

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH “E”: NEW DELHI ]  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA. No. 3002/Del/2014  
(Assessment Year: 2007-08)

ACIT, Central Circle-19, New Delhi.	Vs.	M/s. Simbhaoli Sugars, [Formerly M/s. Simbhaoli Sugar Mills Ltd.,] C-11, Connaught Place, New Delhi – 110 001. PAN: AABCS9972P
(Appellant)		(Respondent)

Department by :	Ms. Sarita Kumar, [CIT] – DR
Assessee by :	Dr. Rakesh Gupta, Advocate
Date of Hearing :	21/10/2021
Date of pronouncement :	22/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Revenue/ ACIT, Central Circle-19, New Delhi against the order passed by the Id. Commissioner of Income Tax (Appeals)–XII, New Delhi, dated 05.02.2014, for assessment year 2007-08, raising following grounds of appeal:-  
*“1. On the facts and in the circumstances of the case, the CIT (A) has erred in not appreciating the fact that mere capitalization of expenses, under the prevailing facts, does not prove the genuineness of the transactions entered into by the assessee.*  
*2. The order of the CIT (A) is erroneous and is not tenable on facts and in law.*  
*3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “*
2. The only ground raised by the revenue is that the Id CIT(A) is not appreciating the fact that mere capitalization of expenses does not prove the genuineness of the transactions entered into by the assessee.
3. Briefly stated the facts shows that the assessee is a company engaged in the business of manufacturing and sale of sugar, industrial and alcohol, generation of power and organic manure. It files its return of income on 15.11.2007 declaring Nil income. Search u/s 132 of the Act was carried out on 21.03.2007. During the course of search several incriminating documents were found and seized. As per seized documents Annexure B-51 which was

found that M/s. Puja Industrial Corporation supplied iron and steel to the assessee company for Assessment Year 2006-07 and 2007-08 to the tune of Rs. 52,57,943/- and Rs. 1,23,04,033/- respectively. During the post search investigation summons were issued to the party but there was no compliance. The assessee was also asked to produce the above party along with books of account but the assessee could not produce the party and therefore, the Id AO made the addition of the above sum. For Assessment Year 2007-08 the addition of Rs. 52,75,943/- was made.

4. Another company from whom the assessee has purchased iron and steel ie. M/s. Faith Mercantile Pvt. Ltd. The purchased bill from this party was also seized. Summons were issued to the party. However, none appeared. Assessee appeared before Id AO and was requested to produce the above party along with bank statement. Later on director of Faith Mercantile Pvt. Ltd Mr. Nanda Kishore Chugh attended along with balance sheet etc. However, books of account and bank statement were not produced. After the detailed examination the Id AO noted that since the suppliers were not produced before the Id AO and the assessee also failed to produce the details of the suppliers in the form of books of account, bank statement of the supplier , addition to the tune of Rs. 12,66,04,608/- was made in the hands of the company.
5. Accordingly, the Id AO made an addition on account of unexplained payment made for both the above parties of Rs. 52,75,953/- and a sum of Rs. 12,66,04,608/-. Consequently, the assessment order was passed on 30.12.2008 determining the total income of the assessee at Rs. 4,54,88,312/- and same was set off against the depreciation. Total income was determined at Rs. Nil.
6. The assessee preferred an appeal before the Id CIT(A), who deleted the above addition stating that the assessee has purchased iron and steel from the above two parties and same has been capitalized by the assessee and no deduction of any revenue expenditure has been claimed. Therefore, the disallowance was deleted.
7. The Id AO aggrieved with the above order has preferred this appeal.
8. The Id DR vehemently supported the order of the Id AO and submitted that the assessee has failed to produce the suppliers along with books of account and bank statement, therefore, in spite of the fact that the assessee has not claimed any expenditure the Id AO has correctly made the addition. It was also submitted that merely because the assessee has not claimed expenditure as deduction, the genuineness of the above payment cannot be accepted.
9. The Id AR vehemently supported the orders of the Id CIT(A). He further stated that when the assessee has not claimed any expenditure of the above steel and iron but capitalized them the

assessee did not claim any revenue expenditure hence, the Id CIT(A) has correctly deleted the addition. He extensively relied upon the order of the Id CIT(A).

10. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the assessee has purchased steel and iron of Rs. 52,75,943/- from M/s. Puja Industries Corporation and further a sum of Rs. 12,66,04,608/- was incurred for the payment of purchase of iron and steel from M/s. Faith Mercantile Pvt. Ltd. Merely because seized documents were found in the form of bills of the above party during the course of search it cannot be said that these purchases are not verifiable. Further, it is also a fact that iron and steel purchased has been capitalized by the assessee in his books of account. The same were not claimed as purchase of raw material etc and debited to the profit and loss accounts in books of account. All the necessary documents in the form of purchase bill etc were available to the Id AO. The bills were containing excise registration and the sales tax registration of the suppliers. Merely because the suppliers did not attend to the summons in one case and both the cases as the suppliers did not produce the books of account and the balance sheet before the Id CIT(A), the purchase of the capital nature cannot be added as income of the assessee. The assessee has shown capital work in progress of Rs. 223 crores. Even otherwise the facts also shows that the assessee has made payment by cheques to both the parties. In view of this, we do not find any infirmity in the order of the Id CIT(A) for deleting the above addition. With respect to the ground raised before us about the genuineness of the above payment we do not find that despite having the sales tax registration and excise registration of the above parties as well as the copies of the bills the Id AO could not prove that any material found during the course of search which even remotely suggests that purchase made by the assessee of capital nature can be added in the hands of the assessee and same were not genuine. Further, with respect to the annexure B-31 some noting were found but same remains uncorroborated. In view of this, the appeal filed by the Id AO is dismissed and the order of the Id CIT(A) is upheld.
11. Accordingly the appeal filed by the learned assessing officer is dismissed.  
Order pronounced in the open court on 22/11/2021.

-Sd/-  
( AMIT SHUKLA )  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated : 22/11/2021.

\*AKKEOT\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi