressed his willingness to declare the net profit @ 0.50% on this turnover and promised to pay tax in four installments on or before 31.03.2018. Thus, at one hand the appellant has agreed for addition by filing affidavit during the assessment proceedings, on the other hand, disregarding the agreement before AO, it has filed appeal against the addition. It is clear that because of agreement by AR of appellant, AO did not make further inquiry to verify or examine the genuineness of expenses or evidence produced before him in respect of purchases. Now, taking the benefit of this, appellant has claimed that the purchases made by him are genuine and the A.O. has wrongly made the addition.

This act of appellant cannot be supported. As held by Hon'ble High Court of Allahabad in the case Sterling Machine Tools vs. CIT reported in 123 ITR 181, assessment based on assessee's admission is not appealable. In that case, it was held that the assessee having agreed for addition, AO was justified in making addition and completing the assessment. Following the decision of Hon'ble Court, it is held in this case also, AO was justified in making addition of Rs.18,39,223/- having agreed by appellant. Otherwise also, as discussed above, on merit, the AO was justified in treating the aforesaid purchases as bogus and estimating the commission @ 0.50% on the total amount of purchases. The grounds taken by appellant are dismissed.”

2.3. Similarly, the Ld. CIT(A) sustained the addition of Rs.1 lakh made by the A.O. under section 68 of the I.T. Act on account of share capital by observing as under :

“5. The Ground No.3 pertains to the addition of Rs.1,00,000/- made by AO u/s 68 of the Act. As it is clear from the assessment order, appellant failed to give any details/evidence in respect of share capital of Rs.1,00,000/- introduced in the company during the year under consideration. Since no details were given by appellant explaining the nature and source of share capital, AO was justified in treating the amount of Rs.1,00,000/- as unexplained u/s 68 of the IT Act. The ground taken by appellant fails.”

3. Aggrieved with such Order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following revised grounds :

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred both in law as well as on facts in upholding the order of assessment passed by the AO at an assessed income of Rs.21,64,860 as against the income returned at Rs.2,25,633/-, thereby making additions to the tune of Rs.19,39,223/-.

2. *That Ld. Commissioner of Income Tax (Appeal) has grossly erred in law as well as on facts in sustaining the addition made by AO to the tune of Rs.18,39,223/- u/s 68 because :*
- a. *He has failed to notice that details of purchases were filed showing all the payments were through account payee cheques.*
 - b. *Merely receiving back, the notices is no ground to confirm the addition specifically when all the payments were through account payee cheques.*
 - c. *He failed to appreciate that purchases were made through small traders and the goods received were sold which is not disputed and doubting such purchases is unjustified.*
3. *That Ld.CIT (Appeals) has erred in law as well as on facts in not appreciating that assessee was*

forced to surrender during the assessment because :

- a. Harassment of the parties was done to whom the goods were sold and huge payments were outstanding.*
 - b. The surrender was forced as outstanding amount from the parties was on account of credit sale and chart submitted clearly shows there was outstanding amount.*
 - c. Losing the outstanding amount would ruin the assessee.*
 - d. The surrender was conditional for not initiating penalty proceeding and also because suppliers were not traceable being small traders though goods supplied were not disputed.*
- 4. That Ld. Commissioner of Income Tax (Appeals) has grossly erred in law as well as on facts in sustaining the addition made by Ld.AO to the tune*

of Rs.1,00,000 on account of unexplained share capital, thereby ignoring that :

a. No adverse material has been brought on record to rebut the evidences furnished by the assessee.

b. Addition has been made purely on assumption, presumption, suspicion, surmises and conjectures and as such, addition made is unsustainable in law.

5. That Ld. CIT(A) erred in law as well as on facts in confirming the action of AO in rejecting the books of account wherein the AO proceeded to out-rightly rejecting the same u/s 145 of the IT Act without any cogent basis and such rejection is arbitrary, unreasonable and uncalled for in the eyes of law and such rejection needs to be based upon objective perusal of the books of accounts so furnished by the assessee.

The above grounds of appeals are independent of and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”

3.1. The Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in sustaining the addition made by the A.O. He submitted that the assessee is engaged in the business of trading in cloth where no tax was leviable and so small traders were engaged from different States where most of the textile mills are situated. He submitted that after the introduction of the GST, the small traders started leaving the trade and assessee has to face difficulties in his business for making purchases from the mills who were represented by the small traders. He submitted that during the course of assessment proceedings, the assessee had produced all the sales and purchase bills which were examined by the A.O. However,

despite all efforts by the A.O. as well as the assessee the traders from whom the assessee had purchased the goods could not be traced and, therefore, could not be produced. He submitted that since the A.O. was insisting the assessee to produce the parties from whom goods were purchased which the assessee could not do, therefore, the assessee in order to buy peace of mind, declared the additional profit being 0.5% of the purchases. However, it is a matter of fact that the books of account were duly audited. Assessee has explained the sales and purchases, details of creditors and debtors were filed, stock summary was produced and the details of closing stock was also submitted. He submitted that no errors were found in the books of account, but, the sole basis of addition was surrender made by the assessee.

3.2. Learned Counsel for the Assessee submitted that A.O. has not doubted the sales, but, has only doubted the purchases and has applied the provisions of Section 68 of the I.T. Act, 1961 to the disallowance and estimated the profit which is not in accordance with Law. The Learned Counsel for the Assessee filed the following comparative

chart and submitted that the A.O. in the order passed under section 143(3) has adopted the net profit of 0.029% in A.Y. 2017-2018 and profit rate of 0.045% was accepted under section 143(1).

Assessment Year	Sales	Purchases	Net Profit	Net profit rate	AO
2015-16	41,29,70,780	41,24,01,229	2,25,632	0.055%	Enhanced to 0.5% u/s 143(3)
2016-17	53,06,61,661	53,00,27,927	2,43,088	0.045%	Accepted u/s 143(1)
2017-18 Pg. 13 to 48 Enclosed	50,77,64,670	50,70,60,859	1,46,479	0.029%	Accepted u/s 143(3) Pg. 1 to 12 enclosed

3.3. He submitted that the assessee during the year under consideration has declared net profit of 0.055% which has been enhanced by the A.O. to 0.5% which is not justified since this is the first year of operation of the company.

3.4. The Learned Counsel for the Assessee referring to various decisions submitted that when sales are accepted and assessee has produced the books of account, purchases and sales and stock register etc., and the payments have been made through banking channels, merely because the

notice issued under section 133(6) of the I.T. Act, 1961, were returned unserved or that the assessee failed to produce the parties, cannot be a ground to make huge additions. He accordingly submitted that the addition made by the A.O. and sustained by the Ld. CIT(A) should be deleted.

3.5. So far as the addition of Rs.1 lakhs on account of share capital is concerned, he submitted that this is the first year of operation of the assessee-company and, therefore, the addition could not have been made under section 68 of the I.T. Act, 1961 and addition if any, could have been made in the hands of the Directors. He accordingly submitted that addition of Rs.1 lakhs also which is sustained by the Ld. CIT(A) should be deleted.

4. The Ld. D.R. on the other hand heavily relied on the order of the A.O. and Ld. CIT(A). He submitted that the assessee in the instant case failed to produce the parties before the A.O. despite being specifically asked since the notices issued under section 133(6) of the I.T. Act were returned unserved. The Inspector also could not locate the

parties. Referring to the assessment order, he drew the attention of the Bench to the various anomalies pointed-out by the A.O. and the modus operandi adopted by the assessee for arranging such bogus bills. He accordingly submitted that in the facts and circumstances of the case, the addition made by the A.O. and sustained by the Ld. CIT(A) is justified. So far as the addition of Rs.1 lakh on account of share capital is concerned, the Ld. D.R. relied on the order of the A.O. and the Ld. CIT(A).

5. I have considered the rival arguments made by both the sides, perused the order of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered various the decisions cited before me. I find the A.O. in the instant case noted that the assessee has shown to have purchased goods of Rs.41,24,01,230/- from 12 parties, the details of which are already given in the preceding paragraph. I find the notice issued by the A.O. under section 133(6) I.T. Act were returned unserved and the assessee also could not produce the parties despite being asked by the A.O. for his verification. Further the

Inspector was also unable to trace the parties for service of the notice. Since the assessee surrendered the net profit @ 0.5% of the turnover, the A.O. applied the net profit of 0.5% of the turnover and after taking the profit already declared by the assessee, made addition of Rs.18,39,223/- under section 68 of the I.T. Act, 1961. I find the A.O. also made addition of Rs.1 lakh on account of share capital under section 68 of the I.T. Act, 1961 treating the same as income from undisclosed source. I find the Ld. CIT(A) sustained both the additions, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Learned Counsel for the Assessee that this being the first year of operation of the company and since the assessee had produced the books of account including the details of purchases, sales, stock register, list of debtors and creditors etc., before the A.O, therefore, adoption of profit rate of 0.5% of the turnover is not justified especially when the A.O. in the order passed under section 143(3) for A.Y. 2017-18 has accepted the net profit rate of 0.029% declared by the assessee. Further it is also his

submission that this being the first year of operation, no addition under section 68 could have been made to the share capital of the company of Rs.1 lakh and addition if any, could have been made in the hands of the Directors.

5.1. I find some force in the above arguments of the Learned Counsel for the Assessee. It is an admitted fact that this is the first year of operation of the assessee-company. The assessee has produced books of account before A.O. and the sales declared by the assessee has not been doubted. Further the A.O. in the subsequent years has accepted the book results i.e., 0.045% in A.Y. 2016-17 under section 143(1) of the I.T. Act, 1961 and 0.029% in the order passed under section 143(3) I.T. Act, 1961 for the A.Y. 2017-18. Therefore, for the impugned assessment year, when the sales has not been doubted and the assessee has produced the books of account including details of purchases, sales, sundry debtors, creditors, stock statement, quantitative of details etc., therefore, adoption of net profit @ 0.5% appears to be on higher side. Considering the totality of the facts and circumstances of the case and in

the interest of justice, I am of the considered opinion that adoption of net profit rate of 0.075% under the facts and circumstances of the present case will meet the ends of justice. I hold and directly accordingly. It is also made clear that this profit rate is only for the impugned year for the assessee and cannot be considered as a precedent for other years or for any other assessee. The ground raised by the assessee on this issue is accordingly partly allowed.

5.2. So far as the addition of Rs.1 lakhs under section 68 of the I.T. Act, 1961 in respect of share capital is concerned, it is an admitted fact that the share capital was invested by the Directors and this is the first year of the incorporation. Therefore, in the year of incorporation the assessee-company in my opinion cannot have income from undisclosed source towards introduction of share capital and addition, if any, could have been made in the hands of the Directors. I, therefore, set aside the order of the Ld. CIT(A) on this issue and direct the A.O. to delete the addition.

6. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 30.09.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 30th September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.